

Regulation JI-R

Las Cruces Public Schools

Related Entries: JI, JICF, JICH, JIH, JICK, JK, JKD, JKD-R

Responsible Office: Associate Superintendent for Instruction

STUDENT RIGHTS AND RESPONSIBILITIES

I. PURPOSE

To provide procedures for implementing the Student Rights and Responsibilities policy that is in accordance with 6-11-2 NMAC.

This regulation provides a comprehensive framework within Las Cruces Public Schools for allowing the school district to carry out its educational mission and exercise its authority and responsibility to provide a safe environment for student learning. The regulation further provides students and parents with an understanding of the basic rights and requirements necessary to effectively function in the educational community.

II. POSITION

The authority of the state and of local boards of education to prescribe and enforce standards of conduct for public school students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. However, it is a property right, which may only be denied when school authorities have adhered to the minimum procedural safeguards required affording the student due process of law.

III. DEFINITIONS

- A. *Administrative authority* means the superintendent, a school principal or a person authorized by either to act officially in a matter involving school discipline or the maintenance of order. The term may include school security officers, but only to the extent of their authority as established under LCPS Board of Education policies (LCPS Policy *KLG Relations with Law Enforcement*).
- B. *Criminal acts* are acts defined as criminal under federal and state law, and any applicable municipal or county criminal ordinances.
- C. *Delinquent acts* are acts so defined in 32A-2-3 NMSA 1978.
- D. *Detention* means requiring a student to remain inside or otherwise restricting his/her liberty at times when other students are free for recess or to leave school.

- E. *Disciplinarian* means a person or group authorized to impose disciplinary consequences after the facts have been determined by a hearing authority.
- F. *Disruptive conduct* means willful conduct that:
 - 1. Significantly and in fact disrupts or interferes with the operation of the public schools or the orderly conduct of any public school activity, including individual classes; or
 - 2. Leads an administrative authority to predict reasonably that such disruption or interference is likely to occur unless preventive action is taken.
- G. *Expulsion* means the removal of a student from public schools either permanently or for an indefinite time exceeding 10 school days.
- H. *Gang related activity* means any demonstration of gang behaviors or inciting negative behaviors or behaviors similar to those of gangs.
- I. *Hearing authority* means a person designated to hear evidence and determine the facts of a case at the required formal hearing.
- J. *Immediate removal* means the removal of a student from school for one (1) school day or less under emergency conditions and without a prior hearing.
- K. *In-school suspension* means suspending a student from one (1) or more regular classes while requiring the student to spend the time in a designated area at the same school or elsewhere.
- L. *Legal limits* include the requirements of the federal and state constitutions and governing statutes, standards and regulations, and also include the fundamental common-law requirement that rules of student conduct be reasonable exercises of the schools' authority in pursuance of legitimate educational and related functions. There are special limitations arising from constitutional guarantees of protected free speech and expression which must be balanced against the schools' need to foster an educational atmosphere free from undue disruptions to appropriate discipline.
- M. *Long-term suspension* means the removal of a student from school for a specified time exceeding either 10 school days for up to one (1) year.
- N. *Parent* means the natural parent, a guardian or other person or entity having custody and control of a student who is subject to the Compulsory School Attendance Law, 22-12-1 NMSA 1978, or the student if he/she is not subject to compulsory attendance.
- O. *Public school* means the campus of and any building, facility, vehicle or

other item of property owned, operated, controlled by or in the possession of Las Cruces Public Schools. For purposes of student discipline, the term also includes any non-school premises being used for school-sponsored activities.

- P. *Refusal to cooperate with school personnel* means a student's willful refusal to obey the lawful instructions or orders of school personnel whose responsibilities include supervision of students.
- Q. *Refusal to identify self* means a person's willful refusal, upon request from school personnel known or identified as such to the person, to identify him/herself accurately.
- R. *Review authority* is a person authorized by the LCPS Board of Education to review a hearing authority's final decision to impose a long-term suspension or expulsion.
- S. *Sexual harassment* regarding students means unwelcome or unwanted conduct of a sexual nature (verbal, non-verbal or physical) when:
1. Submission to such conduct is made either explicitly or implicitly a term or condition of the advancement of a student in school programs or activities;
 2. Submission to or rejection of such conduct by a student is used as the basis for decisions/opportunities affecting the student;
 3. Such conduct substantially interferes with a student's learning or creates an intimidating, hostile or offensive learning environment.
- T. *School personnel* means all members of the staff, faculty and administration employed by Las Cruces Public Schools. The term includes school security officers, school bus drivers and their aides, and also authorized agents of the schools, such as volunteers or chaperones, whose responsibilities include supervision of students.
- U. *Student* means a person who is enrolled in one or more classes at an LCPS school.
- V. *Temporary suspension/short-term suspension* means the removal of a student from school for a specified period of 10 school days or less after a rudimentary hearing.
- W. *Weapon* as set forth in 22-5-4.7 NMSA 1978 means: (LCPS Regulation *JICF-RA Violent, Gang and/or Gang-like Activities*):
1. Any firearm that is designed to, may readily be converted to or will expel

