

STATE OF NEW YORK

7198

2021-2022 Regular Sessions

IN SENATE

June 7, 2021

Introduced by Sens. JACKSON, BRISPORT, BAILEY, BENJAMIN, BIAGGI, COMRIE, GIANARIS, HARCKHAM, HOYLMAN, KAVANAGH, LIU, MAY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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.

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

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2. The board of education or the trustees~~[, as defined in section two of this chapter,~~ of every school district ~~[within the state, however created, and every]~~ or the chancellor of the city school district in the case of the city school district of the city of New York, and every board of cooperative educational services and [county vocational extension board] charter school, shall adopt and amend, as appropriate, a code of conduct for the maintenance of order on school property, including a school function, which shall promote and sustain a safe, respectful, and supportive school environment and govern the conduct of students, teachers and other school personnel as well as visitors and shall provide for the enforcement thereof. Such policy may be adopted by the ~~[school]~~ board of education or trustees, or the chancellor of the city school district in the case of the city school district of the city of New York, or other governing body only after at least one public hearing that provides for the participation of school personnel, parents, students and any other interested parties before its adoption. The school district, board of cooperative educational services, or charter school shall notify the school community and general public about the hearing at least fifteen days prior to the date of the hearing. Such notice shall include the date, time, and place of the hearing, the agenda, a copy of the proposed code of conduct, and information about a public comment period as determined by the school district, board of cooperative educational services, or charter school. The school district, board of cooperative educational services, or charter school shall take necessary steps to notify families who do not speak English and whose children attend a school in the district, a board of cooperative educational services, or a charter school. Such code of conduct shall define violations of the code of conduct and set clear expectations for student conduct on school property, including at school functions, and shall include, at a minimum:

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

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

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

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

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

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

13 d. standards and procedures to assure security and safety of students
14 and school personnel;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. ~~[The]~~ At the beginning of each school year, the board of education or trustees, chancellor of the city school district in the case of the city school district of the city of New York, or other governing body shall: translate the code of conduct into at least the three most commonly spoken languages of the children attending the school district,

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

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

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

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

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

49 § 4. Section 3214 of the education law, as amended by chapter 181 of
50 the laws of 2000, subparagraph 1 of paragraph c of subdivision 3 as
51 amended by chapter 430 of the laws of 2006, paragraphs d and f of subdi-
52 vision 3 as amended by chapter 425 of the laws of 2002, paragraph e of
53 subdivision 3 as amended by chapter 170 of the laws of 2006, paragraph g
54 of subdivision 3 as amended by chapter 352 of the laws of 2005, clause
55 (v) of subparagraph 3 of paragraph g of subdivision 3 as amended by
56 chapter 378 of the laws of 2007, paragraphs a, b and c of subdivision

3-a as amended by chapter 147 of the laws of 2001 and subdivision 7 as amended by section 9 of part YYY of chapter 59 of the laws of 2017, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the nature and impact of the student's alleged misconduct, including but not limited to the harm to the student or other persons, damage to personal or school property or threat to the safety and welfare of the school community;

(2) the student's age, ability to speak or understand English, physical health, mental health, disabilities, and provisions of an individualized education program as it relates to his or her behavior;

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

(4) the student's prior conduct, the appropriateness of prior interventions, and the effectiveness of any prior interventions;

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

(6) other factors determined to be relevant.

c. 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, superintendent of schools, district superintendent of schools and the principal of the school where the ~~pupil~~ student attends shall have the power to suspend a ~~pupil~~ student for a period not to exceed five school days provided that the suspension of such student is not prohibited by section twenty-eight hundred one of this chapter. In the case of such a suspension, the suspending authority shall provide the ~~pupil~~ student with written notice of the charged misconduct including a brief explanation of the basis for the suspension and a description of the alleged behavior that violated the code of conduct that includes the date, time, and place of the scheduled informal conference with the principal, the right to appeal a suspension, and the procedures for appeal. ~~[If the pupil denies the misconduct, the suspending authority shall provide an explanation of the basis for the suspension.]~~ The ~~pupil~~ student and the parent or person in parental relation to the ~~pupil~~ student shall~~, on request,~~ be given an opportunity for an informal conference with the principal ~~at which~~. At the conference, the ~~pupil and/or~~ student and parent or person in parental relation shall be authorized to review all evidence of the alleged misconduct, present the ~~pupil's~~ student's version of the event ~~and~~, to ask questions of the complaining witnesses, and to be represented by an attorney or advocate. The aforesaid notice and opportunity for an informal conference shall take place prior to suspension of the ~~pupil~~ student unless the ~~pupil's~~

1 student's presence in the school poses a continuing danger to persons or
2 property or an ongoing threat of disruption to the academic process, in
3 which case the [~~pupil's~~] student's notice and opportunity for an
4 informal conference shall take place as soon after the suspension begins
5 as is reasonably practicable.

