

STATE OF NEW YORK

5691--A

2023-2024 Regular Sessions

IN ASSEMBLY

March 22, 2023

Introduced by M. of A. SOLAGES, DICKENS, O'DONNELL, HYNDMAN, JEAN-PIERRE, PRETLOW, SAYEGH, WALKER, BICHOTTE HERMELYN, AUBRY, EPSTEIN, REYES, TAYLOR, PHEFFER AMATO, GLICK, CRUZ, SIMON, BRONSON, WALLACE, COOK, WILLIAMS, STIRPE, L. ROSENTHAL, SANTABARBARA, RAMOS, DARLING, OTIS, WEPRIN, GONZALEZ-ROJAS, DAVILA, MEEKS, FORREST, HEVESI, KELLES, GALLAGHER, MAMDANI, MITAYNES, LUNSFORD, LAVINE, SEPTIMO, ANDERSON, DE LOS SANTOS, CARROLL, STECK, SEAWRIGHT, DINOWITZ, JACKSON, PAULIN, KIM, BURGOS, COLTON, CLARK, GIBBS, TAPIA, ZINERMAN, HUNTER, FAHY, RAJKUMAR, SHRESTHA, RAGA, SIMONE, BURDICK, ZACCARO, CUNNINGHAM, ARDILA, ALVAREZ, CHANDLER-WATERMAN, LUCAS, SHIMSKY, BORES, LEE, LEVENBERG -- read once and referred to the Committee on Education -- recommitted to the Committee on Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to school climate and codes of conduct on school property and disciplinary action following violation of such codes of conduct; to amend chapter 123 of the laws of 2003 amending the education law relating to establishing the community district education council within the New York city community school district system, in relation to the effectiveness thereof; to amend chapter 430 of the laws of 2006, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, in relation to the effectiveness thereof; to amend chapter 352 of the laws of 2005, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, in relation to the effectiveness thereof; and to amend chapter 378 of the laws of 2007, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, in relation to the effectiveness thereof

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

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

LBD02392-14-4

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. Notwithstanding any
12 provision of law, rule or regulation to the contrary, this section shall
13 apply to all public schools in the state. For purposes of this
14 section~~[,]~~:

15 a. public school shall include public charter schools pursuant to the
16 provisions of paragraph (c) of subdivision one of section twenty-eight
17 hundred fifty-three of this title; and

18 b. school property means in or within any building, structure, athlet-
19 ic playing field, playground, parking lot or land contained within the
20 real property boundary line of [a] all public elementary or secondary
21 [school] schools; or in or on a school bus, as defined in section one
22 hundred forty-two of the vehicle and traffic law; [and-a] or a school's
23 electronic files and databases. A school function shall mean a school-
24 sponsored or school-authorized extra-curricular event or activity
25 regardless of where such event or activity takes place, including any
26 event or activity that may take place in another state.

27 2. The board of education or the trustees~~[, as defined in section two~~
28 ~~of this chapter,~~ of every public school or school district ~~[within the~~
29 ~~state, however created, and every]~~ or the chancellor of the city school
30 district in the case of the city school district of the city of New
31 York, and every board of cooperative educational services ~~[and county~~
32 ~~vocational extension board]~~, shall adopt and amend, as appropriate, a
33 code of conduct for the maintenance of order on school property, includ-
34 ing a school function, which shall promote and sustain a safe, respect-
35 ful, and supportive school environment and govern the conduct of
36 students, teachers and other school personnel as well as visitors and
37 shall provide for the enforcement thereof. Such policy may be adopted by
38 the ~~[school]~~ board of education or trustees, or the chancellor of the
39 city school district in the case of the city school district of the city
40 of New York only after at least one public hearing that provides for the
41 participation of school personnel, parents, students and any other
42 interested parties before its adoption. The school district or public
43 school, or board of cooperative educational services shall notify the
44 school community and general public about the hearing at least fifteen
45 days prior to the date of the hearing. Such notice shall include the
46 date, time, and place of the hearing, the agenda, a copy of the proposed
47 code of conduct, and information about a public comment period as deter-
48 mined by the school district or public school, or board of cooperative
49 educational services. The school district or public school, or board of
50 cooperative educational services shall take necessary steps to notify
51 families who do not speak English and whose children attend a school in
52 the district or public school, or a board of cooperative educational
53 services. Such code of conduct shall define violations of the code of
54 conduct and set clear expectations for student conduct on school proper-
55 ty, including at school functions, and shall include, at a minimum:

a. ~~[provisions]~~ Acceptable and unacceptable behavior. Provisions detailing acceptable and unacceptable behavior in schools shall include behavior:

(i) 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[7]; and

[provisions] (ii) regarding acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students and visitors on school property[7, including a] and at school [function, including the appropriate range of disciplinary measures which may be imposed for violation of such code, and the roles of teachers, administrators, other school personnel, the board of education and parents;] functions.

b. Disciplinary measures and strategies. Provisions detailing disciplinary measures shall:

(i) be age-appropriate, graduated, and proportionate to respond to any violation of the code of conduct before imposing a removal or suspension, the building administrator shall consult with a school psychologist or other mental health professional, to determine age-appropriate supports and interventions for the student for removal, detention, or suspension;

(ii) consider the student's whole circumstances from a holistic lens including life inside and outside of school that may impact behavior including but not limited to food insecurity, homelessness, bullying, lack of school supplies, abuse, hygiene access, and other issues that may occur in or out of school;

