

# STATE OF NEW YORK

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1040--B

2023-2024 Regular Sessions

## IN SENATE

January 9, 2023

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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 -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- 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".

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

LBD02392-13-4

1 § 2. Section 2801 of the education law, as added by chapter 181 of the  
2 laws of 2000, subdivision 1 as amended by chapter 402 of the laws of  
3 2005, the opening paragraph, paragraph a and paragraph c of subdivision  
4 2 and paragraph a of subdivision 5 as amended by chapter 380 of the laws  
5 of 2001, paragraphs l and m as amended and paragraph n of subdivision 2  
6 as added by chapter 482 of the laws of 2010, and subdivision 3 as  
7 amended by chapter 123 of the laws of 2003, is amended to read as  
8 follows:

9 § 2801. Codes of conduct on school property. 1. Notwithstanding any  
10 provision of law, rule or regulation to the contrary, this section shall  
11 apply to all public schools in the state. For purposes of this  
12 section~~[7]~~:

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

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

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

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

1 (i) regarding conduct, dress and language deemed appropriate and  
2 acceptable on school property, including a school function, and conduct,  
3 dress and language deemed unacceptable and inappropriate on school prop-  
4 erty, including a school function[~~7~~]; and

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

12 b. Disciplinary measures and strategies. Provisions detailing disci-  
13 plinary measures shall:

14 (i) be age-appropriate, graduated, and proportionate to respond to any  
15 violation of the code of conduct before imposing a removal or suspen-  
16 sion, the building administrator shall consult with a school psychol-  
17 ogist or other mental health professional, to determine age-appropriate  
18 supports and interventions for the student for removal, detention, or  
19 suspension;

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

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

27 (1) use of the least severe action necessary to respond to any  
28 violation of the code of conduct before imposing a removal or suspen-  
29 sion; and

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

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

41 c. Suspension provisions. Provisions detailing school suspensions  
42 shall:

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

53 (ii) prohibit suspensions for acts of disobedience;

54 (iii) prohibit suspensions to respond to tardiness, unexcused absence  
55 from class or school, leaving school without permission, and violation  
56 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 for the removal from the classroom and from school proper-  
7 ty, including a school function, of students and other persons who  
8 violate the code of conduct;

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

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

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

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

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

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

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

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

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

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

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

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

46 (1) an education plan that the principal, or the principal's designee,  
47 in consultation with the student's teachers, shall create for the  
48 student for each class in which the student is enrolled. The education  
49 plan shall make provisions for a student's on-going academic instruction  
50 during the removal or suspension and shall include the steps the school  
51 will take to provide the student with a successful re-entry to school.  
52 The student shall have the opportunity to earn all academic credit they  
53 would have been eligible to earn had the student been in class, includ-  
54 ing the opportunity to complete any missed assignments or take any  
55 missed examinations or assessments during the student's removal or  
56 suspension;

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

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

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

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

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

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

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

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];

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

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

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

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

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

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

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

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

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 commenced upon  
 11 thirty days' notice) that provides for the participation of school  
 12 personnel, parents, students and any other 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 YYY 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. ~~Violent pupil. For the purposes of this section, a violent~~  
 49 ~~pupil is an elementary or secondary student under twenty-one years of~~  
 50 ~~age who:~~

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

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

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

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

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

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

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

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

3. Suspension of a pupil] Notwithstanding any provision of law, rule or regulation to the contrary, this section shall apply to all public schools in the state including charter schools pursuant to the provisions of paragraph (c) of subdivision one of section twenty-eight hundred fifty-three of this chapter. Whenever the term "board of education or superintendent of schools" is used in this section, it shall be deemed to include board of trustees, the chancellor of the city school district in the case of the city school district of the city of New York, community boards of education and community superintendents governing community districts in accordance with the provisions of article fifty-two-A of this chapter.

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

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

(1) In the case of such a suspension, the suspending authority shall provide the student with written notice of the charged misconduct including a brief explanation of the basis for the suspension and a description of the alleged behavior that violated the code of conduct that includes the date, time, and place of the scheduled informal conference with the principal, the right to appeal a suspension, the procedures for appeal, and the manner and location of alternative instruction to be provided to the student for the duration of the suspension if the student is suspended out of school.

(2) The student and the parent or person in parental relation to the student shall be given an opportunity for an informal conference with the principal. At the conference, the student and parent or person in parental relation shall be authorized to review all evidence of the alleged misconduct, present the student's version of the event, to ask questions of the complaining witnesses, and to be represented by an attorney or advocate. The aforesaid notice and opportunity for an informal conference shall take place prior to suspension of the student unless the student's presence in the school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic

1 process, in which case the student's notice and opportunity for an  
2 informal conference shall take place as soon after the suspension begins  
3 as is reasonably practicable.

