

STATE OF NEW YORK

1040--A

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sens. JACKSON, BRISPORT, BAILEY, BROUK, CHU, CLEARE, COMRIE, COONEY, FERNANDEZ, GIANARIS, GONZALEZ, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, KAVANAGH, LIU, MAY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, THOMAS, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

LBD02392-11-3

1 of 2001, paragraphs l and m as amended and paragraph n of subdivision 2
2 as added by chapter 482 of the laws of 2010, and subdivision 3 as
3 amended by chapter 123 of the laws of 2003, is amended to read as
4 follows:

5 § 2801. Codes of conduct on school property. 1. Notwithstanding any
6 provision of law, rule or regulation to the contrary, this section shall
7 apply to all public schools in the state. For purposes of this section,
8 school property means in or within any building, structure, athletic
9 playing field, playground, parking lot or land contained within the real
10 property boundary line of ~~[a]~~ all public elementary or secondary
11 ~~[school]~~ schools; or in or on a school bus, as defined in section one
12 hundred forty-two of the vehicle and traffic law; ~~[and-a]~~ or a school's
13 electronic files and databases. A school function shall mean a school-
14 sponsored or school-authorized extra-curricular event or activity
15 regardless of where such event or activity takes place, including any
16 event or activity that may take place in another state.

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

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

49 (i) regarding conduct, dress and language deemed appropriate and
50 acceptable on school property, including a school function, and conduct,
51 dress and language deemed unacceptable and inappropriate on school prop-
52 erty, including a school function~~[,]~~ ; and

53 ~~[provisions]~~ (ii) regarding acceptable civil and respectful treatment
54 of teachers, school administrators, other school personnel, students and
55 visitors on school property~~[, including a]~~ and at school ~~[function,~~
56 ~~including the appropriate range of disciplinary measures which may be~~

~~imposed for violation of such code, and the roles of teachers, administrators, other school personnel, the board of education and parents,]~~
functions.

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

(i) be age-appropriate, graduated, and proportionate to respond to any violation of the code of conduct before imposing a removal or suspension, unless the conduct falls under an exception to the prohibition of suspension described in paragraph c of this subdivision, and the building administrator shall consult with a school psychologist or other mental health professional, where available, to determine age appropriate supports and interventions for the student for removal, detention, or suspension;

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

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

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

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

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

c. Suspension provisions. Provisions detailing school suspensions shall:

(i) prohibit the suspension of students in pre-kindergarten through grade three, unless the student's conduct falls under an exception, suspensions shall be no more than five days, requiring superintendent approval prior to suspension, exceptions to pre-kindergarten through grade three suspension prohibition are as follows:

(1) the student's conduct caused intentional harm to themselves, other students, or staff;

(2) the student's conduct falls under an exception to prohibition of suspension pursuant to subparagraph (ix) of this paragraph;

(3) the student's conduct puts the health and safety of the school community at risk as determined by the school administrator, utilizing the guidance developed by the commissioner; and

(4) suspension is necessary to comply with applicable federal laws;

(ii) prohibit suspensions for initial acts of disobedience, except when the behavior rises to a level of conduct described in exceptions to prohibition of suspension pursuant to subparagraph (ix) of this paragraph. "Acts of disobedience" shall mean disruptive, insubordinate, or rowdy behavior, including behaviors such as the use of foul or inappropriate language, gestures, comments, or refusal to follow directions;

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

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

6 (v) provide that suspensions may be invoked for behavior that does not
7 fall under an exception to prohibition of suspension pursuant to this
8 subdivision if it is determined that it is the only available remedy to
9 prevent reoccurrence and that prior available interventions have not
10 been effective;

11 (vi) provide for the removal from the classroom and from school prop-
12 erty, including a school function, of students and other persons who
13 violate the code of conduct;

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

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

21 (ix) include exceptions to all prohibitions or limitations of suspen-
22 sion described in this section which shall only include conduct as
23 follows:

24 (1) conduct which causes a serious disruption that cannot be addressed
25 through other means, and several other graduated disciplinary measures
26 have already been attempted;

27 (2) conduct which causes damage or injury to school property;

28 (3) possession or distribution of tobacco, alcohol, drugs or other
29 illegal substances;

30 (4) conduct which is of a violent or sexual nature that endangers
31 others;

32 (5) use of threats, intimidation, harassment or coercion against a
33 student or a school employee, including acts prohibited pursuant to the
34 dignity for all students act in section twelve of this chapter;

35 (6) assault of a school employee or another student;

36 (7) intentional attempts, by word or conduct, to place a school
37 employee or another student in fear of imminent serious physical injury;
38 or

39 (8) is necessary to comply with applicable federal laws.

