

# STATE OF NEW YORK

1040

2023-2024 Regular Sessions

## IN SENATE

January 9, 2023

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

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

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

1 Section 1. This act shall be known and may be cited as the "Judith  
2 Kaye School Solutions not Suspensions Act".  
3 § 2. Section 2801 of the education law, as added by chapter 181 of the  
4 laws of 2000, subdivision 1 as amended by chapter 402 of the laws of  
5 2005, the opening paragraph, paragraph a and paragraph c of subdivision  
6 2 and paragraph a of subdivision 5 as amended by chapter 380 of the laws  
7 of 2001, paragraphs l and m as amended and paragraph n of subdivision 2  
8 as added by chapter 482 of the laws of 2010, and subdivision 3 as  
9 amended by chapter 123 of the laws of 2003, is amended to read as  
10 follows:  
11 § 2801. Codes of conduct on school property. 1. For purposes of this  
12 section, school property means in or within any building, structure,  
13 athletic playing field, playground, parking lot or land contained within  
14 the real property boundary line of a public elementary or secondary  
15 school, including a charter school; or in or on a school bus, as defined  
16 in section one hundred forty-two of the vehicle and traffic law; [~~and a~~]  
17 or a school's electronic files and databases. A school function shall  
18 mean a school-sponsored or school-authorized extra-curricular event or  
19 activity regardless of where such event or activity takes place, includ-  
20 ing any event or activity that may take place in another state.

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

LBD02392-02-3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 3-a as amended by chapter 147 of the laws of 2001 and subdivision 7 as  
2 amended by section 9 of part YYY of chapter 59 of the laws of 2017, is  
3 amended to read as follows:

4 § 3214. Student placement, suspensions and transfers. 1. [~~School~~  
5 ~~delinquent. A minor under seventeen years of age, required by any of the~~  
6 ~~provisions of part one of this article to attend upon instruction, who~~  
7 ~~is an habitual truant from such instruction or is irregular in such~~  
8 ~~attendance or insubordinate or disorderly or disruptive or violent~~  
9 ~~during such attendance, is a school delinquent.~~

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

19 [~~2-a. a. Violent pupil. For the purposes of this section, a violent~~  
20 ~~pupil is an elementary or secondary student under twenty-one years of~~  
21 ~~age who:~~

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

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

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

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

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

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

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

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

44 ~~3-]~~ 2. Suspension of a [pupil] student. a. (1) The board of educa-  
45 tion[, board of] or trustees [or sole trustee], the chancellor of the  
46 city school district in the case of the city school district of the city  
47 of New York, other governing body, the superintendent of schools,  
48 district superintendent of schools or principal of a school may suspend  
49 [~~the following pupils~~] students from required attendance upon instruc-  
50 tion[+]

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

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

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

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

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

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

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

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

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

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

31 (6) other factors determined to be relevant.

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

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

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

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



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

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

[~~2~~] Where a [~~pupil~~] student has been suspended in accordance with this section by a board of education, the board may in its discretion hear and determine the proceeding or appoint a hearing officer who shall have the same powers and duties with respect to the board that a hearing officer has with respect to a superintendent where the suspension was ordered by [~~him~~] the superintendent. 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~~] themselves with the evidence in the case. The board may reject, confirm or modify the conclusions of the hearing officer.

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

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

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 2 of subsection g of  
26 section nine hundred thirty of title eighteen of the United States Code.

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

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

51 [~~g-~~] h. Discipline of students with disabilities and students presumed  
52 to have a disability for discipline purposes. (1) Notwithstanding any  
53 other provision of this subdivision to the contrary, a student with a  
54 disability as such term is defined in section forty-four hundred one of  
55 this chapter and a student presumed to have a disability for discipline  
56 purposes, may be suspended or removed from [~~his or her~~] their current

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

14 (2) As used in this paragraph:

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

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

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

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

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

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

1 sion, and, except as otherwise provided in clause (vi) of this subpara-  
2 graph, the suspension does not result in a change in placement under  
3 federal law.

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

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

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

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

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

48 (ix) the commissioner shall implement this paragraph by adopting regu-  
49 lations which coordinate the procedures required for discipline of  
50 students with disabilities, and students presumed to have a disability  
51 for discipline purposes, pursuant to 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, with the general procedures  
54 for student discipline under this section.

55 [~~3-a~~] i. When a student is suspended from school consistent with  
56 this section and section twenty-eight hundred one of this chapter, the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 parental relation to the student within three days of the hearing. The  
2 written decision shall state the length of suspension, if any, findings  
3 of fact, reasons for determination, length of suspension, if any, proce-  
4 dures for appeal, and the date by which the appeal shall be filed.

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

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

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

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

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

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

51 (ii) the board of trustees or board of education of any school  
52 district, other governing body, the chancellor of the city school  
53 district in the case of the city school district of the city of New  
54 York, a district superintendent of schools or a building principal shall  
55 have authority, provided that the suspension of such student is not  
56 prohibited by section twenty-eight hundred one of this chapter, to order

1 the placement of a student with a disability into an appropriate interim  
2 alternative educational setting, another setting or suspension for a  
3 period not to exceed five consecutive school days where such student is  
4 suspended pursuant to this subdivision and, except as otherwise provided  
5 in clause (vi) of this subparagraph, the suspension does not result in a  
6 change in placement under federal law.

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

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

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

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

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

54 (viii) nothing in this section shall be construed to authorize the  
55 suspension or removal of a student with a disability from his or her  
56 current educational placement for violation of school rules following a

1 determination by the committee on special education that the behavior is  
2 a manifestation of the student's disability, except as authorized under  
3 federal law and regulations.

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

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

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

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

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

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

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

54 b. the amendments to subparagraph 1 of paragraph c of subdivision 3 of  
55 section 3214 of the education law made by section four of this act shall  
56 be subject to the expiration and reversion of such subparagraph pursuant

1 to subdivision (a) of section 8 of chapter 430 of the laws of 2006, as  
2 amended, when upon such date the provisions of section five of this act  
3 shall take effect;

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

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

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