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

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

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

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

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

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

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

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

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

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

b. Disruptive pupil. For the purposes of this section, a disruptive pupil is an elementary or secondary student under twenty-one years of

age who is substantially disruptive of the educational process or substantially interferes with the teacher's authority over the classroom.

3. Suspension of a pupil. a. The board of education, board of trustees or sole trustee, the superintendent of schools, district superintendent of schools or principal of a school may suspend the following pupils from required attendance upon instruction:

A pupil who is insubordinate or disorderly or violent or disruptive, or whose conduct otherwise endangers the safety, morals, health or welfare of others.

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

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

c. * (1) No pupil may be suspended for a period in excess of five

school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his or her behalf. Where the pupil is a student with a disability or a student presumed to have a disability, the provisions of paragraph g of this subdivision shall also apply. Where a pupil has been suspended in accordance with this subparagraph by a superintendent of schools, district superintendent of schools, or community superintendent, the superintendent shall personally hear and determine the proceeding or may, in his or her discretion, designate a hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding before him or her. A record of the hearing shall be maintained, but no stenographic transcript shall be required and a tape recording shall be deemed a satisfactory record. The hearing officer shall make findings of fact and recommendations as to the appropriate measure of discipline to the superintendent. The report of the hearing officer shall be advisory only, and the superintendent may accept all or any part thereof. An appeal will lie from the decision of the superintendent to the board of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools. Where the basis for the suspension is, in whole or in part, the possession on school grounds or school property by the student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in subdivision one of section 265.01 of the penal law, the hearing officer or superintendent shall not be barred from considering the admissibility of such weapon, instrument or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.

* NB Effective until June 30, 2027

* (1) No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable

notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his behalf. Where a pupil has been suspended in accordance with this subdivision by a superintendent of schools, district superintendent of schools, or community superintendent, the superintendent shall personally hear and determine the proceeding or may, in his discretion, designate a hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding before him. A record of the hearing shall be maintained, but no stenographic transcript shall be required and a tape recording shall be deemed a satisfactory record. The hearing officer shall make findings of fact and recommendations as to the appropriate measure of discipline to the superintendent. The report of the hearing officer shall be advisory only, and the superintendent may accept all or any part thereof. An appeal will lie from the decision of the superintendent to the board of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools. Where the basis for the suspension is, in whole or in part, the possession on school grounds or school property by the student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in subdivision one of section 265.01 of the penal law, the hearing officer or superintendent shall not be barred from considering the admissibility of such weapon, instrument or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.

* NB Effective June 30, 2027

(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. Procedure after suspension. Where a pupil has been suspended pursuant to this subdivision and said pupil is of compulsory attendance age, immediate steps shall be taken for his or her 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 has been suspended for cause, the suspension may be revoked by the board of education whenever it appears to be for the best interest of the school and the pupil to do so. The board of education may also condition a student's early return to school and suspension revocation on the pupil'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. Discipline of students with disabilities and students presumed to have a disability for discipline purposes. (1) 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 current educational placement for violation of school rules only in accordance with the procedures established in this section, the regulations 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) 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) 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) In applying the federal law consistent with this section:

(i) 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) the trustees or board of education of any school district, a district superintendent of schools or a building principal shall have authority to order the placement of a student with a disability into an appropriate interim alternative educational setting, another setting or suspension 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, the suspension does not result in a change in placement under federal law.

(iii) the superintendent of schools of a school district, either directly or upon recommendation of a hearing officer designated pursuant to paragraph c of this subdivision, may order the placement of a student with a disability into an interim alternative educational setting, another setting or suspension 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 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, the suspension does not result in a change in placement under federal law.

(iv) the superintendent of schools of a school district, either directly or upon recommendation of a hearing officer designated pursuant to paragraph c of this subdivision, may order the change in placement of a student with a disability to an interim alternative educational setting for up to forty-five school days under the circumstances specified in subsection (k)(1)(G) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute or a longer period where authorized by federal law under the circumstances specified in subsection (k)(1)(C) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute, but in neither case shall such period exceed the period of suspension ordered by a superintendent in accordance with this subdivision.

