

Regulation JICK-R

Las Cruces Public Schools

Related Entries: JICK, JICKA, JICKA-RA, JICFA, JICFA-RA, JICFB, JICFB-RA, JKD, JKD-RA
Responsible Office: Chief Academic Officer

SEXUAL HARASSMENT OF STUDENTS

I. PURPOSE

To implement the policy of the Board of Education prohibiting sexual harassment of students.

II. BACKGROUND AND DEFINITIONS

The Board of Education has found that the effective education of our students requires a school environment in which students feel safe and secure. Sexual harassment of students, whether by employees or by other students, impairs the proper atmosphere for education, and creates an inequitable climate for learning. In addition to its negative effect upon education, sexual harassment negatively affects the characters of young people, both the harassers and the victims of harassment.

- A. *“Complainant” means* in complaints of harassment, a complainant is a student alleging prohibited action or treatment prohibited by Board Policy JICK.
- B. *“Respondent” means* the person alleged to be responsible for the prohibited conduct alleged in a complaint.
- C. *“Day” means* the calculation of days in complaint processing, except as otherwise expressly provided, shall exclude Saturdays, Sundays, and federal, state and school holidays or closures.
- D. *“Complaint Submission Date” means* the date on which a written complaint was received by the Responsible Administrator.
- E. *“Responsible Administrator” means* School Principal, Director of Human Resources or Superintendent of Schools, the authorized designee of these individuals, or the administrator designated by the Superintendent, as appropriate.
- F. *“Neutral and objective investigator/administrator” means* an administrator or designated investigator who is not the subject of a complaint or is not a Complainant.

III. NOTICE OF PROHIBITION AGAINST SEXUAL HARASSMENT OF STUDENTS

- A. The Superintendent or designee will provide notice of the Board of Education’s prohibition set forth in Board Policy JICK against sexual harassment of students by publication in any or all School District student, staff and parent handbook, including in any student, staff and parent handbooks published by any school in the School District as follows:

“It is the policy of the Board of Education to prohibit harassment of any student on the basis of sex. The Board of Education and the Administration of the Las Cruces Public Schools will not tolerate sexual-harassment of students by employees or by other students. Sexual harassment is illegal. No employee of the School District shall engage in any conduct of a sexual nature with any student, regardless of the student’s age, ability to consent, or actual consent. Conduct by students or employees, including but not limited to, sexually-oriented name-calling, graffiti, teasing, etc., has no place in school. However, requests by students to other students for dates or other age-appropriate expressions of interest or affection are not considered sexual harassment. The School District shall provide an educational program that offers equal educational benefits for boys and girls.

The Board of Education’s policy prohibiting sexual harassment against students is located on the School District’s website at www.lcps.k12.nm.us and designated as Policy JICK.”

- B. At each in-service training provided to School District employees at the beginning of each school year, employees will be provided generalized training on the prohibition of Policy JICK and their responsibilities under the Policy. Employees will be provided with a copy of Policy JICK during training or will be provided with the website address for their continued review of, and access to, the Policy.

IV. REPORTING POSSIBLE VIOLATIONS OF THE JICK POLICY

- A. Any student who believes he or she has been the victim of sexual harassment by another student or by an employee of the School District should immediately report any alleged violation of Policy JICK or any alleged acts which may constitute sexual harassment to any employee of the School District.
- B. Any School District employee who witnesses, or is aware of conduct which may violate Policy JICK shall report it to the principal or assistant principal of the school where the employee works or to their immediate supervisor at his or her earliest opportunity. Any employee who receives any report, written or verbal, of possible sexual harassment of a student, whether the report is given by a student, a parent, or another employee, or who himself or herself observes instances of sexual harassment must notify his or her immediate supervisor; the principal or assistant principal of the school where the employee works or the Superintendent, regardless

of whether the employee receiving the report or observing the instance considers the matter credible or significant.