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

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

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

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

51 ~~e. provisions for detention, suspension and removal from the classroom~~
52 ~~of students, consistent with section thirty-two hundred fourteen of this~~
53 ~~chapter and other applicable federal, state and local laws including~~
54 ~~provisions for the school authorities to establish] (ii) policies and~~

55 procedures to ensure the provision of continued educational programming

1 and activities for students removed from the classroom, placed in
2 detention, or suspended from school, which shall include:

3 (1) an education plan that the principal, or the principal's designee,
4 in consultation with the student's teachers, shall create for the
5 student for each class in which the student is enrolled. The education
6 plan shall make provisions for a student's on-going academic instruction
7 during the removal or suspension and shall include the steps the school
8 will take to provide the student with a successful re-entry to school.
9 The student shall have the opportunity to earn all academic credit they
10 would have been eligible to earn had the student been in class, includ-
11 ing the opportunity to complete any missed assignments or take any
12 missed examinations or assessments during the student's removal or
13 suspension;

14 (2) procedures for when an examination or assessment cannot be
15 rescheduled, the student shall be allowed on school property to take
16 such assessment or examination on the day and time that the assessment
17 or examination is given, unless the student presents a risk to the
18 health and safety of the school community, then alternative spaces may
19 be used as described in section thirty-two hundred fourteen of this
20 chapter; and

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

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

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

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

36 [~~i.~~] (vi) provisions setting forth the circumstances under and proce-
37 dures by which parents or persons in parental relation to the student
38 accused of violating the code of conduct shall be notified of such code
39 of conduct violations including notice that any statement by the
40 student, written or oral, may be used against the student in a criminal,
41 immigration, or juvenile delinquency investigation and/or proceeding
42 and/or in a court of law;

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

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

52 [~~l. a minimum suspension period, for students who repeatedly are~~
53 ~~substantially disruptive of the educational process or substantially~~
54 ~~interfere with the teacher's authority over the classroom, provided that~~
55 ~~the suspending authority may reduce such period on a case by case basis~~
56 ~~to be consistent with any other state and federal law. For purposes of~~

~~1 this section, the definition of "repeatedly are substantially disruptive" shall be determined in accordance with the regulations of the~~
~~2 commissioner;~~
~~3~~

~~4 m. a minimum suspension period for acts that would qualify the pupil~~
~~5 to be defined as a violent pupil pursuant to paragraph a of subdivision~~
~~6 two a of section thirty two hundred fourteen of this chapter, provided~~
~~7 that the suspending authority may reduce such period on a case by case~~
~~8 basis to be consistent with any other state and federal law; and~~

~~9 n.] (ix) provisions to comply with article two of this chapter.~~

10 3. The [~~district~~] code of conduct shall be developed in collaboration
 11 with [~~student, teacher, administrator, and parent organizations~~] repre-
 12 sentatives from interested stakeholders including, but not limited to,
 13 students, teachers, administrators, parents, school safety personnel,
 14 collective bargaining units representing teachers, school-related
 15 professionals, and the principals, and other school personnel and shall
 16 be approved by the board of education or trustees, [~~or other governing~~
 17 ~~body,~~] or by the chancellor of the city school district in the case of
 18 the city school district of the city of New York. In the city school
 19 district of the city of New York, each community district education
 20 council shall be authorized to adopt and implement additional policies,
 21 which are consistent with the city district's district-wide code of
 22 conduct, to reflect the individual needs of each community school
 23 district provided that such additional policies shall require the
 24 approval of the chancellor.

25 3-a. The board of education or trustees, the chancellor of the city
 26 school district in the case of the city school district of the city of
 27 New York shall provide professional development in accordance with this
 28 section for school personnel, law enforcement and public or private
 29 security personnel employed, retained or contracted with a school
 30 district or public school regarding the code of conduct, the use of
 31 multi-tiered systems of support, positive behavioral interventions, and
 32 age-appropriate graduated and proportionate discipline, which may
 33 include implicit bias training, according to collective bargaining
 34 agreements.