(iii) utilize multi-tiered systems of support and positive behavioral interventions, including:

(1) use of the least severe action necessary to respond to any violation of the code of conduct before imposing a removal or suspension; and

(2) restorative practices, social and emotional learning, therapeutic crisis interventions, counseling, de-escalation, collaborative problem-solving, conflict mediation or resolution strategies, engagement with families, class meetings, facilitated circles, conferences, peer mediation, and other interventions;

(iv) ensure any disciplinary strategies used shall provide students with the opportunity to hold themselves accountable for their behavior and repair any harm, which may include strategies to build community, strengthen relationships, engage in restorative practices; and allowing students the opportunity to remedy harm through community service with consent of their parents or persons in parental relations.

c. Suspension provisions. Provisions detailing school suspensions shall:

(i) prohibit the suspension of students in pre-kindergarten through grade three, except if a suspension is necessary to comply with applicable federal laws, including the Gun Free school act 20 U.S.C. 7961 et al. In the event a student in grades pre-K through three engages in behavior that would otherwise give rise to consideration of a suspension were they in grades four and above, schools shall make use of positive behavioral supports, and all other necessary services and interventions, including but not limited to functional behavior assessments and behavior intervention plans, that may be implemented to prevent the recurrence of the student's behaviors;

(ii) prohibit suspensions for acts of disobedience;

(iii) prohibit suspensions to respond to tardiness, unexcused absence from class or school, leaving school without permission, and violation of school dress code;

(iv) require schools to make a good faith effort to meet with the parents to develop and implement interventions and a re-entry plan for all school suspensions, this includes making several attempts to contact the parent, provide remote options to parents, and consider the parent's schedule;

(v) provide for the removal from the classroom and from school property, including a school function, of students and other persons who violate the code of conduct;

(vi) provide for detention, suspension and removal from the classroom of students, consistent with section thirty-two hundred fourteen of this chapter and other applicable federal, state and local laws;

(vii) establish disciplinary measures to be taken in incidents involving the possession or use of illegal substances or weapons, the use of physical force, vandalism, violation of another student's civil rights and threats of violence;

(viii) include exceptions to all prohibitions or limitations of suspension described in this section which shall only include conduct as follows:

(1) sale or distribution of tobacco, alcohol, drugs or other illegal substances;

(2) conduct that was intended and resulted in serious bodily injury upon another person while at school, on school premises, or at a school function;

(3) physical sexual assault and/or forcing another to engage in a sexual activity while at school, on school premises, or at a school function; or

(4) is necessary to comply with applicable federal laws.

d. Code of conduct and disciplinary procedures. School authorities shall establish:

(i) standards and procedures to assure security and safety of students and school personnel;

~~[c. provisions for the removal from the classroom and from school property, including a school function, of students and other persons who violate the code;~~

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

~~e. provisions for detention, suspension and removal from the classroom of students, consistent with section thirty-two hundred fourteen of this chapter and other applicable federal, state and local laws including provisions for the school authorities to establish]~~ (ii) policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom, placed in detention, or suspended from school, which shall include:

(1) an education plan that the principal, or the principal's designee, in consultation with the student's teachers, shall create for the student for each class in which the student is enrolled. The education plan shall make provisions for a student's on-going academic instruction during the removal or suspension and shall include the steps the school will take to provide the student with a successful re-entry to school. The student shall have the opportunity to earn all academic credit they would have been eligible to earn had the student been in class, includ-

1 ing the opportunity to complete any missed assignments or take any
2 missed examinations or assessments during the student's removal or
3 suspension;

4 (2) procedures for when an examination or assessment cannot be
5 rescheduled, the student shall be allowed on school property to take
6 such assessment or examination on the day and time that the assessment
7 or examination is given, unless the student presents a risk to the
8 health and safety of the school community, then alternative spaces may
9 be used as described in section thirty-two hundred fourteen of this
10 chapter;

11 (3) policies on the timeframe an educational plan shall be completed
12 and implemented, this shall be within a reasonable and expeditious time-
13 frame to mitigate learning loss in accordance with the length of the
14 suspension, provided that the education plan is delivered to the student
15 no later than forty-eight hours after the start of suspension; and

16 (4) in the event a suspension is imposed for twenty-one days or more,
17 starting from the first day of exclusion, the education plan shall,
18 include meetings every ten school days comprising of the student, parent
19 or person in parental relation, guidance, school support staff and
20 teachers to review the student's academic progress, services and barriers,
21 if any, to a return to the school community. Consideration shall be
22 given to a termination of suspension status and immediate return to the
23 school community. In no event shall a suspension be longer than forty
24 days unless to comply with applicable federal law.