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

(vi) notwithstanding any other provision of this subdivision to the contrary, upon a determination by a manifestation team that the behavior of a student with a disability was not a manifestation of the student's disability, such student may be disciplined pursuant to this section in the same manner and for the same duration as a nondisabled student, except that such student shall continue to receive services to the extent required under federal law and regulations, and such services may be provided in an interim alternative educational setting.

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

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

(ix) the commissioner shall implement this paragraph by adopting regulations which coordinate the procedures required for discipline of students with disabilities, and students presumed to have a disability for discipline purposes, pursuant to subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute, with the general procedures for student discipline under this section.

* NB Effective until June 30, 2027

* g. Discipline of students with disabilities and students presumed to have a disability for discipline purposes. (1) 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 current educational placement for violation of school rules only in accordance with the procedures established in this section, the regulations 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) As used in this paragraph, 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)(8) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute.

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

(i) 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) the trustees or board of education of any school district, a district superintendent of schools or a building principal shall have authority to order the placement of a student with a disability into an appropriate interim alternative educational setting, another setting or suspension 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, the suspension does not result in a change in placement under federal law.

(iii) the superintendent of schools of a school district, either directly or upon recommendation of a hearing officer designated pursuant to paragraph c of this subdivision, may order the placement of a student with a disability into an interim alternative educational setting, another setting or suspension for up to ten consecutive school days, inclusive of any period in which the student is placed in an appropriate interim alternative educational placement, another setting or suspension pursuant to clause (ii) of this subparagraph 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, the suspension does not result in a change in placement under federal law.

(iv) the superintendent of schools of a school district, either

directly or upon recommendation of a hearing officer designated pursuant to paragraph c of this subdivision, may order the change in placement of a student with a disability to an interim alternative educational setting for up to forty-five days, but not to exceed the period of suspension ordered by a superintendent in accordance with this subdivision, under the circumstances specified in subsection (k)(1) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute.

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

(vi) notwithstanding any other provision of this subdivision to the contrary, upon a determination by the committee on special education that the behavior of a student with a disability was not a manifestation of the student's disability, such student may be disciplined pursuant to this section in the same manner as a nondisabled student, except that such student shall continue to receive services to the extent required under federal law and regulations.

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

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

(ix) the commissioner shall implement this paragraph by adopting regulations which coordinate the procedures required for discipline of students with disabilities, and students presumed to have a disability for discipline purposes, pursuant to subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the

federal regulations implementing such statute, with the general procedures for student discipline under this section.

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3-a. Teacher removal of a disruptive pupil. In addition, any teacher shall have the power and authority to remove a disruptive pupil, as defined in subdivision two-a of this section, from such teacher's classroom consistent with discipline measures contained in the code of conduct adopted by the board pursuant to section twenty-eight hundred one of this chapter. The school authorities of any school district shall establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom pursuant to this subdivision and provided further that nothing in this subdivision shall authorize the removal of a pupil in violation of any state or federal law or regulation. No pupil shall return to the classroom until the principal makes a final determination pursuant to paragraph c of this subdivision, or the period of removal expires, whichever is less.

a. Such teacher shall inform the pupil and the school principal of the reasons for the removal. If the teacher finds that the pupil's continued presence in the classroom does not pose a continuing danger to persons or property and does not present an ongoing threat of disruption to the academic process, the teacher shall, prior to removing the student from the classroom, provide the student with an explanation of the basis for the removal and allow the pupil to informally present the pupil's version of relevant events. In all other cases, the teacher shall provide the pupil with an explanation of the basis for the removal and an informal opportunity to be heard within twenty-four hours of the pupil's removal, provided that if such twenty-four hour period does not end on a school day, it shall be extended to the corresponding time on the next school day.

b. The principal shall inform the person in parental relation to such pupil of the removal and the reasons therefor within twenty-four hours of the pupil's removal, provided that if such twenty-four hour period does not end on a school day, it shall be extended to the corresponding

time on the next school day. The pupil and the person in parental relation shall, upon request, be given an opportunity for an informal conference with the principal to discuss the reasons for the removal. If the pupil denies the charges, the principal shall provide an explanation of the basis for the removal and allow the pupil and/or person in parental relation to the pupil an opportunity to present the pupil's version of relevant events. Such informal hearing shall be held within forty-eight hours of the pupil's removal, provided that if such forty-eight hour period does not end on a school day, it shall be extended to the corresponding time on the second school day next following the pupil's removal. For purposes of this subdivision, "school day" shall mean a school day as defined pursuant to clause (v) of subparagraph three of paragraph g of subdivision three of this section.