35 4. [~~The~~] At the beginning of each school year, the board of education
 36 or trustees, the chancellor [~~or other governing body~~] of the city school
 37 district in the case of the city school district of the city of New
 38 York, shall: translate the code of conduct into at least the three most
 39 commonly spoken languages of the children attending the school district,
 40 board of cooperative educational services, or public school, post the
 41 code of conduct on the school district's, public school's or board of
 42 cooperative educational services website, provide copies of a summary of
 43 the code of conduct to all students at a general assembly [~~held at the~~
 44 ~~beginning of the school year and shall make copies of the code available~~
 45 ~~to persons in parental relation to students at the beginning of each~~
 46 ~~school year, and shall] or classroom lesson, mail a plain language
 47 summary of such code to all parents or persons in parental relation to
 48 students before the beginning of each school year, and make it available
 49 thereafter upon request. The board of education or trustees, the chan-
 50 cellor of the city school district in the case of the city school
 51 district of the city of New York, or other governing body shall take
 52 reasonable steps to ensure community awareness of the code of conduct's
 53 provisions.~~

54 5. a. The board of education or trustees, or the chancellor [~~or other~~
 55 ~~governing body~~] of the city school district in the case of the city
 56 school district of the city of New York shall annually review and update

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

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

17 § 3. Section 17 of chapter 123 of the laws of 2003 amending the educa-
18 tion law relating to establishing the community district education coun-
19 cil within the New York city community school district system, is
20 amended to read as follows:

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

25 § 4. Section 3214 of the education law, as amended by chapter 181 of
26 the laws of 2000, subparagraph 1 of paragraph c of subdivision 3 as
27 amended by chapter 430 of the laws of 2006, paragraphs d and f of subdi-
28 vision 3 as amended by chapter 425 of the laws of 2002, paragraph e of
29 subdivision 3 as amended by chapter 170 of the laws of 2006, paragraph g
30 of subdivision 3 as amended by chapter 352 of the laws of 2005, clause
31 (v) of subparagraph 3 of paragraph g of subdivision 3 as amended by
32 chapter 378 of the laws of 2007, paragraphs a, b and c of subdivision
33 3-a as amended by chapter 147 of the laws of 2001 and subdivision 7 as
34 amended by section 9 of part YY of chapter 59 of the laws of 2017, is
35 amended to read as follows:

36 § 3214. Student placement, suspensions and transfers. 1. [~~School~~
37 ~~delinquent. A minor under seventeen years of age, required by any of the~~
38 ~~provisions of part one of this article to attend upon instruction, who~~
39 ~~is an habitual truant from such instruction or is irregular in such~~
40 ~~attendance or insubordinate or disorderly or disruptive or violent~~
41 ~~during such attendance, is a school delinquent.~~

42 ~~2. Special day schools. The school authorities of any city or school~~
43 ~~district may establish schools or set apart rooms in public school~~
44 ~~buildings for the instruction of school delinquents, and fix the number~~
45 ~~of days per week and the hours per day of required attendance, which~~
46 ~~shall not be less than is required of minors attending the full time day~~
47 ~~schools.~~

48 ~~2-a. a.]~~ Notwithstanding any provision of law, rule or regulation to
49 the contrary, this section shall apply to all public schools in the
50 state. Whenever the term "board of education or superintendent of
51 schools" is used in this section, it shall be deemed to include board of
52 trustees, the chancellor of the city school district in the case of the
53 city school district of the city of New York, community boards of educa-
54 tion and community superintendents governing community districts in
55 accordance with the provisions of article fifty-two-A of this chapter.

1 2. Suspension of a student. The board of education or trustees, the
2 chancellor of the city school district in the case of the city school
3 district of the city of New York, superintendent of schools, district
4 superintendent of schools and the principal of the school where the
5 student attends shall have the power to suspend a student as follows:

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

9 (1) In the case of such a suspension, the suspending authority shall
10 provide the student with written notice of the charged misconduct
11 including a brief explanation of the basis for the suspension and a
12 description of the alleged behavior that violated the code of conduct
13 that includes the date, time, and place of the scheduled informal
14 conference with the principal, the right to appeal a suspension, and the
15 procedures for appeal.

16 (2) The student and the parent or person in parental relation to the
17 student shall be given an opportunity for an informal conference with
18 the principal. At the conference, the student and parent or person in
19 parental relation shall be authorized to review all evidence of the
20 alleged misconduct, present the student's version of the event, to ask
21 questions of the complaining witnesses, and to be represented by an
22 attorney or advocate. The aforesaid notice and opportunity for an
23 informal conference shall take place prior to suspension of the student
24 unless the student's presence in the school poses a continuing danger to
25 persons or property or an ongoing threat of disruption to the academic
26 process, in which case the student's notice and opportunity for an
27 informal conference shall take place as soon after the suspension begins
28 as is reasonably practicable.