a projectile by the action of an explosion; and

2. Any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four (4) ounces, missile having an explosive or incendiary charge of more than one-quarter (1/4) ounce, mine or similar device.

IV. GENERAL PROVISIONS

A. *Jurisdiction over Students.* All officials, employees and authorized agents of Las Cruces Public Schools whose responsibilities include supervision of students shall have comprehensive authority within constitutional bounds to maintain order and discipline in school.

1. In exercising this authority, such officials, employees and authorized agents of the public schools may exercise such powers of control, supervision and correction over students as may be reasonably necessary to enable them to properly perform their duties and accomplish the purposes of education.
2. This authority applies whenever students are lawfully subject to the schools' control, regardless of place. During such periods, LCPS authorities shall have the right to supervise and control the conduct of students, and students shall have the duty to submit to the school districts' authority.
3. The foregoing is intended to reflect the common law regarding the rights, duties and liabilities of LCPS authorities in supervising, controlling and disciplining students. Nothing herein shall be construed as enlarging the liability of LCPS authorities beyond that imposed by statute, common law or New Mexico Public Education Department regulation.

B. *School Authority over Non-Students:* In furtherance of the state's compelling interest in the orderly operation of the public schools and school activities, LCPS officials have the following forms of authority over non-students whose actions adversely affect school operations or activities.

1. *On School Property:* The LCPS Board of Education prohibits entry to and provides for the removal from any public school building or grounds of any person who refuses to identify him/her and state a lawful purpose for entering.
 - a. Any person who refuses may be removed by school authorities, who may use reasonable physical force to accomplish the removal. Alternately, a person who refuses and who then refuses a lawful request to leave school premises may be subject to arrest by law officers for criminal offenses, including but not limited to, criminal

trespass, interference with the educational process or disorderly conduct.

- b. A person who does identify him/herself and states a lawful purpose may nevertheless be subject to removal by school officials for engaging in activities prohibited by this regulation or the person may also be subject to arrest by law officers if he/she is committing any crime.

2. *Off School Property:* LCPS authorities have indirect and limited authority over the activities of non-students off school property. To the extent that non-students' conduct at or near schools or school-sponsored activities may constitute a criminal offense, including the crimes of interference with the educational process, disorderly conduct or criminal trespass (after refusing a lawful request to leave), school authorities may request law enforcement agencies to arrest offenders.

C. *Statement of policy.* The primary responsibility of LCPS and its professional staffs shall be to instill in students an appreciation of our representative form of government, the rights and responsibilities of the individual or group and the legal processes whereby necessary changes are effected.

1. The school is a community and the rules and regulations of a school are the laws of its community. Each carries with it a corresponding obligation.
2. The right to attend public school is not absolute. It is conditioned on each student's acceptance of the obligation to abide by the lawful rules of the school community until and unless the rules are changed through lawful processes.
3. Teachers, administrators and other school employees also have rights and duties. Teachers are required by law to maintain a suitable environment for teaching in their classes and to assist in maintaining school order and discipline. Administrators are responsible for maintaining and facilitating the educational program by ensuring an orderly, safe environment in the public schools. In discharging their duties, all school employees have the right to be free from intimidation or abuse and to have their lawful requests and instructions followed.
4. Nothing in this regulation shall be held to affect the due process rights of LCPS employees or their use of any school district grievance procedure. This regulation does not address employment disputes.