25 ~~[f-]~~ (iii) procedures by which violations of the code of conduct are
26 reported to the appropriate school personnel, the facts are investigated
27 and determined, and discipline measures ~~[imposed and discipline measures~~
28 ~~carried out]~~ are determined and implemented;

29 ~~[g-]~~ (iv) provisions ensuring such code and the enforcement thereof
30 are in compliance with state and federal laws relating to students with
31 disabilities;

32 ~~[h-]~~ (v) provisions setting forth the procedures by which local law
33 enforcement agencies shall be notified of code violations which consti-
34 tute a crime;

35 ~~[i-]~~ (vi) provisions setting forth the circumstances under and proce-
36 dures by which parents or persons in parental relation to the student
37 accused of violating the code of conduct shall be notified of such code
38 of conduct violations including notice that any statement by the
39 student, written or oral, may be used against the student in a criminal,
40 immigration, or juvenile delinquency investigation and/or proceeding
41 and/or in a court of law. This notice shall be given prior to a student
42 providing a written or oral statement, and the parent or person in
43 parental relation to the student shall have an opportunity to discuss
44 such potential consequences with the student prior to any statements
45 being recorded;

46 ~~[j-]~~ (vii) provisions setting forth the circumstances under and proce-
47 dures by which a ~~[complaint in criminal court, a juvenile delinquency~~
48 ~~petition]~~ student may be referred to law enforcement, consistent with
49 the provisions of section twenty-eight hundred one-a of this article, or
50 referred for a person in need of supervision petition as defined in
51 articles three and seven of the family court act will be filed;

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

55 ~~[l- a minimum suspension period, for students who repeatedly are~~
56 ~~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.~~] (ix) 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 representing teachers, school-related professionals, and the principals, and other school personnel and shall be approved by the board of education or trustees, [~~or other governing body,~~] the charter school's authorizers 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, the chancellor of the city school district in the case of the city school district of the city of New York 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 public school regarding the code of conduct, the use of multi-tiered systems of support, positive behavioral interventions including restorative practices, and age-appropriate graduated and proportionate discipline, which may include implicit bias training, according to collective bargaining agreements.

4. [~~The~~] At the beginning of each school year, the board of education or trustees, the chancellor [~~or other governing body~~] of the city school district in the case of the city school district of the city of New York, shall: translate the code of conduct into at least the three most commonly spoken languages of the children attending the school district, board of cooperative educational services, or public school, post the code of conduct on the school district's, public school's or board of cooperative educational services website, provide copies of a summary of the code of conduct to all students at a general assembly [~~held at the beginning of the school year and shall make copies of the code available to persons in parental relation to students at the beginning of each school year, and shall~~] or classroom lesson, mail a plain language summary of such code to all parents or persons in parental relation to students before the beginning of each school year, and make [~~it~~] such copies available thereafter upon request and on the school and/or school district's websites. 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, or other governing body shall take reasonable steps to ensure community awareness of the code of conduct's provisions.

5. a. The board of education or trustees, or the chancellor ~~[or other governing body]~~ of the city school district in the case of the city school district of the city of New York shall annually review and update the district's codes of conduct if necessary, taking into consideration the effectiveness of code of conduct provisions and the fairness and consistency of its administration. Each school district is authorized to establish a committee and to facilitate the review of the code of conduct and the district's response to code of conduct violations. Any such committee shall be comprised of similar individuals described in subdivision three of this section. The ~~[school]~~ board of education or trustees, the chancellor of the city school district in the case of the city of New York, or other governing body shall reapprove any such updated code only after at least one public hearing (that commenced upon thirty days' notice) that provides for the participation of school personnel, parents, students and any other interested parties.

b. Each district or public school, or board of cooperative educational services shall file a copy of its codes of conduct with the commissioner and ~~[all]~~ any amendments to such code shall be filed with the commissioner no later than thirty days after their adoption.

§ 3. Section 17 of chapter 123 of the laws of 2003 amending the education law relating to establishing the community district education council within the New York city community school district system, is amended to read as follows:

§ 17. This act shall take effect immediately; provided, however, that ~~[the provisions]~~ sections one through twelve, fourteen and fifteen of this act shall be deemed repealed on the same date as sections 1 through 20, 24 and 26 through 30 of chapter 91 of the laws of 2002.

§ 4. Section 3214 of the education law, as amended by chapter 181 of the laws of 2000, subparagraph 1 of paragraph c of subdivision 3 as amended by chapter 430 of the laws of 2006, paragraphs d and f of subdivision 3 as amended by chapter 425 of the laws of 2002, paragraph e of subdivision 3 as amended by chapter 170 of the laws of 2006, paragraph g of subdivision 3 as amended by chapter 352 of the laws of 2005, clause (v) of subparagraph 3 of paragraph g of subdivision 3 as amended by 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. The school authorities of any city or school district may establish schools or set apart rooms in public school buildings for the instruction of school delinquents, and fix the number of days per week and the hours per day of required attendance, 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. ~~Suspension of a pupil~~] Notwithstanding any provision of law, rule or regulation to the contrary, this section shall apply to all public schools in the state including charter schools pursuant to the provisions of paragraph (c) of subdivision one of section twenty-eight hundred fifty-three of this chapter. Whenever the term "board of education or superintendent of schools" is used in this section, it shall be deemed to include board of trustees, the chancellor of the city school district in the case of the city school district of the city of New York, community boards of education and community superintendents governing community districts in accordance with the provisions of article fifty-two-A of this chapter.

2. Suspension of a student. 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, superintendent of schools, district superintendent of schools and the principal of the school where the student attends shall have the power to suspend a student as follows:

a. For a period not to exceed five consecutive school days provided that the suspension of such student is not prohibited by section twenty-eight hundred one of this chapter.

(1) In the case of such a suspension, the suspending authority shall provide the 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, the procedures for appeal, and the manner and location of alternative instruction to be provided to the student for the duration of the suspension if the student is suspended out of school.