29 b. For a period not to exceed twenty consecutive school days,
30 provided that the suspension of such student is not prohibited by subdi-
31 vision two of section twenty-eight hundred one of this chapter, or for a
32 period in excess of twenty consecutive school days, provided the suspen-
33 sion shall only be for violent acts described in subdivision three of
34 this section, an exception to any prohibition of suspension described in
35 subdivision two of section twenty-eight hundred one of this chapter, or
36 pursuant to applicable federal law.

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

39 (2) If approved, such student and the parent or person in parental
40 relation to such student shall have had an opportunity for a fair hear-
41 ing, upon reasonable written notice, which shall include a brief
42 description of the facts upon which the alleged violations of the code
43 of conduct are based, the section of the code of conduct that the
44 student is alleged to have violated, and the date, time and place of the
45 hearing. Prior to the hearing, copies of all evidence regarding the
46 alleged incident shall be provided to the student and parent or person
47 in parental relation to the student. The hearing shall be convened with-
48 in five days of the written notice, unless the parent or person in
49 parental relation to the student or student requests a later date.

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

54 (4) Where the student is a student with a disability or a student
55 presumed to have a disability, the provisions of subdivision seven of
56 this section shall also apply.

1 (5) Where a student has been suspended in accordance with this para-
2 graph, the board of education or trustees, the chancellor of the city
3 school district in the case of the city school district of the city of
4 New York, superintendent of schools, district superintendent of schools,
5 or community superintendent shall personally hear and determine the
6 proceeding or may, in their discretion, designate a hearing officer to
7 conduct the hearing. The entity or individual that conducts the hearing
8 shall be authorized to administer oaths and to issue subpoenas in
9 conjunction with the proceeding.

10 (6) A record of the hearing shall be maintained, but no stenographic
11 transcript shall be required and an audio recording shall be deemed a
12 satisfactory record. The entity or individual that conducts the hearing
13 shall make written findings of fact based on a preponderance of the
14 evidence and shall make recommendations as to the appropriate measure of
15 discipline if any. The report of the hearing officer shall be advisory
16 only, and the board of education or trustees, the chancellor of the city
17 school district in the case of the city school district of the city of
18 New York, other governing body, superintendent of schools or district
19 superintendent of schools may accept all or any part thereof.

20 (7) The board of education or trustees, the chancellor of the city
21 school district in the case of the city school district of the city of
22 New York, superintendent of schools, or district superintendent of
23 schools shall issue a written decision to the school and parent or
24 person in parental relation to the student within three days of the
25 hearing. The written decision shall state the length of suspension, if
26 any, findings of fact, reasons for determination, procedures for appeal,
27 and the date by which the appeal shall be filed.

28 (8) Where the basis for the suspension is, in whole or in part, the
29 possession on school grounds or school property by the student of any
30 firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto
31 or any of the weapons, instruments or appliances specified in subdivi-
32 sion one of section 265.01 of the penal law, the hearing officer or
33 superintendent shall not be barred from considering the admissibility of
34 such weapon, instrument or appliance as evidence, notwithstanding a
35 determination by a court in a criminal or juvenile delinquency proceed-
36 ing that the recovery of such weapon, instrument or appliance was the
37 result of an unlawful search or seizure.

38 (9) Where a student has been suspended in accordance with this section
39 by a board of education or trustees, the board may in its discretion
40 hear and determine the proceeding or appoint a hearing officer who shall
41 have the same powers and duties with respect to the board that a hearing
42 officer has with respect to a superintendent where the suspension was
43 ordered by the superintendent. The findings and recommendations of the
44 hearing officer conducting the proceeding shall be advisory and subject
45 to final action by the board of education, each member of which shall
46 before voting review the testimony and acquaint themselves with the
47 evidence in the case. The board may reject, confirm or modify the
48 conclusions of the hearing officer.

49 c. (1) Consistent with the federal gun-free schools act, any public
50 school student who is determined under this subdivision to have brought
51 a firearm to or possessed a firearm at a public school shall be
52 suspended for a period of not less than one calendar year and any
53 nonpublic school pupil participating in a program operated by a public
54 school district using funds from the elementary and secondary education
55 act of nineteen hundred sixty-five who is determined under this subdivi-
56 sion to have brought a firearm to or possessed a firearm at a public