D. *Local school board authority:* The LCPS Board of Education has discretion to develop such rules, regulations, policies and minimums prescribed in this regulation. The LCPS Board of Education has discretion to develop such

rules, regulations, policies and procedures as it deems appropriate to local conditions, including policies which afford students more protection than the minimums established here. The LCPS Board of Education and school district administrative authorities which deem it appropriate may provide for student, community and/or appropriate state and local agency participation in the formulation and enforcement of school rules.

- E. Severability: Any part of this regulation found by adjudication before a competent tribunal to be contrary to law shall be stricken without effect to the remainder.

V. RULES OF CONDUCT

A. *Prohibited Activities*: The commission of or participation in the activities designated below is prohibited in all New Mexico public schools and is prohibited by students whenever they are subject to the control of school authorities. Acts prohibited by this regulation, criminal or delinquent acts, and prohibited activities which include, but are not limited to:

1. Willful interference with the educational process of any public school, threatening to commit or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of a public school;
2. Arson;
3. Assault and/or battery;
4. Criminal damage to property;
5. Criminal libel;
6. Criminal trespass;
7. Unlawful assembly or disturbing lawful assembly;
8. Extortion;
9. Larceny, robbery or burglary;
10. Illegal sale, possession, transportation or use of firearm, explosive or other weapon (LCPS Policy *JICF Violent, Gang and/or Gang-like Activities*);
11. Sale, possession, transportation or use without prescription of a drug, substance or immediate precursor defined as a controlled substance in the Controlled Substances Act (30-31-1 NMSA 1978) (LCPS Policy *JICH Alcohol, Tobacco, and Other Drugs*);

12. Use of a telephone and/or email to terrify, intimidate, threaten, harass, annoy or offend;
 13. Offenses under municipal traffic codes or the New Mexico Motor Vehicle Code on school property or school-related activity;
 14. Slander to the degree of accusing anyone of an act in school for which he/she could be charged;
 15. Gang related activity; (LCPS Policy *JICF Violent, Gang and/or Gang-like Activities*);
 16. Sexual harassment, intimidation, bullying and hazing; (LCPS Policy *JICK Harassment, Intimidation, Bullying, and Hazing*);
 17. Disruptive conduct;
 18. Refusal to identify self;
 19. Refusal to cooperate with school personnel, including situations where students willfully disobey lawful instructions or orders from school personnel or agents such as volunteer chaperones, whose responsibilities include supervision of students. This regulatory offense includes, but is not limited to, a student's:
 - a. Willfully refusing a direction to cease any conduct which a supervisory person in charge of a class or other activity has clearly identified to the student as a hindrance to the activity;
 - b. Willfully refusing a direction to cease engaging in disruptive conduct;
 - c. Willfully refusing or failing to leave a school facility or school-sponsored activity after being directed to do so by an administrative authority; and
 - d. Willfully refusing or failing to abide by restrictions on student privileges or other lawful conditions imposed by an administrative authority as a disciplinary measure.
- B. *Regulated Activities*: Beyond those activities designated above as prohibited, all other areas of student conduct may be regulated within legal limits by the LCPS Board of Education, as the Board deems appropriate. Conduct by non-students which affects school operations may be regulated within legal limits pursuant to any of the forms of authority described above. Activities subject to LCPS Board of Education regulations within legal limits include, but are not limited to:
1. School attendance;

2. Use of and access to the public schools, including:
 - a. Restrictions on vehicular traffic on school property;
 - b. Prohibition of or conditions on the presence of non-school persons on school grounds or in school buildings while school is in session; and
 - c. Reasonable standards of conduct for all persons attending school-sponsored activities or other activities on school property;
3. Students' dress and personal appearance;
4. Use of controlled substances, alcohol and tobacco in the public schools, school property and school-related activities;
5. Speech and assembly within the public schools;
6. Publications distributed in the public schools;
7. The existence, scope and conditions of availability of student privileges, including extracurricular activities and rules governing participation;
8. By statute, LCPS is required to adopt a policy providing for the expulsion from school, for a period of not less than one year, of any student who is determined to have knowingly brought a weapon to a school (LCPS Policy *JICF Violent, Gang and/or Gang-like Activities*); and
9. For students with out-of-school conduct having a direct and immediate effect on school discipline or the general safety and welfare of the school.

