

# STATE OF NEW YORK

5691

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, JOYNER, 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 -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to school climate and codes of conduct on school property and disciplinary action following violation of such codes of conduct; and to amend the education law, in relation to making conforming amendments

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

1 Section 1. This act shall be known and may be cited as the "Judith  
2 Kaye School Solutions not Suspensions Act".  
3 § 2. Section 2801 of the education law, as added by chapter 181 of the  
4 laws of 2000, subdivision 1 as amended by chapter 402 of the laws of  
5 2005, the opening paragraph, paragraph a and paragraph c of subdivision  
6 2 and paragraph a of subdivision 5 as amended by chapter 380 of the laws  
7 of 2001, paragraphs l and m as amended and paragraph n of subdivision 2  
8 as added by chapter 482 of the laws of 2010, and subdivision 3 as  
9 amended by chapter 123 of the laws of 2003, is amended to read as  
10 follows:  
11 § 2801. Codes of conduct on school property. 1. For purposes of this  
12 section, school property means in or within any building, structure,  
13 athletic playing field, playground, parking lot or land contained within  
14 the real property boundary line of a public elementary or secondary  
15 school, including a charter school; or in or on a school bus, as defined

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

LBD02392-02-3

1 in section one hundred forty-two of the vehicle and traffic law; ~~[and a]~~  
2 or a school's electronic files and databases. A school function shall  
3 mean a school-sponsored or school-authorized extra-curricular event or  
4 activity regardless of where such event or activity takes place, includ-  
5 ing any event or activity that may take place in another state.

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

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

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

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

1 behavior, and foster healthy relationships within the school community.  
2 No student, however, shall be required to participate in a restorative  
3 practice without their consent. Reasonable attempts shall also be made  
4 to obtain the consent of their parents or persons in parental relations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 4. [~~The~~] At the beginning of each school year, the board of education  
56 or trustees, chancellor of the city school district in the case of the

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

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

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

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

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

52 § 4. Section 3214 of the education law, as amended by chapter 181 of  
53 the laws of 2000, subparagraph 1 of paragraph c of subdivision 3 as  
54 amended by chapter 430 of the laws of 2006, paragraphs d and f of subdi-  
55 vision 3 as amended by chapter 425 of the laws of 2002, paragraph e of  
56 subdivision 3 as amended by chapter 170 of the laws of 2006, paragraph g



1 of subdivision 3 as amended by chapter 352 of the laws of 2005, clause  
2 (v) of subparagraph 3 of paragraph g of subdivision 3 as amended by  
3 chapter 378 of the laws of 2007, paragraphs a, b and c of subdivision  
4 3-a as amended by chapter 147 of the laws of 2001 and subdivision 7 as  
5 amended by section 9 of part YYY of chapter 59 of the laws of 2017, is  
6 amended to read as follows:

7 § 3214. Student placement, suspensions and transfers. 1. [~~School~~  
8 ~~delinquent. A minor under seventeen years of age, required by any of the~~  
9 ~~provisions of part one of this article to attend upon instruction, who~~  
10 ~~is an habitual truant from such instruction or is irregular in such~~  
11 ~~attendance or insubordinate or disorderly or disruptive or violent~~  
12 ~~during such attendance, is a school delinquent.~~

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

22 [~~2-a. a. Violent pupil. For the purposes of this section, a violent~~  
23 ~~pupil is an elementary or secondary student under twenty one years of~~  
24 ~~age who+~~

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

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

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

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

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

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

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

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

47 3.] 2. Suspension of a [~~pupil~~] student. a. (1) The board of educa-  
48 tion[~~, board of~~] or trustees [~~or sole trustee~~], the chancellor of the  
49 city school district in the case of the city school district of the city  
50 of New York, other governing body, the superintendent of schools,  
51 district superintendent of schools or principal of a school may suspend  
52 [~~the following pupils~~] students from required attendance upon instruc-  
53 tion[+]

54 ~~A pupil who is insubordinate or disorderly or violent or disruptive,~~  
55 ~~or whose conduct otherwise endangers the safety, morals, health or~~  
56 ~~welfare of others]~~ as provided in paragraphs b, c, and d of this subdi-

1 vision, in accordance with the code of conduct, provided that the  
2 suspension of such student is not prohibited by section twenty-eight  
3 hundred one of this chapter.