(2) The student and the parent or person in parental relation to the student shall be given an opportunity for an informal conference with the principal. At the conference, the student and parent or person in parental relation shall be authorized to review all evidence of the alleged misconduct, present the student's version of the event, 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 student

1 unless the student's presence in the school poses a continuing danger to
2 persons or property or an ongoing threat of disruption to the academic
3 process, in which case the 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 b. For a period not to exceed twenty consecutive school days,
7 provided that the suspension of such student is not prohibited by subdivi-
8 sion two of section twenty-eight hundred one of this chapter, or for a
9 period in excess of twenty consecutive school days, provided the suspen-
10 sion shall only be for conduct that falls under an exception as
11 described in a code of conduct adopted pursuant to section twenty-eight
12 hundred one of this chapter or pursuant to applicable federal law.

13 (1) No student may be suspended for a period in excess of five consec-
14 utive school days without approval from the superintendent.

15 (2) If approved, such student and the parent or person in parental
16 relation to such student shall have had an opportunity for a fair hear-
17 ing, upon reasonable written notice, which shall include a brief
18 description of the facts upon which the alleged violations of the code
19 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, including but not limited to statements by students
23 and staff, video surveillance, anecdotal records, photographs and other
24 documentary evidence, audio recordings, and other materials related to
25 the incident shall be provided to the student and parent or person in
26 parental relation to the student, and to any attorney or advocate of the
27 student, as well as notice of the time, manner and place of the
28 provision of alternative instruction when a student is removed from the
29 school building because of the suspension proceeding. The hearing shall
30 be convened within five days of the written notice, unless the parent or
31 person in parental relation to the student or student requests a later
32 date.

33 (3) At the hearing, such student shall have the right of represen-
34 tation by an attorney or advocate, with the right to request the pres-
35 ence of and question witnesses against such student and to request the
36 presence of and present witnesses and other evidence on their behalf.

37 (4) Where the student is a student with a disability or a student
38 presumed to have a disability, the provisions of subdivision six of this
39 section shall also apply.

40 (5) Where a student has been suspended in accordance with this para-
41 graph, the board of education or trustees, the chancellor of the city
42 school district in the case of the city school district of the city of
43 New York, superintendent of schools, district superintendent of schools,
44 or community superintendent shall personally hear and determine the
45 proceeding or may, in their discretion, designate a hearing officer to
46 conduct the hearing. The entity or individual that conducts the hearing
47 shall be authorized to administer oaths and to issue subpoenas in
48 conjunction with the proceeding.

49 (6) A record of the hearing shall be maintained, but no stenographic
50 transcript shall be required and an audio recording shall be deemed a
51 satisfactory record. The entity or individual that conducts the hearing
52 shall make written findings of fact based on a preponderance of the
53 evidence and shall make recommendations as to the appropriate measure of
54 discipline if any. The report of the hearing officer shall be advisory
55 only, and the board of education or trustees, the chancellor of the city
56 school district in the case of the city school district of the city of

1 New York, other governing body, superintendent of schools or district
2 superintendent of schools may accept all or any part thereof.

3 (7) The board of education or trustees, the chancellor of the city
4 school district in the case of the city school district of the city of
5 New York, superintendent of schools, or district superintendent of
6 schools shall issue a written decision to the school and parent or
7 person in parental relation to the student within three days of the
8 hearing. The written decision shall state the length of suspension, if
9 any, findings of fact, reasons for determination, procedures for appeal,
10 the date by which the appeal shall be filed, and the manner and location
11 of alternative instruction to be provided to the student for the dura-
12 tion of the suspension if the student is suspended out of school.

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

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

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

1 under the age of sixteen who has been determined to have brought a weap-
2 on or firearm to school in violation of this subdivision to a present-
3 ment agency for a juvenile delinquency proceeding consistent with arti-
4 cle three of the family court act except a student fourteen or fifteen
5 years of age who qualifies for juvenile offender status under subdivi-
6 sion forty-two of section 1.20 of the criminal procedure law. A super-
7 intendent shall refer any student sixteen years of age or older or a
8 student fourteen or fifteen years of age who qualifies for juvenile
9 offender status under subdivision forty-two of section 1.20 of the crim-
10 inal procedure law, who has been determined to have brought a weapon or
11 firearm to school in violation of this subdivision to the appropriate
12 law enforcement officials.

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

21 (3) As used in this paragraph:

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

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

27 3. Alternative learning spaces or schools. The school authorities of
28 any city, school district or public school, or board of cooperative
29 educational services shall establish, to the extent practicable, schools
30 or set apart spaces in school buildings or properties for the instruc-
31 tion of students removed or suspended for violations of the code of
32 conduct, and fix the number of days per week and the hours per day of
33 required attendance and instruction, which shall not be less than is
34 required of minors attending the full time day schools. The commissioner
35 shall establish guidance for alternative learning spaces or schools for
36 when students are removed from the classroom or suspended, including
37 allowing a student that has been removed or suspended on school property
38 to take an examination or assessment that cannot be rescheduled when the
39 student presents a risk to the health and safety of the school community
40 as it applies to subdivisions seven and eight of this section and
41 section twenty-eight hundred one of this chapter.