1 school or other premises used by the school district to provide such
2 programs shall be suspended for a period of not less than one calendar
3 year from participation in such program. The procedures of this subdivi-
4 sion shall apply to such a suspension of a nonpublic school student. A
5 superintendent of schools, district superintendent of schools or commu-
6 nity superintendent shall have the authority to modify this suspension
7 requirement for each student on a case-by-case basis. The determination
8 of a superintendent shall be subject to review by the board of education
9 or trustees, or the chancellor of the city school district in the case
10 of the city school district of the city of New York, pursuant to subdi-
11 vision one of this section and the commissioner pursuant to section
12 three hundred ten of this chapter. Nothing in this subdivision shall be
13 deemed to authorize the suspension of a student with a disability in
14 violation of the individuals with disabilities education act or article
15 eighty-nine of this chapter. A superintendent shall refer the student
16 under the age of sixteen who has been determined to have brought a weap-
17 on or firearm to school in violation of this subdivision to a present-
18 ment agency for a juvenile delinquency proceeding consistent with arti-
19 cle three of the family court act except a student fourteen or fifteen
20 years of age who qualifies for juvenile offender status under subdivi-
21 sion forty-two of section 1.20 of the criminal procedure law. A super-
22 intendent shall refer any student sixteen years of age or older or a
23 student fourteen or fifteen years of age who qualifies for juvenile
24 offender status under subdivision forty-two of section 1.20 of the crim-
25 inal procedure law, who has been determined to have brought a weapon or
26 firearm to school in violation of this subdivision to the appropriate
27 law enforcement officials.

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

36 (3) As used in this paragraph:

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

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

42 3. Violent [~~pupil~~] act. a. A teacher shall immediately report and
43 refer a student that has committed a violent act to the principal or
44 superintendent for a violation of the code of conduct.

45 b. For the purposes of this section, a violent [~~pupil is an elementary~~
46 ~~or secondary student under twenty one years of age who~~] act shall
47 include:

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

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

52 (3) [~~possesses,~~] while on school district property, possessing a gun,
53 knife, explosive or incendiary bomb, or other dangerous instrument capa-
54 ble of causing physical injury or death;

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

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

6 (6) knowingly and intentionally [~~damages or destroys~~] damaging or
7 destroying the personal property of a teacher, administrator, other
8 school district employee or any person lawfully upon school district
9 property; or

10 (7) knowingly and intentionally [~~damages or destroys~~] damaging or
11 destroying school district property.

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

17 3. Suspension of a pupil] 4. Alternative learning spaces or schools.
18 The school authorities of any city, school district or public school,
19 or board of cooperative educational services shall establish, to the
20 extent practicable, schools or set apart spaces in school buildings or
21 properties for the instruction of students removed or suspended for
22 violations of the code of conduct, and fix the number of days per week
23 and the hours per day of required attendance and instruction, which
24 shall not be less than is required of minors attending the full time day
25 schools. The commissioner shall establish guidance for alternative
26 learning spaces or schools for when students are removed from the class-
27 room or suspended, including allowing a student that has been removed or
28 suspended on school property to take an examination or assessment that
29 cannot be rescheduled when the student presents a risk to the health and
30 safety of the school community as it applies to subdivisions eight and
31 nine of this section and section twenty-eight hundred one of this chap-
32 ter.

33 5. Consideration for student suspension. a. (1) The board of educa-
34 tion[~~, board of~~] or trustees [~~or sole trustee~~], the chancellor of the
35 city school district in the case of the city school district of the city
36 of New York, the superintendent of schools, district superintendent of
37 schools or principal of a school may suspend [~~the following pupils~~]
38 students from required attendance upon instruction[+

39 ~~A pupil who is insubordinate or disorderly or violent or disruptive,~~
40 ~~or whose conduct otherwise endangers the safety, morals, health or~~
41 ~~welfare of others] as provided in subdivision two of this section, in
42 accordance with the code of conduct, provided that the suspension of
43 such student is not prohibited by section twenty-eight hundred one of
44 this chapter.~~

45 (2) School officials shall weigh the likelihood that a lesser inter-
46 vention or discipline would adequately address the student's misconduct,
47 redress any harm or damage, and prevent future violations of the code of
48 conduct.

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

51 (4) The school shall inform any student that submission of a written
52 statement is voluntary and that any statement by the student, written or
53 oral, may be used against the student in a criminal, immigration, or
54 juvenile delinquency investigation and/or proceeding and/or in a court
55 of law. If a student has been arrested or if the school is considering
56 referring the student to law enforcement, the school shall not request a

1 statement from such student, except where there is imminent risk of
2 serious physical injury to the student or other person or persons.