4 b. For a period not to exceed twenty consecutive school days,  
5 provided that the suspension of such student is not prohibited by subdivi-  
6 sion two of section twenty-eight hundred one of this chapter, or for a  
7 period in excess of twenty consecutive school days, provided the suspen-  
8 sion shall only be for conduct that falls under an exception as  
9 described in a code of conduct adopted pursuant to section twenty-eight  
10 hundred one of this chapter or pursuant to applicable federal law.

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

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

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

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

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

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

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

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

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

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

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

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

19 (3) As used in this paragraph:

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~d. (1) Consistent with the federal gun-free schools act, any public~~  
22 ~~school pupil who is determined under this subdivision to have brought a~~  
23 ~~firearm to or possessed a firearm at a public school shall be suspended~~  
24 ~~for a period of not less than one calendar year and any nonpublic school~~  
25 ~~pupil participating in a program operated by a public school district~~  
26 ~~using funds from the elementary and secondary education act of nineteen~~  
27 ~~hundred sixty five who is determined under this subdivision to have~~  
28 ~~brought a firearm to or possessed a firearm at a public school or other~~  
29 ~~premises used by the school district to provide such programs shall be~~  
30 ~~suspended for a period of not less than one calendar year from partic-~~  
31 ~~ipation in such program. The procedures of this subdivision shall apply~~  
32 ~~to such a suspension of a nonpublic school pupil. A superintendent of~~  
33 ~~schools, district superintendent of schools or community superintendent~~  
34 ~~shall have the authority to modify this suspension requirement for each~~  
35 ~~student on a case-by-case basis. The determination of a superintendent~~  
36 ~~shall be subject to review by the board of education pursuant to para-~~  
37 ~~graph c of this subdivision and the commissioner pursuant to section~~  
38 ~~three hundred ten of this chapter. Nothing in this subdivision shall be~~  
39 ~~deemed to authorize the suspension of a student with a disability in~~  
40 ~~violation of the individuals with disabilities education act or article~~  
41 ~~eighty nine of this chapter. A superintendent shall refer the pupil~~  
42 ~~under the age of sixteen who has been determined to have brought a weap-~~  
43 ~~on or firearm to school in violation of this subdivision to a present-~~  
44 ~~ment agency for a juvenile delinquency proceeding consistent with arti-~~  
45 ~~cle three of the family court act except a student fourteen or fifteen~~  
46 ~~years of age who qualifies for juvenile offender status under subdivi-~~  
47 ~~sion forty two of section 1.20 of the criminal procedure law. A super-~~  
48 ~~intendent shall refer any pupil sixteen years of age or older or a~~  
49 ~~student fourteen or fifteen years of age who qualifies for juvenile~~  
50 ~~offender status under subdivision forty two of section 1.20 of the crim-~~  
51 ~~inal procedure law, who has been determined to have brought a weapon or~~  
52 ~~firearm to school in violation of this subdivision to the appropriate~~  
53 ~~law enforcement officials.~~

54 ~~(2) Nothing in this paragraph shall be deemed to mandate such action~~  
55 ~~by a school district pursuant to subdivision one of this section where~~  
56 ~~such weapon or firearm is possessed or brought to school with the writ-~~

~~ten authorization of such educational institution in a manner authorized by article two hundred sixty five of the penal law for activities approved and authorized by the trustees or board of education or other governing body of the public school and such governing body adopts appropriate safeguards to ensure student safety.~~

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

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

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

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

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

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

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

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

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

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

(7) other factors determined to be relevant.

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

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

~~g.] 6. 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~~

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

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

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

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

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

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

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

47 [~~(iii)~~] (3) the superintendent of schools of a school district, either  
48 directly or upon recommendation of a hearing officer designated pursuant  
49 to [~~paragraph e of this~~] subdivision two of this section, may order the  
50 placement of a student with a disability into an interim alternative  
51 educational setting, another setting or suspension, provided that the  
52 suspension of such student is not prohibited by section twenty-eight  
53 hundred one of this chapter, for up to ten consecutive school days,  
54 inclusive of any period in which the student is placed in an appropriate  
55 interim alternative educational setting, another setting or suspension  
56 pursuant to [~~clause (ii) of this~~] subparagraph two of this paragraph for

1 the behavior, where the superintendent determines in accordance with the  
2 procedures set forth in this subdivision that the student has engaged in  
3 behavior that warrants a suspension, and, except as otherwise provided  
4 in [~~clause (vi) of this~~] subparagraph four of this paragraph, the  
5 suspension does not result in a change in placement under federal law.