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

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

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

18 b. [~~1~~] In considering appropriate discipline measures, school  
19 authorities shall consider the facts of each case, including, but not  
20 limited to:

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

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

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

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

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

34 (6) other factors determined to be relevant.

35 c. The board of education [~~7~~, ~~board of~~] or trustees, [~~or sole trustee,~~  
36 the chancellor of the city school district in the case of the city  
37 school district of the city of New York, other governing body, super-  
38 intendent of schools, district superintendent of schools and the princi-  
39 pal of the school where the [~~pupil~~] student attends shall have the power  
40 to suspend a [~~pupil~~] student for a period not to exceed five school days  
41 provided that the suspension of such student is not prohibited by  
42 section twenty-eight hundred one of this chapter. In the case of such a  
43 suspension, the suspending authority shall provide the [~~pupil~~] student  
44 with written notice of the charged misconduct including a brief explana-  
45 tion of the basis for the suspension and a description of the alleged  
46 behavior that violated the code of conduct that includes the date, time,  
47 and place of the scheduled informal conference with the principal, the  
48 right to appeal a suspension, and the procedures for appeal. [~~If the~~  
49 ~~pupil denies the misconduct, the suspending authority shall provide an~~  
50 ~~explanation of the basis for the suspension.~~] The [~~pupil~~] student and  
51 the parent or person in parental relation to the [~~pupil~~] student shall [~~7~~  
52 ~~on request,~~] be given an opportunity for an informal conference with the  
53 principal [~~at which~~]. At the conference, the [~~pupil and/or~~] student and  
54 parent or person in parental relation shall be authorized to review all  
55 evidence of the alleged misconduct, present the [~~pupil's~~] student's  
56 version of the event [~~and~~], to ask questions of the complaining

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

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

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



1 school district of the city of New York, other governing body, super-  
2 intendent of schools or district superintendent of schools may accept  
3 all or any part thereof. [~~An appeal will lie from the decision of the~~  
4 ~~superintendent to the board of education who shall make its decision~~  
5 ~~solely upon the record before it. The board may adopt in whole or in~~  
6 ~~part the decision of the superintendent of schools~~] The board of educa-  
7 tion or trustees, the chancellor of the city school district in the case  
8 of the city school district of the city of New York, other governing  
9 body, superintendent of schools, or district superintendent of schools  
10 shall issue a written decision to the school and parent or person in  
11 parental relation to the student within three days of the hearing. The  
12 written decision shall state the length of suspension, if any, findings  
13 of fact, reasons for determination, length of suspension, if any, proce-  
14 dures for appeal, and the date by which the appeal shall be filed.

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

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

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

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

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

24 (3) As used in this paragraph:

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

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

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

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

54 [~~g-~~] h. Discipline of students with disabilities and students presumed  
55 to have a disability for discipline purposes. (1) Notwithstanding any  
56 other provision of this subdivision to the contrary, a student with a

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

17 (2) As used in this paragraph:

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

24 (ii) a "manifestation team" means a representative of the school  
25 district, the parent or person in parental relation, and relevant  
26 members of the committee on special education, as determined by the  
27 parent or person in parental relation and the district.

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

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

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

48 (iii) the superintendent of schools of a school district, either  
49 directly or upon recommendation of a hearing officer designated pursuant  
50 to paragraph c of this subdivision, may order the placement of a student  
51 with a disability into an interim alternative educational setting,  
52 another setting or suspension, provided that the suspension of such  
53 student is not prohibited by section twenty-eight hundred one of this  
54 chapter, for up to ten consecutive school days, inclusive of any period  
55 in which the student is placed in an appropriate interim alternative  
56 educational setting, another setting or suspension pursuant to clause

1 (ii) of this subparagraph for the behavior, where the superintendent  
2 determines in accordance with the procedures set forth in this subdivi-  
3 sion that the student has engaged in behavior that warrants a suspen-  
4 sion, and, except as otherwise provided in clause (vi) of this subpara-  
5 graph, the suspension does not result in a change in placement under  
6 federal law.