c. The principal shall not set aside the discipline imposed by the teacher unless the principal finds that the charges against the pupil are not supported by substantial evidence or that the pupil's removal is otherwise in violation of law or that the conduct warrants suspension from school pursuant to this section and a suspension will be imposed. The principal's determination made pursuant to this paragraph shall be made by the close of business on the school day next succeeding the end of the forty-eight hour period for an informal hearing contained in paragraph b of this subdivision.

d. The principal may, in his or her discretion, designate a school district administrator, to carry out the functions required of the principal under this subdivision.

4. Expense. a. The expense attending the commitment and costs of maintenance of any school delinquent shall be a charge against the city or district where he resides, if such city or district employs a superintendent of schools; otherwise it shall be a county charge.

b. The school authorities may institute proceedings before a court having jurisdiction to determine the liability of a person in parental relation to contribute towards the maintenance of a school delinquent under sixteen years of age ordered to attend upon instruction under

confinement. If the court shall find the person in parental relation able to contribute towards the maintenance of such a minor, it may issue an order fixing the amount to be paid weekly.

5. Involuntary transfers of pupils who have not been determined to be a student with a disability or a student presumed to have a disability for discipline purposes.

a. The board of education, board of trustees or sole trustee, the superintendent of schools, or district superintendent of schools may transfer a pupil who has not been determined to be a student with a disability as defined in section forty-four hundred one of this chapter, or a student presumed to have a disability for discipline purposes as defined in paragraph g of subdivision three of this section from regular classroom instruction to an appropriate educational setting in another school upon the written recommendation of the school principal and following independent review thereof. For purposes of this section of the law, "involuntary transfer" does not include a transfer made by a school district as part of a plan to reduce racial imbalance within the schools or as a change in school attendance zones or geographical boundaries.

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

No recommendation for pupil transfer shall be initiated by the principal until such pupil and a person in parental relation has been sent written notification of the consideration of transfer recommendation. Such notice shall set a time and place of an informal conference with the principal and shall inform such person in parental relation and such pupil of their right to be accompanied by counsel or an individual of their choice.

c. After the conference and if the principal concludes that the pupil would benefit from a transfer or that the pupil would receive an

adequate and appropriate education in another school program or facility, the principal may issue a recommendation of transfer to the superintendent. Such recommendation shall include a description of behavior and/or academic problems indicative of the need for transfer; a description of alternatives explored and prior action taken to resolve the problem. A copy of that letter shall be sent to the person in parental relation and to the pupil.

d. Upon receipt of the principal's recommendation for transfer and a determination to consider that recommendation, the superintendent shall notify the person in parental relation and the pupil of the proposed transfer and of their right to a fair hearing as provided in paragraph c of subdivision three of this section and shall list community agencies and free legal assistance which may be of assistance. The written notice shall include a statement that the pupil or person in parental relation has ten days to request a hearing and that the proposed transfer shall not take effect, except upon written parental consent, until the ten day period has elapsed, or, if a fair hearing is requested, until after a formal decision following the hearing is rendered, whichever is later.

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

6. Transfer of a pupil. Where a suspended pupil is to be transferred pursuant to subdivision five of this section, he or she shall remain on the register of the original school for two school days following transmittal of his or her records to the school to which he or she is to be transferred. The receiving school shall immediately upon receiving those records transmitted by the original school, review them to insure proper placement of the pupil. Staff members who are involved in the pupil's education must be provided with pertinent records and information relating to the background and problems of the pupil before the pupil is placed in a classroom.

7. Transfer of disciplinary records. Notwithstanding any other provision of law to the contrary, each local educational agency, as such term is defined in subsection thirty of section eighty-one hundred one

of the Elementary and Secondary Education Act of 1965, as amended, shall establish procedures in accordance with section eighty-five hundred thirty-seven of the Elementary and Secondary Education Act of 1965, as amended, and the Family Educational Rights and Privacy Act of 1974, to facilitate the transfer of disciplinary records relating to the suspension or expulsion of a student to any public or nonpublic elementary or secondary school in which such student enrolls or seeks, intends or is instructed to enroll, on a full-time or part-time basis.