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

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

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

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

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

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

1 ~~[3-a]~~ 7. Education plan. When a student is suspended from school  
2 consistent with this section and section twenty-eight hundred one of  
3 this chapter, the principal, or the principal's designee, in consulta-  
4 tion with the student's teachers, shall create an education plan for the  
5 student for each class in which the student is enrolled, according to  
6 the timeframe policies required in the code of conduct described in  
7 section twenty-eight hundred one of this chapter. The education plan  
8 shall make provisions for a student's on-going academic instruction  
9 during the suspension and shall include the steps the school will take  
10 to provide the student with a successful re-entry to school. The student  
11 shall have the opportunity to earn all academic credit they would have  
12 been eligible to earn had the student been in class, including the  
13 opportunity to complete any missed assignments or take any missed exam-  
14 ination or assessments during the student's suspension. If an examina-  
15 tion or assessment cannot be rescheduled, the student shall be allowed  
16 on school property to take such assessment or examination on the day and  
17 time that the assessment or examination is given, unless the student  
18 presents a risk to the health and safety of the school community then  
19 the assessment or examination should be provided in an alternative space  
20 as described in subdivision three of this section, if available.

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

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

1 student's removal, provided that if such twenty-four hour period does  
2 not end on a school day, it shall be extended to the corresponding time  
3 on the next school day.

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

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

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

35 [~~4-~~] 9. Expense. [~~a-~~] The expense attending the commitment and costs  
36 of maintenance of any [~~school delinquent~~] student placed as a result of  
37 a finding related to school or educational issues shall be a charge  
38 against the city or district where [~~he~~] the student resides, if such  
39 city or district employs a superintendent of schools; otherwise it shall  
40 be a county charge.

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

48 [~~5-~~] 10. Involuntary transfers of [~~pupils~~] students who have not been  
49 determined to be a student with a disability or a student presumed to  
50 have a disability for discipline purposes.

51 a. The board of education[~~, board of~~] or trustees [~~or sole trustee,~~],  
52 the chancellor of the city school district in the case of the city  
53 school district of New York, other governing body, the superintendent of  
54 schools, or district superintendent of schools may transfer a [~~pupil~~]  
55 student who has not been determined to be a student with a disability as  
56 defined in section forty-four hundred one of this chapter, or a student

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

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

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

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

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

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

44 [~~6-~~] 11. Transfer of a [~~pupil~~] student. Where a suspended [~~pupil~~]  
45 student is to be transferred pursuant to subdivision [~~five~~] ten of this  
46 section, [~~he or she~~] the student shall remain on the register of the  
47 original school for two school days following transmittal of [~~his or~~  
48 ~~her~~] their records to the school to which [~~he or she~~] the student is to  
49 be transferred. The receiving school shall immediately upon receiving  
50 those records transmitted by the original school, review them to  
51 [~~insure~~] ensure proper placement of the [~~pupil~~] student. Staff members  
52 who are involved in the [~~pupil's~~] student's education must be provided  
53 with pertinent records and information relating to the background and  
54 problems of the [~~pupil~~] student before the [~~pupil~~] student is placed in  
55 a classroom.

1     ~~[7-]~~ 12. Transfer of disciplinary records. Notwithstanding any other  
2 provision of law to the contrary, each local educational agency, as such  
3 term is defined in subsection thirty of section eighty-one hundred one  
4 of the Elementary and Secondary Education Act of 1965, as amended, shall  
5 establish procedures in accordance with section eighty-five hundred  
6 thirty-seven of the Elementary and Secondary Education Act of 1965, as  
7 amended, and the Family Educational Rights and Privacy Act of 1974, to  
8 facilitate the transfer of disciplinary records relating to the suspen-  
9 sion or expulsion of a student to any public or nonpublic elementary or  
10 secondary school in which such student enrolls or seeks, intends or is  
11 instructed to enroll, on a full-time or part-time basis.

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

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

23     (1) the number of teacher removals, number of days removed, and  
24 purpose of removal;

25     (2) the number of suspensions, length of suspension, and purpose of  
26 suspension;

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

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

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

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

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

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

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

53     § 7. Subdivision d of section 27 of chapter 378 of the laws of 2007,  
54 amending the education law relating to implementation of the federal  
55 individuals with disabilities education improvement act of 2004, as

1 amended by chapter 253 of the laws of 2021, is amended to read as  
2 follows:

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

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