VI. ENFORCING RULES OF CONDUCT

- A. *Enforcing Attendance Requirements*: Formal enforcement action under the Compulsory Attendance Law, *supra*, and the Family in Need of Services Act, 32A-3-1 NMSA 1978, shall be initiated whenever a student's absences indicate that the law is being violated. An administrative authority who has reason to believe a student is violating LCPS Board of Education attendance policies may take whatever further disciplinary action is deemed appropriate under LCPS Policy *JHB Students in Need of Intervention for Attendance*.
- B. *Search and Seizure*: School property assigned to a student and a student's person or property while under the authority of the public schools are subject to search, and items found are subject to seizure, in accordance with LCPS Policy *JIH Student Interrogations, Searches, and Seizures*.
 1. Notice of search policy. Students shall be given reasonable notice, through distribution of written policies or otherwise, of each school's policy on searches at the beginning of each school year or upon admission for students entering during the year. (LCPS Policy *JIH Student*

Interrogations, Searches, and Seizures.)

2. Who may search? Certified school personnel, school security personnel and school bus drivers are “authorized persons” to conduct searches when a search is permissible as set fourth below. An authorized person who is conducting a search may request the assistance of some other person(s), who, upon consent, become(s) an authorized person for the purpose of that search only.
3. When search permissible. Unless LCPS Board of Education policy provides otherwise, an authorized person may conduct a search when he/she has a reasonable suspicion that a crime or other breach of disciplinary rules is occurring or has occurred. An administrative authority may direct or conduct a search under the same conditions and also when he/she has reasonable cause to believe that a search is necessary to help maintain school discipline.
4. Conduct of searches; witnesses. The following requirements govern the conduct of permissible searches by authorized persons:
 - a. School property, including lockers and school buses, may be searched with or without students present unless the LCPS Board of Education or administrative authority provides otherwise. When students are not present for locker searches, another authorized person shall serve as a witness whenever possible. Locks furnished by students should not be destroyed unless a student refuses to open one or circumstances otherwise render such action necessary in the judgment of the administrative authority.
 - b. Student vehicles when on campus or otherwise under school control and a student’s personal effects which are not within his/her immediate physical possession may be searched in accordance with the requirements for locker searchers.
 - c. Physical searches of a student’s person may be conducted only by an authorized person who is of the same sex as the student, and, except when circumstances render it impossible, may be conducted only in the presence of another authorized person of the same sex. The extent of the search must be reasonably related to the infraction, and the search must not be excessively intrusive in light of the student’s age and sex, and the nature of the infraction.
 - d. Seizure of items: Illegal items, legal items which threaten the safety or security of others, and items which are used to disrupt or interfere with the educational process may be seized by authorized persons. Seized items shall be released to appropriate authorities or a student’s parent or returned to the student when and if the administrative authority deems appropriate.

- e. Notification of law enforcement authorities: the LCPS administrative authority shall have discretion to notify law enforcement officers when a search discloses illegally posed contraband material or evidence of some other crime or delinquent act.
- C. *Basis for Disciplinary Action:* A student may appropriately be disciplined by administrative authorities in the following circumstances:
- 1. Violating valid rules of student conduct established by the LCPS Board of Education or by an administrative authority to whom the board has delegated rulemaking authority, when the student knew or should have known of the rule in question or that the conduct was prohibited; or
 - 2. Committing acts prohibited by this regulation, when the student knew or should have known that the conduct was prohibited.
- D. *Selection of Disciplinary Sanctions:* Within legal limits as defined in 6.11.2.7(1) NMAC 1978, the LCPS Board of Education has the discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct. The board authorizes the appropriate administrative authorities to make such determinations as outlined in school district regulations.
- 1. *School Discipline and Criminal Charges:* Appropriate disciplinary actions may be taken against students regardless of whether criminal charges are also filed in connection with an incident.
 - 2. *Nondiscriminatory Enforcement:* The LCPS Board of Education and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex or disability, except to the extent otherwise permitted or required by law or regulation. This statement shall not be construed as requiring identical treatment of students for violation of the same rule; it shall be read as prohibiting differential treatment which is based on race, religion, color, national origin, ancestry, sex or disability rather than on other differences in individual cases or students (LCPS Policy AC *Nondiscrimination*).
- E. *Corporal Punishment.* Corporal punishment of students is not permitted in the Las Cruces Public Schools (LCPS Policy *JKA Prohibition of Corporal Punishment*).
- F. *Detention, Suspension and Expulsion:* Where detention, suspension and/or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in 6.11.2.12 NMAC. Suspensions or expulsions of students with

disabilities shall be subject to the further requirements of 6.11.2.10(G) NMAC (LCPS Policy *JKD Suspension or Expulsion of Students*).