42 4. Consideration for student suspension. a. (1) The board of educa-
43 tion[~~, board of~~] or trustees [~~or sole trustee~~], the chancellor of the
44 city school district in the case of the city school district of the city
45 of New York, the superintendent of schools, district superintendent of
46 schools or principal of a school may suspend [~~the following pupils~~
47 students from required attendance upon instruction[~~+~~

48 ~~A pupil who is insubordinate or disorderly or violent or disruptive,~~
49 ~~or whose conduct otherwise endangers the safety, morals, health or~~
50 ~~welfare of others]~~ as provided in subdivision two of this section, in
51 accordance with the code of conduct, provided that the suspension of
52 such student is not prohibited by section twenty-eight hundred one of
53 this chapter.

54 (2) School officials shall weigh the likelihood that a lesser inter-
55 vention or discipline would adequately address the student's misconduct,

1 redress any harm or damage, and prevent future violations of the code of
2 conduct.

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

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

13 ~~b. (1) The board of education, board of trustees, or sole trustee,~~
14 ~~superintendent of schools, district superintendent of schools and the~~
15 ~~principal of the school where the pupil attends shall have the power to~~
16 ~~suspend a pupil for a period not to exceed five school days. In the~~
17 ~~case of such a suspension, the suspending authority shall provide the~~
18 ~~pupil with notice of the charged misconduct. If the pupil denies the~~
19 ~~misconduct, the suspending authority shall provide an explanation of the~~
20 ~~basis for the suspension. The pupil and the person in parental relation~~
21 ~~to the pupil shall, on request, be given an opportunity for an informal~~
22 ~~conference with the principal at which the pupil and/or person in~~
23 ~~parental relation shall be authorized to present the pupil's version of~~
24 ~~the event and to ask questions of the complaining witnesses. The afore-~~
25 ~~said notice and opportunity for an informal conference shall take place~~
26 ~~prior to suspension of the pupil unless the pupil's presence in the~~
27 ~~school poses a continuing danger to persons or property or an ongoing~~
28 ~~threat of disruption to the academic process, in which case the pupil's~~
29 ~~notice and opportunity for an informal conference shall take place as~~
30 ~~soon after the suspension as is reasonably practicable.~~

31 ~~(2) A teacher shall immediately report and refer a violent pupil prin-~~
32 ~~icipal or superintendent for a violation of the code of conduct and a~~
33 ~~minimum suspension period pursuant to section twenty-eight hundred one~~
34 ~~of this chapter.~~

35 ~~c. (1) No pupil may be suspended for a period in excess of five school~~
36 ~~days unless such pupil and the person in parental relation to such pupil~~
37 ~~shall have had an opportunity for a fair hearing, upon reasonable~~
38 ~~notice, at which such pupil shall have the right of representation by~~
39 ~~counsel, with the right to question witnesses against such pupil and to~~
40 ~~present witnesses and other evidence on his or her behalf. Where the~~
41 ~~pupil is a student with a disability or a student presumed to have a~~
42 ~~disability, the provisions of paragraph g of this subdivision shall also~~
43 ~~apply. Where a pupil has been suspended in accordance with this subpara-~~
44 ~~graph by a superintendent of schools, district superintendent of~~
45 ~~schools, or community superintendent, the superintendent shall~~
46 ~~personally hear and determine the proceeding or may, in his or her~~
47 ~~discretion, designate a hearing officer to conduct the hearing. The~~
48 ~~hearing officer shall be authorized to administer oaths and to issue~~
49 ~~subpoenas in conjunction with the proceeding before him or her. A~~
50 ~~record of the hearing shall be maintained, but no stenographic tran-~~
51 ~~script shall be required and a tape recording shall be deemed a satis-~~
52 ~~factory record. The hearing officer shall make findings of fact and~~
53 ~~recommendations as to the appropriate measure of discipline to the~~
54 ~~superintendent. The report of the hearing officer shall be advisory~~
55 ~~only, and the superintendent may accept all or any part thereof. An~~
56 ~~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. 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 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. 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 with the evidence in the case. The board may reject, confirm or modify the conclusions of the hearing officer.~~

~~d. (1) Consistent with the federal gun free schools act, any public school pupil 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. 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 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 under the age of sixteen who has been determined to have brought a weapon or firearm to school in violation of this subdivision to a presentment agency for a juvenile delinquency proceeding consistent with article three of the family court act except a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law. A superintendent shall refer any pupil sixteen years of age or older or a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law, who has been determined to have brought a weapon or firearm to school in violation of this subdivision to the appropriate law enforcement officials.~~

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

~~(3) As used in this paragraph:~~

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

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

e.] 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 and emotional health, disabilities, and provisions of an individualized education program as it relates to the student's behavior;

(3) the student as a whole including life inside and outside of school that may impact behavior such as food insecurity, homelessness, bullying, lack of school supplies, abuse, hygiene access, and other issues that may occur in or out of school;

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

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

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

(7) other factors determined to be relevant.

5. Procedure after suspension. Where a [pupil] student has been suspended pursuant to this subdivision and said [pupil is of compulsory attendance age] student has the legal right to attend school, immediate steps shall be taken for [his or her] their attendance upon instruction elsewhere [or for supervision or detention of said pupil pursuant to the provisions of article seven of the family court act]. Where a [pupil] student has been suspended for cause, the suspension may be revoked by the board of education or trustees, or the chancellor of the city school district in the case of the city school district of the city of New York, whenever it appears to be for the best interest of the school and the [pupil] student to do so. The board of education or trustees, or the chancellor of the city school district in the case of the city school district for the city of New York, may also condition a student's early return to school and suspension revocation on the [pupil's] student's voluntary participation in counseling or specialized classes, including anger management or dispute resolution, where applicable.