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

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

25 ~~c. (1) No pupil may be suspended for a period in excess of five school~~
26 ~~days unless such pupil and the person in parental relation to such pupil~~
27 ~~shall have had an opportunity for a fair hearing, upon reasonable~~
28 ~~notice, at which such pupil shall have the right of representation by~~
29 ~~counsel, with the right to question witnesses against such pupil and to~~
30 ~~present witnesses and other evidence on his or her behalf. Where the~~
31 ~~pupil is a student with a disability or a student presumed to have a~~
32 ~~disability, the provisions of paragraph g of this subdivision shall also~~
33 ~~apply. Where a pupil has been suspended in accordance with this subpara-~~
34 ~~graph by a superintendent of schools, district superintendent of~~
35 ~~schools, or community superintendent, the superintendent shall~~
36 ~~personally hear and determine the proceeding or may, in his or her~~
37 ~~discretion, designate a hearing officer to conduct the hearing. The~~
38 ~~hearing officer shall be authorized to administer oaths and to issue~~
39 ~~subpoenas in conjunction with the proceeding before him or her. A~~
40 ~~record of the hearing shall be maintained, but no stenographic tran-~~
41 ~~script shall be required and a tape recording shall be deemed a satis-~~
42 ~~factory record. The hearing officer shall make findings of fact and~~
43 ~~recommendations as to the appropriate measure of discipline to the~~
44 ~~superintendent. The report of the hearing officer shall be advisory~~
45 ~~only, and the superintendent may accept all or any part thereof. An~~
46 ~~appeal will lie from the decision of the superintendent to the board of~~
47 ~~education who shall make its decision solely upon the record before it.~~
48 ~~The board may adopt in whole or in part the decision of the superinten-~~
49 ~~dent of schools. Where the basis for the suspension is, in whole or in~~
50 ~~part, the possession on school grounds or school property by the student~~
51 ~~of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor,~~
52 ~~stiletto or any of the weapons, instruments or appliances specified in~~
53 ~~subdivision one of section 265.01 of the penal law, the hearing officer~~
54 ~~or superintendent shall not be barred from considering the admissibility~~
55 ~~of such weapon, instrument or appliance as evidence, notwithstanding a~~
56 ~~determination by a court in a criminal or juvenile delinquency proceed-~~

~~ing that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.~~

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

~~d. (1) Consistent with the federal gun free schools act, any public school pupil who is determined under this subdivision to have brought a firearm to or possessed a firearm at a public school shall be suspended for a period of not less than one calendar year and any nonpublic school pupil participating in a program operated by a public school district using funds from the elementary and secondary education act of nineteen hundred sixty-five who is determined under this subdivision to have brought a firearm to or possessed a firearm at a public school or other premises used by the school district to provide such programs shall be suspended for a period of not less than one calendar year from participation in such program. The procedures of this subdivision shall apply to such a suspension of a nonpublic school pupil. A superintendent of schools, district superintendent of schools or community superintendent shall have the authority to modify this suspension requirement for each student on a case-by-case basis. The determination of a superintendent shall be subject to review by the board of education pursuant to paragraph c of this subdivision and the commissioner pursuant to section three hundred ten of this chapter. Nothing in this subdivision shall be deemed to authorize the suspension of a student with a disability in violation of the individuals with disabilities education act or article eighty-nine of this chapter. A superintendent shall refer the pupil under the age of sixteen who has been determined to have brought a weapon or firearm to school in violation of this subdivision to a presentment agency for a juvenile delinquency proceeding consistent with article three of the family court act except a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law. A superintendent shall refer any pupil sixteen years of age or older or a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law, who has been determined to have brought a weapon or firearm to school in violation of this subdivision to the appropriate law enforcement officials.~~

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

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

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

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

e.] In considering appropriate discipline measures, school authorities shall consider the facts of each case, including, but not limited to:

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

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

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

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

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

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

(7) other factors determined to be relevant.

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

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

g.] 7. Discipline of students with disabilities and students presumed to have a disability for discipline purposes. [(1)] a. Notwithstanding any other provision of this subdivision to the contrary, a student with a disability as such term is defined in section forty-four hundred one of this chapter and a student presumed to have a disability for discipline purposes, may be suspended or removed from [his or her] their current educational placement, provided that the suspension of such student is not prohibited by section twenty-eight hundred one of this chapter, for violation of [school rules] the code of conduct only in accordance with the procedures established in this section, the regu-

lations of the commissioner implementing this paragraph, and subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute, as such federal law and regulations are from time to time amended. Nothing in this paragraph shall be construed to confer greater rights on such students than are conferred under applicable federal law and regulations, or to limit the ability of a school district to change the educational placement of a student with a disability in accordance with the procedures in article eighty-nine of this chapter.