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

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

~~of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools]~~ The board of education or trustees, the chancellor of the city school district in the case of the city school district of the city of New York, other governing body, superintendent of schools, or district superintendent of schools shall issue a written decision to the school and parent or person in parental relation to the student within three days of the hearing. The written decision shall state the length of suspension, if any, findings of fact, reasons for determination, length of suspension, if any, procedures for appeal, and the 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.

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

d.) e. (1) Consistent with the federal gun-free schools act, any public school ~~[pupil]~~ student who is determined under this subdivision to have brought a firearm to or possessed a firearm at a public school shall be suspended for a period of not less than one calendar year and any nonpublic school pupil participating in a program operated by a public school district using funds from the elementary and secondary education act of nineteen hundred sixty-five who is determined under this subdivision to have brought a firearm to or possessed a firearm at a public school or other premises used by the school district to provide such programs shall be suspended for a period of not less than one calendar year from participation in such program. The procedures of this subdivision shall apply to such a suspension of a nonpublic school ~~[pupil]~~ student. A superintendent of schools, district superintendent of schools or community superintendent shall have the authority to modify this suspension requirement for each student on a case-by-case basis. The determination of a superintendent shall be subject to review by the board of education or trustees, other governing body, or the chancellor of the city school district in the case of the city school district of the city of New York, pursuant to paragraph ~~[e]~~ d of this subdivision and the commissioner pursuant to section three hundred ten of this chapter. Nothing in this subdivision shall be deemed to authorize the suspension of a student with a disability in violation of the individuals with disabilities education act or article eighty-nine of this chapter. A superintendent shall refer the ~~[pupil]~~ student under the age of sixteen who has been determined to have brought a weapon or firearm

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

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

20 (3) As used in this paragraph:

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

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

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

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

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

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

13 (2) As used in this paragraph:

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

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

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

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

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

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

graph, the suspension does not result in a change in placement under federal law.

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

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

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

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

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

(ix) the commissioner shall implement this paragraph by adopting regulations which coordinate the procedures required for discipline of students with disabilities, and students presumed to have a disability for discipline purposes, pursuant to subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute, with the general procedures for student discipline under this section.

~~[3-a]~~ i. When a student is suspended from school consistent with this section and section twenty-eight hundred one of this chapter, the principal, or the principal's designee, in consultation with the

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

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

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

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

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

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

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

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

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

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

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

1 schools or as a change in school attendance zones or geographical bound-
2 aries.

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

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

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

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

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

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

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

1 secondary school in which such student enrolls or seeks, intends or is
2 instructed to enroll, on a full-time or part-time basis.

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

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

parental relation to the student within three days of the hearing. The written decision shall state the length of suspension, if any, findings of fact, reasons for determination, length of suspension, if any, procedures for appeal, and the 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.

§ 6. Paragraphs d and f of subdivision 3 of section 3214 of the education law, as amended by chapter 181 of the laws of 2000, are amended to read as follows:

~~[d.]~~ e. Consistent with the federal gun-free schools act of nineteen hundred ninety-four, any public school ~~[pupil]~~ student who is determined under this subdivision to have brought a weapon to school shall be suspended for a period of not less than one calendar year and any nonpublic school ~~[pupil]~~ student participating in a program operated by a public school district using funds from the elementary and secondary education act of nineteen hundred sixty-five who is determined under this subdivision to have brought a weapon to a public school or other premises used by the school district to provide such programs shall be suspended for a period of not less than one calendar year from participation in such program. The procedures of this subdivision shall apply to such a suspension of a nonpublic school ~~[pupil]~~ student. A superintendent of schools, district superintendent of schools or community superintendent shall have the authority to modify this suspension requirement for each student on a case-by-case basis. The determination of a superintendent shall be subject to review by the board of education or trustees, other governing body, or the chancellor of the city school district in the case of the city school district of the city of New York, pursuant to paragraph c of this subdivision and the commissioner pursuant to section three hundred ten of this chapter. Nothing in this subdivision shall be deemed to authorize the suspension of a student with a disability in violation of the individuals with disabilities education act or article eighty-nine of this chapter. A superintendent shall refer the ~~[pupil]~~ student under the age of sixteen who has been determined to have brought a weapon to school in violation of this subdivision to a presentment agency for a juvenile delinquency proceeding consistent with article three of the family court act except a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law. A superintendent shall refer any ~~[pupil]~~ student sixteen years of age or older or a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law, who has been determined to have brought a weapon to school in violation of this subdivision to the appropriate law enforcement officials.

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

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

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

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

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

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

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

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

54 (iii) the superintendent of schools of a school district, either
55 directly or upon recommendation of a hearing officer designated pursuant
56 to paragraph c of this subdivision, may order the placement of a student

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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