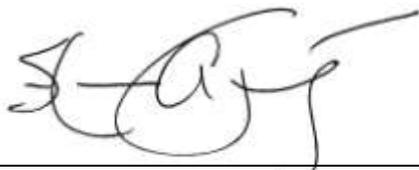
G. Discipline of Special Education and 504 Students: Students with disabilities who receive special education, students who qualify under 504 Rehabilitation Act, and students who are in the process of being evaluated for special education are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children. However, the individual educational needs of exceptional children must be met to the extent required by federal and state laws and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 3000.530. Note: A manifest determination meeting must be held prior to any consideration of a long term suspension. Representation from the LCPS Special Education Department staff shall be present at all manifest meetings.

1. Long-Term Suspensions or Expulsions of students with disabilities is equivalent to change in educational placement and therefore require special consideration. Long-term suspension or expulsion shall be governed by the procedures set forth in 6.11.2.11 NMAC (LCPS Regulation *JKD-RA Suspension or Expulsion of Students*).
2. Temporary Suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in regulation LCPS Regulation *JKD-RA Suspension and Expulsion of Students* provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of 6.11.2.10 (G)(3) NMAC.
3. *Program Prescriptions:* A student with a disability's individualized education program (IEP) need not affirmatively authorize disciplinary actions which are not otherwise in conflict with the regulation. However, the IEP Committee may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP Committee may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this regulation.
4. *Immediate Removal:* Immediate removal of students with disabilities may be done in accordance with the procedures of 6.11.2.12 NMAC.

5. A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any other protections provided for in this subsection if the conditions set forth in 34 CFR Sec. 300.534 have been met.
6. Referral to and action by law enforcement and judicial authorities.
 - a. Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.
 - b. Transmittal of records.
 - i. An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.
 - ii. An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Education Rights and Privacy Acts (FERPA).

History: Formerly Procedure 336.1-336.9, revised 01.17.06, revised 11.11.09

Legal reference: 6-11-2 NMAC 1978, 32A-2-3 NMSA 1978, 22-12-1 NMSA 1978, 30-31-1 NMSA 1978, 32A-3-1 NMSA 1978, 6.11.2.12 NMAC 1978, 6.11.2.10(g) NMAC 1978, 6.11.2.11 NMAC 1978, 6.11.2.10 (g) (3) NMAC 1978, 6.11.2.12 NMAC 1978, 6.31.2 NMAC 1978, 6.11.2.12 (g) NMAC 1978, 6.31.2.13(1)(11) NMAC 1978, 6.31.2.13(I0(2) NMAC 1978, 6.11.2.11(C)(1) NMAC 1978, 6.11.2.11 NMAC 1978, .11.2.12 NMAC 1978, 6.11.2.12 NMAC 1978, .11.2.12 NMAC 1978; Subsection G, Paragraph (4), Subparagraphs (j) and (k) of Section 6.11.2.12 NMAC (b); Subsection G, Paragraph (4), Subparagraph (h) of Section 6.11.2.12 NMAC; Subsection G, Paragraph (4), Subparagraph (h), Sub-subparagraph (vi) of Section 6.11.2.12 NMAC; Subsection G, Paragraph (4), Subparagraph (h), Sub-subparagraph (vi) of Section 6.11.2.12 NMAC; Subsection G, Paragraph (4), Subparagraph (l), Sub-subparagraph (iii) or Sub-subparagraph (iv) of Section 6.11.2.12 NMAC; 34 CFR Sec. 300.534, 34 CFR Sec. 300.527, 34 CFR Part 300, or Section 504, and 34 CFR Part 104, 34 CFR Sec. 300.523, 34 CFR Sec. 300.519, 34 CFR Sec. 300.519, 34 CFR Sec. 300.520(a)(2), 34 CFR Sec. 300.522, 34 CFR Sec. 300.520(b) and (c), 34 CFR Sec. 300.519, 34 CFR Sec. 300.121(d), 34 CFR Sec. 300.528, 34 CFR Sec. 300.526, 34 CFR Sec. 300.121.



Associate Superintendent for Instruction

November 11, 2009
Date