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

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

25 (vi) notwithstanding any other provision of this subdivision to the  
26 contrary, upon a determination by a manifestation team that the behavior  
27 of a student with a disability was not a manifestation of the student's  
28 disability, such student may be disciplined pursuant to this section in  
29 the same manner and for the same duration as a nondisabled student,  
30 except that such student shall continue to receive services to the  
31 extent required under federal law and regulations, and such services may  
32 be provided in an interim alternative educational setting, provided that  
33 the suspension of such student is not prohibited by section twenty-eight  
34 hundred one of this 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 school days under the circumstances specified in subsections (k)(3) and  
40 (k)(4) of section fourteen hundred fifteen of title twenty of the United  
41 States code and the federal regulations implementing such statutes,  
42 provided that such procedure may be repeated, as necessary, provided  
43 that the suspension of such student is not prohibited by section twen-  
44 ty-eight 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 their current educational placement for violation of school rules  
48 following a determination by a manifestation team that the behavior is a  
49 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 ~~[3-a.]~~ i. When a student is suspended from school consistent with  
4 this section and section twenty-eight hundred one of this chapter, the  
5 principal, or the principal's designee, in consultation with the  
6 student's teachers, shall within twenty-four hours create an education  
7 plan for the student for each class in which the student is enrolled,  
8 provided that if such twenty-four hour period does not end on a school  
9 day, it shall be extended to the corresponding time on the next school  
10 day. The education plan shall make provisions for a student's on-going  
11 academic instruction during the suspension and shall include the steps  
12 the school will take to provide the student with a successful re-entry  
13 to school. The student shall have the opportunity to earn all academic  
14 credit they would have been eligible to earn had the student been in  
15 class, including the opportunity to complete any missed assignments or  
16 take any missed examination or assessments during the student's suspen-  
17 sion. If an examination or assessment cannot be rescheduled, the student  
18 shall be allowed on school property to take such assessment or examina-  
19 tion on the day and time that the assessment or examination is given.

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

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



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

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

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

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

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

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

48 a. The board of education[~~, board of~~] or trustees [~~or sole trustee,~~],  
49 the chancellor of the city school district in the case of the city  
50 school district of New York, other governing body, the superintendent of  
51 schools, or district superintendent of schools may transfer a [~~pupil~~]  
52 student who has not been determined to be a student with a disability as  
53 defined in section forty-four hundred one of this chapter, or a student  
54 presumed to have a disability for discipline purposes as defined in  
55 paragraph [~~g~~] h of subdivision [~~three~~] two of this section from regular  
56 classroom instruction to an appropriate educational setting in another

1 school upon the written recommendation of the school principal and  
2 following independent review thereof. For purposes of this section of  
3 the law, "involuntary transfer" does not include a transfer made by a  
4 school district as part of a plan to reduce racial imbalance within the  
5 schools or as a change in school attendance zones or geographical bound-  
6 aries.

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

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

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

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

39 Parental consent to a transfer shall not constitute a waiver of the  
40 right to a fair hearing.

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

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

1 thirty-seven of the Elementary and Secondary Education Act of 1965, as  
2 amended, and the Family Educational Rights and Privacy Act of 1974, to  
3 facilitate the transfer of disciplinary records relating to the suspen-  
4 sion or expulsion of a student to any public or nonpublic elementary or  
5 secondary school in which such student enrolls or seeks, intends or is  
6 instructed to enroll, on a full-time or part-time basis.

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

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

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

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

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

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

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

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

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

55 (ii) the board of trustees or board of education of any school  
56 district, other governing body, the chancellor of the city school

1 district in the case of the city school district of the city of New  
2 York, a district superintendent of schools or a building principal shall  
3 have authority, provided that the suspension of such student is not  
4 prohibited by section twenty-eight hundred one of this chapter, to order  
5 the placement of a student with a disability into an appropriate interim  
6 alternative educational setting, another setting or suspension for a  
7 period not to exceed five consecutive school days where such student is  
8 suspended pursuant to this subdivision and, except as otherwise provided  
9 in clause (vi) of this subparagraph, the suspension does not result in a  
10 change in placement under federal law.