~~[f. Whenever the term "board of education or superintendent of schools" is used in this subdivision, it shall be deemed to include community boards of education and community superintendents governing community districts in accordance with the provisions of article fifty-two A of this chapter.~~

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

20 ~~[(2)]~~ b. As used in this paragraph:

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

27 ~~[(ii)]~~ (2) a "manifestation team" means a representative of the school
28 district, the parent or person in parental relation, and relevant
29 members of the committee on special education, as determined by the
30 parent or person in parental relation and the district.

31 ~~[(3)]~~ c. In applying the federal law consistent with this section:

32 ~~[(i)]~~ (1) in the event of a conflict between the procedures estab-
33 lished in this section and those established in subsection (k) of
34 section fourteen hundred fifteen of title twenty of the United States
35 code and the federal regulations implementing such statute, such federal
36 statute and regulations shall govern.

37 ~~[(ii)]~~ (2) the board of trustees or board of education of any school
38 district, the chancellor of the city school district of the city of New
39 York, a district superintendent of schools or a building principal shall
40 have authority, provided that suspension of such student is not prohib-
41 ited by subdivision two of section twenty-eight hundred one of this
42 chapter, to order the placement of a student with a disability into an
43 appropriate interim alternative educational setting, another setting or
44 suspension, provided that the suspension of such student is not prohib-
45 ited by section twenty-eight hundred one of this chapter, for a period
46 not to exceed five consecutive school days where such student is
47 suspended pursuant to this subdivision and, except as otherwise provided
48 in ~~[clause (vi) of this]~~ subparagraph four of this paragraph, the
49 suspension does not result in a change in placement under federal law.

50 ~~[(iii)]~~ (3) the superintendent of schools of a school district, either
51 directly or upon recommendation of a hearing officer designated pursuant
52 to ~~[paragraph c of this]~~ subdivision two of this section, may order the
53 placement of a student with a disability into an interim alternative
54 educational setting, another setting or suspension, provided that the
55 suspension of such student is not prohibited by section twenty-eight
56 hundred one of this chapter, 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 setting, another setting or suspension
3 pursuant to [~~clause (ii) of this~~] subparagraph two of this paragraph for
4 the behavior, where the superintendent determines in accordance with the
5 procedures set forth in this subdivision that the student has engaged in
6 behavior that warrants a suspension, and, except as otherwise provided
7 in [~~clause (vi) of this~~] subparagraph four of this paragraph, the
8 suspension does not result in a change in placement under federal law.

9 [~~(iv)~~] (4) the superintendent of schools of a school district, either
10 directly or upon recommendation of a hearing officer designated pursuant
11 to [~~paragraph c of this~~] subdivision two of this section, may order the
12 change in placement of a student with a disability to an interim alter-
13 native educational setting for up to forty-five school days under the
14 circumstances specified in subsection (k)(1)(G) of section fourteen
15 hundred fifteen of title twenty of the United States code and the feder-
16 al regulations implementing such statute or a longer period where
17 authorized by federal law under the circumstances specified in
18 subsection (k)(1)(C) of section fourteen hundred fifteen of title twenty
19 of the United States code and the federal regulations implementing such
20 statute, but in neither case shall such period exceed the period of
21 suspension ordered by a superintendent in accordance with this subdivi-
22 sion, provided that the suspension of such student is not prohibited by
23 section twenty-eight hundred one of this chapter.

24 [~~(v)~~] (5) the terms "day," "business day," and "school day" shall be
25 as defined in section 300.11 of title thirty-four of the code of federal
26 regulations.

27 [~~(vi)~~] (6) notwithstanding any other provision of this subdivision to
28 the contrary, upon a determination by a manifestation team that the
29 behavior of a student with a disability was not a manifestation of the
30 student's disability, such student may be disciplined pursuant to this
31 section in the same manner and for the same duration as a nondisabled
32 student, except that such student shall continue to receive services to
33 the extent required under federal law and regulations, and such services
34 may be provided in an interim alternative educational setting, provided
35 that the suspension of such student is not prohibited by section twen-
36 ty-eight hundred one of this chapter.

37 [~~(vii)~~] (7) an impartial hearing officer appointed pursuant to subdivi-
38 sion one of section forty-four hundred four of this chapter may order
39 a change in placement of a student with a disability to an appropriate
40 interim alternative educational setting for not more than forty-five
41 school days under the circumstances specified in subsections (k)(3) and
42 (k)(4) of section fourteen hundred fifteen of title twenty of the United
43 States code and the federal regulations implementing such statutes,
44 provided that such procedure may be repeated, as necessary, provided
45 that the suspension of such student is not prohibited by section twen-
46 ty-eight hundred one of this chapter.

47 [~~(viii)~~] (8) nothing in this section shall be construed to authorize
48 the suspension or removal of a student with a disability from [~~his or~~
49 ~~her~~] their current educational placement for violation of school rules
50 following a determination by a manifestation team that the behavior is a
51 manifestation of the student's disability, except as authorized under
52 federal law and regulations.

