

STATE OF NEW YORK

5415

2021-2022 Regular Sessions

IN ASSEMBLY

February 16, 2021

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

AN ACT to amend the education law, in relation to school suspensions

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

1 Section 1. Subparagraph 1 of paragraph c of subdivision 3 of section
2 3214 of the education law, as amended by chapter 430 of the laws of
3 2006, is amended to read as follows:

4 (1) No pupil may be suspended for a period in excess of five school
5 days unless such pupil and the person in parental relation to such pupil
6 shall have had an opportunity for a fair hearing, upon reasonable
7 notice, at which such pupil shall have the right of representation by
8 counsel, with the right to question witnesses against such pupil and to
9 present witnesses and other evidence on his or her behalf. Where a pupil
10 may be considered a dangerous threat to himself, herself, or others,
11 such pupil may be suspended for no more than ten days prior to a hearing
12 taking place to allow the school to have adequate time to make an evalu-
13 ation on the pupil's mental health, which may include a psychiatric
14 evaluation, and the risk of danger to others and to consult with law
15 enforcement. Where the pupil is a student with a disability or a student
16 presumed to have a disability, the provisions of paragraph g of this
17 subdivision shall also apply. Where a pupil has been suspended in
18 accordance with this subparagraph by a superintendent of schools,
19 district superintendent of schools, or community superintendent, the
20 superintendent shall personally hear and determine the proceeding or
21 may, in his or her discretion, designate a hearing officer to conduct
22 the hearing. The hearing officer shall be authorized to administer oaths
23 and to issue subpoenas in conjunction with the proceeding before him or
24 her. A record of the hearing shall be maintained, but no stenographic
25 transcript shall be required and a tape recording shall be deemed a
26 satisfactory record. The hearing officer shall make findings of fact

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

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1 and recommendations as to the appropriate measure of discipline to the
2 superintendent. The report of the hearing officer shall be advisory
3 only, and the superintendent may accept all or any part thereof. An
4 appeal will lie from the decision of the superintendent to the board of
5 education who shall make its decision solely upon the record before it.
6 The board may adopt in whole or in part the decision of the superinten-
7 dent of schools. Where the basis for the suspension is, in whole or in
8 part, the possession on school grounds or school property by the student
9 of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor,
10 stiletto or any of the weapons, instruments or appliances specified in
11 subdivision one of section 265.01 of the penal law, the hearing officer
12 or superintendent shall not be barred from considering the admissibility
13 of 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 § 2. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of
18 the education law, as amended by chapter 380 of the laws of 2001, is
19 amended to read as follows:

20 (1) No pupil may be suspended for a period in excess of five school
21 days unless such pupil and the person in parental relation to such pupil
22 shall have had an opportunity for a fair hearing, upon reasonable
23 notice, at which such pupil shall have the right of representation by
24 counsel, with the right to question witnesses against such pupil and to
25 present witnesses and other evidence on his behalf. Where a pupil may be
26 considered a dangerous threat to himself, herself, or others, such pupil
27 may be suspended for no more than ten days prior to a hearing taking
28 place to allow the school to have adequate time to make an evaluation on
29 the pupil's mental health, which may include a psychiatric evaluation,
30 and the risk of danger to others and to consult with law enforcement.

31 Where a pupil has been suspended in accordance with this subdivision by
32 a superintendent of schools, district superintendent of schools, or
33 community superintendent, the superintendent shall personally hear and
34 determine the proceeding or may, in his discretion, designate a hearing
35 officer to conduct the hearing. The hearing officer shall be authorized
36 to administer oaths and to issue subpoenas in conjunction with the
37 proceeding before him. A record of the hearing shall be maintained, but
38 no stenographic transcript shall be required and a tape recording shall
39 be deemed a satisfactory record. The hearing officer shall make findings
40 of fact and recommendations as to the appropriate measure of discipline
41 to the superintendent. The report of the hearing officer shall be advi-
42 sory only, and the superintendent may accept all or any part thereof. An
43 appeal will lie from the decision of the superintendent to the board of
44 education who shall make its decision solely upon the record before it.
45 The board may adopt in whole or in part the decision of the superinten-
46 dent of schools. Where the basis for the suspension is, in whole or in
47 part, the possession on school grounds or school property by the student
48 of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor,
49 stiletto or any of the weapons, instruments or appliances specified in
50 subdivision one of section 265.01 of the penal law, the hearing officer
51 or superintendent shall not be barred from considering the admissibility
52 of such weapon, instrument or appliance as evidence, notwithstanding a
53 determination by a court in a criminal or juvenile delinquency proceed-
54 ing that the recovery of such weapon, instrument or appliance was the
55 result of an unlawful search or seizure.

1 § 3. This act shall take effect immediately, provided that the amend-
2 ments to subparagraph 1 of paragraph c of subdivision 3 of section 3214
3 of the education law made by section one of this act shall be subject to
4 the expiration and reversion of such subparagraph pursuant to section 8
5 of chapter 430 of the laws of 2006, as amended, when upon such date the
6 provisions of section two of this act shall take effect.