- C. Teachers and other school staff who witness acts of possible sexual harassment by students shall have an affirmative duty and the authority to act in a reasonable manner within the disciplinary standards of conduct established for School District employees to promptly stop such conduct, including but not limited to, taking custody of the alleged student-violator and removing the student from the educational environment for the purpose of immediately transferring custody of the student to a School District administrator for further review and action under this Regulation.
- D. Where possible, reports of violations of Policy JICK may be submitted in writing using Form JICK-E1 (Report of Harassment, Intimidation, Bullying or Hazing form). A copy of the submitted Form JICK-E1 shall be immediately forwarded to Office of the Superintendent for appropriate action and distribution within the Administration.
- E. Nothing in Policy JICK or in this Regulation shall prevent any person from reporting possible sexual harassment of a student to the Superintendent of Schools.

V. PROCEDURAL REQUIREMENTS FOR INVESTIGATION

A. Time Limits

A complaint under this procedure should be filed as soon as possible after the time of occurrence, but at no time later than 90 calendar days of the occurrence of the alleged violation(s) of Board Policy JICK. Failure of a complainant or appellant to comply with any time limitation in the complaint procedure may result in dismissal of the complaint and/or denial of the appeal. Dismissal shall not preclude the individual's right to pursue the complaint through other appropriate external agencies. If a School District representative fails to comply with any time limitation in the grievance procedure, the Complainant may immediately proceed to the next level permitted by these Procedures.

B. Service

Service of any notice or decision provided for under this procedure shall be deemed effective on the person served as of the date of delivery, if personally served, faxed or e-mailed, or effective three (3) calendar days of deposit by first class mail if delivered by mail.

C. Confidentiality

- 1. Confidentiality will be maintained to the greatest extent possible. Any information gathered during an informal procedure may be used during a formal procedure, if initiated. While there can be no assurance of complete confidentiality, complaints under this procedure will be treated as sensitive information not to be shared with others except in limited circumstances. Examples of exceptions to maintaining confidentiality include:

- a. information the law requires to be reported.
 - b. information imparted to others in supervisory positions in order to further an investigation or halt a discriminatory practice.
 - c. information given to the Respondent in order to have sufficient information to respond to the allegations.
2. The School District will take all reasonable steps to investigate and respond to a complaint consistent with a request by the complaining party not to disclose his/her name. However, such requests for confidentiality may limit the School District's ability to adequately investigate and respond to the allegations raised in the complaint.
 3. Requests for confidentiality, therefore, will be evaluated in the context of the School District's responsibility to provide a safe and nondiscriminatory environment for all students, and the request will be weighed against the following factors:
 - a. the complainant's age;
 - b. whether there have been other harassment complaints about the same individual; and
 - c. the alleged harasser's rights to receive information under federal and State law and School District policies. Information provided to the alleged victim(s) and their parents/guardians shall be in compliance with the confidentiality provisions of state and federal law pertaining to the confidentiality of employee and student information and records, including but not limited to, the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1417(c); 34 C.F.R. § 300.560; Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g; 34 CFR Part 99) and the Inspection of Public Records Act ("IPRA"), N.M. Stat. Ann. § 14-2-1 *et. seq.* (2005), as amended and re-codified in the future.
 4. All parties to a grievance, including the Complainant, Respondent and witnesses, have privacy interests and, therefore, all parties should be cautioned not to divulge or publicize the nature of the proceedings or the identity of those involved outside the scope of the investigation.

VI. INFORMAL AND FORMAL PROCESSES

A. INFORMAL RESOLUTION PROCEDURES: Informal resolution may be an appropriate choice when the conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. No formal investigation is involved in the informal resolution process, and the informal resolution process shall not be considered a precondition for the filing of a formal written complaint pursuant to Section VI.B., below.

1. A written request for informal resolution must be made within ten (10) days of the date of the alleged incident. The school principal or designee shall determine whether the nature of the problem is such that it is likely to be resolved by agreement on an informal basis.
2. Methods for informal resolution may include, but are not limited to, coaching the person on how to directly address a situation which is causing a problem; mediating the dispute with the parties; developing written behavior expectations of the alleged offender to redirect conduct; assisting with the resolution of a real or perceived problem; or arranging a documented meeting with the alleged offender that involves a discussion of the disability discrimination policies and requirements for compliance.
3. The principal or designee shall document any informal resolution, and a copy of such documentation shall be forwarded to the Superintendent of Schools, or the individual designated by the Superintendent within three (3) days of resolution.