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

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

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

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

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

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

[~~(iii)~~] **(3)** the superintendent of schools of a school district, either directly or upon recommendation of a hearing officer designated pursuant to [~~paragraph e of this~~] subdivision two of this section, may order the placement of a student with a disability into an interim alternative educational setting, another setting or suspension, provided that the suspension of such student is not prohibited by section twenty-eight hundred one of this chapter, for up to ten consecutive school days, inclusive of any period in which the student is placed in an appropriate interim alternative educational setting, another setting or suspension pursuant to [~~clause (ii) of this~~] subparagraph two of this paragraph for the behavior, where the superintendent determines in accordance with the procedures set forth in this subdivision that the student has engaged in behavior that warrants a suspension, and, except as otherwise provided in [~~clause (vi) of this~~] subparagraph four of this paragraph, the suspension does not result in a change in placement under federal law.

[~~(iv)~~] **(4)** the superintendent of schools of a school district, either directly or upon recommendation of a hearing officer designated pursuant

1 to [~~paragraph e of this~~] subdivision two of this section, may order the
2 change in placement of a student with a disability to an interim alter-
3 native educational setting for up to forty-five school days under the
4 circumstances specified in subsection (k)(1)(G) of section fourteen
5 hundred fifteen of title twenty of the United States code and the feder-
6 al regulations implementing such statute or a longer period where
7 authorized by federal law under the circumstances specified in
8 subsection (k)(1)(C) of section fourteen hundred fifteen of title twenty
9 of the United States code and the federal regulations implementing such
10 statute, but in neither case shall such period exceed the period of
11 suspension ordered by a superintendent in accordance with this subdivi-
12 sion, provided that the suspension of such student is not prohibited by
13 section twenty-eight hundred one of this chapter.

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

17 [~~(vi)~~] (6) notwithstanding any other provision of this subdivision to
18 the contrary, upon a determination by a manifestation team that the
19 behavior of a student with a disability was not a manifestation of the
20 student's disability, such student may be disciplined pursuant to this
21 section in the same manner and for the same duration as a nondisabled
22 student, except that such student shall continue to receive services to
23 the extent required under federal law and regulations, and such services
24 may be provided in an interim alternative educational setting, provided
25 that the suspension of such student is not prohibited by section twen-
26 ty-eight hundred one of this chapter.

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

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

43 [~~(ix)~~] (9) the commissioner shall implement this paragraph by adopting
44 regulations which coordinate the procedures required for discipline of
45 students with disabilities, and students presumed to have a disability
46 for discipline purposes, pursuant to subsection (k) of section fourteen
47 hundred fifteen of title twenty of the United States code and the feder-
48 al regulations implementing such statute, with the general procedures
49 for student discipline under this section.

50 [~~3-a~~] 8. Education plan. When a student is suspended from school
51 consistent with this section and section twenty-eight hundred one of
52 this chapter, the principal, or the principal's designee, in consulta-
53 tion with the student's teachers, shall create an education plan for the
54 student for each class in which the student is enrolled, according to
55 the timeframe policies required in the code of conduct described in
56 section twenty-eight hundred one of this chapter. The education plan

1 shall make provisions for a student's on-going academic instruction
2 during the suspension and shall include the steps the school will take
3 to provide the student with a successful re-entry to school. The student
4 shall have the opportunity to earn all academic credit they would have
5 been eligible to earn had the student been in class, including the
6 opportunity to complete any missed assignments or take any missed exam-
7 ination or assessments during the student's suspension. If an examina-
8 tion or assessment cannot be rescheduled, the student shall be allowed
9 on school property to take such assessment or examination on the day and
10 time that the assessment or examination is given, unless the student
11 presents a risk to the health and safety of the school community then
12 the assessment or examination should be provided in an alternative space
13 as described in subdivision four of this section, if available.