53 [~~(ix)~~] (9) the commissioner shall implement this paragraph by adopting
54 regulations which coordinate the procedures required for discipline of
55 students with disabilities, and students presumed to have a disability
56 for discipline purposes, pursuant to subsection (k) of section fourteen

1 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.

4 ~~[3-a.]~~ 7. Education plan. 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 student's teachers, shall create an education plan for the student for each class in which the student is enrolled, according to the timeframe policies required in the code of conduct described in section twenty-eight hundred one of this chapter. The education plan shall make provisions for a student's on-going academic instruction during the suspension and shall include the steps the school will take to provide the student with a successful re-entry to school. The student shall have the opportunity to earn all academic credit they would have been eligible to earn had the student been in class, including the opportunity to complete any missed assignments or take any missed examination or assessments during the student's suspension. If an examination or assessment cannot be rescheduled, the student shall be allowed on school property to take such assessment or examination on the day and time that the assessment or examination is given, unless the student presents a risk to the health and safety of the school community then the assessment or examination should be provided in an alternative space as described in subdivision three of this section, if available.

24 8. Teacher removal of a ~~[disruptive pupil]~~ student. In addition, any teacher shall have the power and authority to remove a ~~[disruptive pupil, as defined in subdivision two-a of this section,]~~ student from such teacher's classroom consistent with discipline measures contained in the code of conduct adopted by the board pursuant to section twenty-eight hundred one of this chapter. The school authorities of any school district or public school, board of cooperative educational services shall establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom pursuant to this ~~[subdivision and provided further that nothing]~~ section. When a student is removed from the classroom, the student shall have the opportunity to earn all academic credit including the opportunity to complete any missed assignments or take any missed examinations or assessments during the student's removal. If an examination or assessment cannot be rescheduled, the student shall be allowed on school property to take such assessment or examination on the day and time that the assessment or examination is given unless the student presents a risk to the health and safety of the school community then the assessment or examination should be provided in an alternative space as described in subdivision three of this section, if available. Nothing in this subdivision shall authorize the removal of a ~~[pupil]~~ student in violation of any state or federal law or regulation. No ~~[pupil]~~ student shall return to the classroom until the principal makes a final determination pursuant to ~~[paragraph c of]~~ this subdivision, or the period of removal expires, whichever is less.

49 a. Such teacher shall inform the ~~[pupil]~~ student and the school principal of the reasons for the removal. If the teacher finds that the ~~[pupil's]~~ student's continued presence in the classroom does not pose a continuing danger to persons or property and does not present an ongoing threat of disruption to the academic process, the teacher shall, prior to removing the student from the classroom, provide the student with an explanation of the basis for the removal and allow the ~~[pupil]~~ student to informally present the ~~[pupil's]~~ student's version of relevant

1 events. In all other cases, the teacher shall provide the [~~pupil~~]
2 student with an explanation of the basis for the removal and an informal
3 opportunity to be heard within twenty-four hours of the [~~pupil's~~]
4 student's removal, provided that if such twenty-four hour period does
5 not end on a school day, it shall be extended to the corresponding time
6 on the next school day.

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

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

35 d. The principal may, in [~~his or her~~] their discretion, designate a
36 school district administrator, to carry out the functions required of
37 the principal under this subdivision.

38 [~~4-~~] 9. Expense. [~~a-~~] The expense attending the commitment and costs
39 of maintenance of any [~~school delinquent~~] student placed as a result of
40 a finding related to school or educational issues shall be a charge
41 against the city or district where [~~he~~] the student resides, if such
42 city or district employs a superintendent of schools; otherwise it shall
43 be a county charge.

44 [~~b. The school authorities may institute proceedings before a court~~
45 ~~having jurisdiction to determine the liability of a person in parental~~
46 ~~relation to contribute towards the maintenance of a school delinquent~~
47 ~~under sixteen years of age ordered to attend upon instruction under~~
48 ~~confinement. If the court shall find the person in parental relation~~
49 ~~able to contribute towards the maintenance of such a minor, it may issue~~
50 ~~an order fixing the amount to be paid weekly.~~

51 [~~5-~~] 10. Involuntary transfers of [~~pupils~~] students who have not been
52 determined to be a student with a disability or a student presumed to
53 have a disability for discipline purposes.

54 a. The board of education[, ~~board of~~] or trustees [~~or sole trustee,~~],
55 the chancellor of the city school district in the case of the city
56 school district of New York, other governing body, the superintendent of

1 schools, or district superintendent of schools may transfer a ~~[pupil]~~
2 ~~student~~ who has not been determined to be a student with a disability as
3 defined in section forty-four hundred one of this chapter, or a student
4 presumed to have a disability for discipline purposes as defined in
5 ~~[paragraph g of]~~ subdivision ~~[three]~~ ~~six~~ of this section from regular
6 classroom instruction to an appropriate educational setting in another
7 school upon the written recommendation of the school principal and
8 following independent review thereof. For purposes of this section of
9 the law, "involuntary transfer" does not include a transfer made by a
10 school district as part of a plan to reduce racial imbalance within the
11 schools or as a change in school attendance zones or geographical bound-
12 aries.

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

17 No recommendation for ~~[pupil]~~ ~~student~~ transfer shall be initiated by
18 the principal until such ~~[pupil]~~ ~~student~~ and a ~~parent or~~ person in
19 parental relation has been sent written notification of the consider-
20 ation of transfer recommendation. Such notice shall set a time and place
21 of an informal conference with the principal and shall inform such
22 ~~parent or~~ person in parental relation and such ~~[pupil]~~ ~~student~~ of their
23 right to be accompanied by counsel or an individual of their choice.