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

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

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

39 (vi) notwithstanding any other provision of this subdivision to the  
40 contrary, upon a determination by the committee on special education  
41 that the behavior of a student with a disability was not a manifestation  
42 of the student's disability, such student may be disciplined pursuant to  
43 this section in the same manner as a nondisabled student, except that  
44 such student shall continue to receive services to the extent required  
45 under federal law and regulations, provided that the suspension of such  
46 student is not prohibited by section twenty-eight hundred one of this  
47 chapter.

48 (vii) an impartial hearing officer appointed pursuant to subdivision  
49 one of section forty-four hundred four of this chapter may order a  
50 change in placement of a student with a disability to an appropriate  
51 interim alternative educational setting for not more than forty-five  
52 days under the circumstances specified in subsections (k)(2) and (k)(7)  
53 of section fourteen hundred fifteen of title twenty of the United States  
54 code and the federal regulations implementing such statutes, provided  
55 that such procedure may be repeated, as necessary, provided that the



1 suspension of such student is not prohibited by section twenty-eight  
2 hundred one of this chapter.

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

9 (ix) the commissioner shall implement this paragraph by adopting regu-  
10 lations which coordinate the procedures required for discipline of  
11 students with disabilities, and students presumed to have a disability  
12 for discipline purposes, pursuant to subsection (k) of section fourteen  
13 hundred fifteen of title twenty of the United States code and the feder-  
14 al regulations implementing such statute, with the general procedures  
15 for student discipline under this section.

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

19 a. Such teacher shall inform the [~~pupil~~] student and the school prin-  
20 cipal of the reasons for the removal. If the teacher finds that the  
21 [~~pupil's~~] student's continued presence in the classroom does not pose a  
22 continuing danger to persons or property and does not present an ongoing  
23 threat of disruption to the academic process, the teacher shall, prior  
24 to removing the student from the classroom, provide the student with an  
25 explanation of the basis for the removal and allow the [~~pupil~~] student  
26 to informally present the [~~pupil's~~] student's version of relevant  
27 events. In all other cases, the teacher shall provide the [~~pupil~~]  
28 student with an explanation of the basis for the removal and an informal  
29 opportunity to be heard within twenty-four hours of the [~~pupil's~~]  
30 student's removal.

31 b. The principal shall inform the parent or person in parental  
32 relation to such [~~pupil~~] student of the removal and the reasons therefor  
33 within twenty-four hours of the [~~pupil's~~] student's removal. The [~~pupil~~]  
34 student and the parent or person in parental relation shall, upon  
35 request, be given an opportunity for an informal conference with the  
36 principal to discuss the reasons for the removal. If the [~~pupil~~] student  
37 denies the charges, the principal shall provide an explanation of the  
38 basis for the removal and allow the [~~pupil~~] student and/or parent or  
39 person in parental relation to the [~~pupil~~] student an opportunity to  
40 present the [~~pupil's~~] student's version of relevant events. Such  
41 informal [~~hearing~~] conference shall be held within forty-eight hours of  
42 the [~~pupil's~~] student's removal.

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

52 § 8. This act shall take effect September 1, 2024; provided, however  
53 that:

54 a. the amendments to subdivision 3 of section 2801 of the education  
55 law made by section two of this act shall be subject to the expiration  
56 and reversion of such subdivision pursuant to section 34 of chapter 91

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

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

9 c. the amendments to paragraph g of subdivision 3 of section 3214 of  
10 the education law made by section four of this act shall be subject to  
11 the expiration and reversion of such paragraph pursuant to section 22 of  
12 chapter 352 of the laws of 2005, as amended, when upon such date the  
13 provisions of section six of this act shall take effect;

14 c-1. the amendments to clause (v) of subparagraph 3 of paragraph g of  
15 subdivision 3 of section 3214 of the education law made by section four  
16 of this act shall be subject to the expiration and reversion of such  
17 clause pursuant to subdivision d of section 27 of chapter 378 of the  
18 laws of 2007, as amended, when upon such date the provisions of section  
19 six of this act shall take effect; and

20 d. the amendments to paragraphs a, b and c of subdivision 3-a of  
21 section 3214 of the education law made by section four of this act shall  
22 be subject to the expiration and reversion of such paragraphs pursuant  
23 to section 12 of chapter 147 of the laws of 2001, as amended, when upon  
24 such date the provisions of section seven of this act shall take effect.