14 9. Teacher removal of a [~~disruptive pupil~~] student. In addition, any
15 teacher shall have the power and authority to remove a [~~disruptive~~
16 ~~pupil, as defined in subdivision two-a of this section,~~] student from
17 such teacher's classroom consistent with discipline measures contained
18 in the code of conduct adopted by the board pursuant to section twenty-
19 eight hundred one of this chapter. The school authorities of any school
20 district or public school, board of cooperative educational services
21 shall establish policies and procedures to ensure the provision of
22 continued educational programming and activities for students removed
23 from the classroom pursuant to this [~~subdivision and provided further~~
24 ~~that nothing~~] section. When a student is removed from the classroom,
25 the student shall have the opportunity to earn all academic credit
26 including the opportunity to complete any missed assignments or take any
27 missed examinations or assessments during the student's removal. If an
28 examination or assessment cannot be rescheduled, the student shall be
29 allowed on school property to take such assessment or examination on the
30 day and time that the assessment or examination is given unless the
31 student presents a risk to the health and safety of the school community
32 then the assessment or examination should be provided in an alternative
33 space as described in subdivision four of this section, if available.
34 Nothing in this subdivision shall authorize the removal of a [~~pupil~~
35 student in violation of any state or federal law or regulation. No
36 [~~pupil~~] student shall return to the classroom until the principal makes
37 a final determination pursuant to [~~paragraph e of~~] this subdivision, or
38 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~~] five of
15 paragraph [~~g~~] c of subdivision [~~three~~] seven 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-~~] 10. Expense. [~~a-~~] The expense attending the commitment and costs
29 of maintenance of any [~~school delinquent~~] student placed as a result of
30 a 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-~~] 11. Involuntary transfers of [~~pupils~~] students who have not been
42 determined to be a student with a disability or a student presumed to
43 have a 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 of~~] subdivision [~~three~~] seven 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 e of]~~ subdivision ~~[three]~~ two of this section and
28 shall 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 e. Parental consent to a transfer shall not constitute a waiver of the
36 right to a fair hearing.

37 ~~[6-]~~ 12. Transfer of a ~~[pupil]~~ student. Where a suspended ~~[pupil]~~
38 student is to be transferred pursuant to subdivision ~~[five]~~ eleven of
39 this section, ~~[he or she]~~ the student shall remain on the register of
40 the original school for two school days following transmittal of ~~[his or~~
41 ~~her]~~ their records to the school to which ~~[he or she]~~ the student is to
42 be transferred. The receiving school shall immediately upon receiving
43 those records transmitted by the original school, review them to
44 ~~[insure]~~ ensure proper placement of the ~~[pupil]~~ student. Staff members
45 who are involved in the ~~[pupil's]~~ student's education must be provided
46 with pertinent records and information relating to the background and
47 problems of the ~~[pupil]~~ student before the ~~[pupil]~~ student is placed in
48 a classroom.

49 ~~[7-]~~ 13. Transfer of disciplinary records. Notwithstanding any other
50 provision of law to the contrary, each local educational agency, as such
51 term is defined in subsection thirty of section eighty-one hundred one
52 of the Elementary and Secondary Education Act of 1965, as amended, shall
53 establish procedures in accordance with section eighty-five hundred
54 thirty-seven of the Elementary and Secondary Education Act of 1965, as
55 amended, and the Family Educational Rights and Privacy Act of 1974, to
56 facilitate the transfer of disciplinary records relating to the suspen-

1 sion or expulsion of a student to any public or nonpublic elementary or
2 secondary school in which such student enrolls or seeks, intends or is
3 instructed to enroll, on a full-time or part-time basis.

4 14. Annual report on student discipline. a. The board of education or
5 superintendent of schools shall post on its website and submit to the
6 department by October thirty-first of each year an annual report, based
7 on data from the preceding school year, on the discipline of students.
8 The department shall analyze the collected data and compare to previous
9 year post collected annual reports on their website by November thirti-
10 eth of each year.

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

15 (1) the number of teacher removals, number of days removed, and
16 purpose of removal;

17 (2) the number of suspensions, length of suspension, and purpose of
18 suspension;

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

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

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

27 § 5. Subdivision (a) of section 8 of chapter 430 of the laws of 2006,
28 amending the education law relating to implementation of the federal
29 individuals with disabilities education improvement act of 2004, as
30 amended by chapter 253 of the laws of 2021, is amended to read as
31 follows:

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

34 § 6. Section 22 of chapter 352 of the laws of 2005, amending the
35 education law relating to implementation of the federal individuals with
36 disabilities education improvement act of 2004, as amended by chapter
37 253 of the laws of 2021, is amended to read as follows:

38 § 22. This act shall take effect July 1, 2005, provided, however, if
39 this act shall become a law after such date it shall take effect imme-
40 diately and shall be deemed to have been in full force and effect on and
41 after July 1, 2005; and provided further, however, that sections one
42 through [~~four~~] three and six through twenty-one of this act shall expire
43 and be deemed repealed June 30, 2024, and section five of this act shall
44 expire and be deemed repealed June 30, 2024.

45 § 7. Subdivision d of section 27 of chapter 378 of the laws of 2007,
46 amending the education law relating to implementation of the federal
47 individuals with disabilities education improvement act of 2004, as
48 amended by chapter 253 of the laws of 2021, is amended to read as
49 follows:

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

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