24 c. After the conference and if the principal concludes that the
25 ~~[pupil]~~ ~~student~~ would benefit from a transfer or that the ~~[pupil]~~
26 ~~student~~ would receive an adequate and appropriate education in another
27 school program or facility, the principal may issue a recommendation of
28 transfer to the superintendent. Such recommendation shall include a
29 description of behavior and/or academic problems indicative of the need
30 for transfer; a description of alternatives explored and prior action
31 taken to resolve the problem. A copy of that letter shall be sent to the
32 ~~parent or~~ person in parental relation and to the ~~[pupil]~~ ~~student~~.

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

45 e. Parental consent to a transfer shall not constitute a waiver of the
46 right to a fair hearing.

47 ~~[6-]~~ ~~11.~~ Transfer of a ~~[pupil]~~ ~~student~~. Where a suspended ~~[pupil]~~
48 ~~student~~ is to be transferred pursuant to subdivision ~~[five]~~ ~~ten~~ of this
49 section, ~~[he or she]~~ ~~the student~~ shall remain on the register of the
50 original school for two school days following transmittal of ~~[his or~~
51 ~~her]~~ ~~their~~ records to the school to which ~~[he or she]~~ ~~the student~~ is to
52 be transferred. The receiving school shall immediately upon receiving
53 those records transmitted by the original school, review them to
54 ~~[insure]~~ ~~ensure~~ proper placement of the ~~[pupil]~~ ~~student~~. Staff members
55 who are involved in the ~~[pupil's]~~ ~~student's~~ education must be provided
56 with pertinent records and information relating to the background and

1 problems of the ~~[pupil]~~ student before the ~~[pupil]~~ student is placed in
2 a classroom.

3 ~~[7-]~~ 12. Transfer of disciplinary records. Notwithstanding any other
4 provision of law to the contrary, each local educational agency, as such
5 term is defined in subsection thirty of section eighty-one hundred one
6 of the Elementary and Secondary Education Act of 1965, as amended, shall
7 establish procedures in accordance with section eighty-five hundred
8 thirty-seven of the Elementary and Secondary Education Act of 1965, as
9 amended, and the Family Educational Rights and Privacy Act of 1974, to
10 facilitate the transfer of disciplinary records relating to the suspen-
11 sion or expulsion of a student to any public or nonpublic elementary or
12 secondary school in which such student enrolls or seeks, intends or is
13 instructed to enroll, on a full-time or part-time basis.

14 13. Annual report on student discipline. a. The board of education or
15 superintendent of schools shall post on its website and submit to the
16 department by October thirty-first of each year an annual report, based
17 on data from the preceding school year, on the discipline of students.
18 The department shall analyze the collected data and compare to previous
19 year post collected annual reports on their website by November thirti-
20 eth of each year.

21 b. The commissioner shall establish and distribute a uniform reporting
22 structure for school districts to fill out for annual report on the
23 discipline of students requirement, pursuant to this subdivision. The
24 uniform reporting structure shall collect data on the following:

25 (1) the number of teacher removals, number of days removed, and
26 purpose of removal;

27 (2) the number of suspensions, length of suspension, and purpose of
28 suspension;

29 (3) the number of students subjected more than once to a teacher
30 removal, suspension, or any combination thereof;

31 (4) the number of students subjected to an expulsion; and

32 (5) this data shall be disaggregated, where apparent, disclosed or
33 discoverable: by race, ethnicity, gender, gender expression, sexuality,
34 family income or economic status, religion, grade, year of birth, wheth-
35 er the individual is receiving special education services, whether the
36 individual is an English language learner, and homeless status.

37 § 5. Subdivision (a) of section 8 of chapter 430 of the laws of 2006,
38 amending the education law relating to implementation of the federal
39 individuals with disabilities education improvement act of 2004, as
40 amended by chapter 253 of the laws of 2021, is amended to read as
41 follows:

42 (a) sections one~~[, two,]~~ and six of this act shall expire and be
43 deemed repealed June 30, 2024;

44 § 6. Section 22 of chapter 352 of the laws of 2005, amending the
45 education law relating to implementation of the federal individuals with
46 disabilities education improvement act of 2004, as amended by chapter
47 253 of the laws of 2021, is amended to read as follows:

48 § 22. This act shall take effect July 1, 2005, provided, however, if
49 this act shall become a law after such date it shall take effect imme-
50 diately and shall be deemed to have been in full force and effect on and
51 after July 1, 2005; and provided further, however, that sections one
52 through ~~four~~ three and six through twenty-one of this act shall expire
53 and be deemed repealed June 30, 2024, and section five of this act shall
54 expire and be deemed repealed June 30, 2024.

55 § 7. Subdivision d of section 27 of chapter 378 of the laws of 2007,
56 amending the education law relating to implementation of the federal

1 individuals with disabilities education improvement act of 2004, as
2 amended by chapter 253 of the laws of 2021, is amended to read as
3 follows:

4 d. [~~the provisions~~] sections one, two and four through twenty-five of
5 this act shall expire and be deemed repealed June 30, 2024.

6 § 8. This act shall take effect immediately; provided, however that
7 sections two and four of this act shall take effect July 1, 2025.