B. FORMAL COMPLAINT PROCEDURES: Initiation of the formal complaint procedures requires a written complaint utilizing JICK-E1 (Report of Harassment, Intimidation, Bullying, Hazing Form). All written complaints regarding students or employees in violation of Board Policy JICK shall be submitted to:

For students:

Any employee of the School District
School Principal of the school attended by the Student;
Superintendent of Schools or his/her designee.

For employees:

School Principal of school in which the employee works;
Chief of Human Resources; or
Superintendent of Schools or his/her designee.

All other inquiries or complaints by employees regarding discrimination, harassment or bullying of any type with regards to employment should also be directed to the Chief of Human Resources or the administrator designated by the Superintendent. Any and all complaints regarding employment may be brought to the attention of the Superintendent of Schools.

Step 1 – Reporting Complaints

(a) The Complainant may obtain a Complaint Form from the School Principal, Human Resources Department, or the School District website. The Complainant may attach a written narrative explaining the nature of the complaint to the Form, if sufficient space is not available on the form. JICK-E1 (Report of Harassment, Intimidation, Bullying, Hazing Form) and/or narrative shall contain information that describes the conduct that has violated the prohibitions in Board Policy JICK and identify with reasonable particularity the respondent(s) and any witnesses to the alleged conduct.

(b) Any School District employee who either reasonably believes a student has been victim of conduct that violates Board Policy JICK or who receives a complaint of sexual harassment or violence on the basis of sex from a student must immediately submit the Complaint Form to the Responsible Administrator. This reporting obligation is in addition to a school employee's reporting obligations to appropriate officials pursuant to law and Board or Education Policies when the employee has a reasonable belief that a student is being abused or neglected or subject to other forms of abuse and neglect prohibited by law.

Step 2 – Determining Applicability of the Procedures

The Responsible Administrator shall initially review the written complaint to determine whether the matter falls within the scope of these procedures. Within five (5) days after the Complaint Submission Date, the Responsible Administrator shall initiate an investigation of the matters alleged, or inform the Complainant in writing that the matters alleged in the complaint are not within the jurisdiction or authority of the School District to investigate and that the School District will not carry out any further investigation. If the matter does not involve allegations of misconduct within the scope of these procedures, the Responsible Administrator shall forward the matter to the proper School District administrative authority for review, if appropriate.

Step 3 – Investigation

(a) The Responsible Administrator shall oversee that an adequate, reliable and impartial investigation of the complaint is conducted by the principal or designee of the school site where the student is enrolled, the employee is assigned, and/or where the alleged discrimination occurred.

(b) In order to provide a neutral and objective investigation, neither the Responsible Administrator, nor the principal or designee conducting the investigation shall be a party to the complaint in the investigation.

(c) In the event that the principal or his/her designee is not a neutral party, the Responsible Administrator shall designate a neutral and objective administrator to conduct the investigation. In the event that the Responsible Administrator is not a neutral party, the Superintendent shall designate a neutral and objective administrator to oversee the investigation.

(d) In conducting the investigation, the designated investigator shall interview all parties identified in the complaint and other witnesses that the investigator determines may provide information relevant to resolving the complaint allegation(s). Both the Complainant and Respondent shall have the opportunity to identify witnesses to be interviewed and provide documentation or other evidence for the designated investigator to review.

(e) The Responsible Administrator shall consider the evidence compiled by the designated investigator and take whatever additional actions the Responsible

Administrator deems necessary to complete the investigation.

(f) The Responsible Administrator will maintain documentation of all proceedings, which may include written findings of facts, transcripts, notes, or audio recordings until such time as a final written investigative report is compiled and issued by the Responsible Administrator and the School District takes action on the Complaint, in necessary, including during any appeals authorized under these Procedures. The Responsible Administrator shall ensure his or her document retention and use shall be in compliance with the confidentiality provisions of state and federal law pertaining to the confidentiality of employee and student information and records, including but not limited to, the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1417(c); 34 C.F.R. § 300.560; Family Educational Rights and Privacy Act (“FERPA”) (20 U.S.C. § 1232g; 34 CFR Part 99) and the Inspection of Public Records Act (“IPRA”), N.M. Stat. Ann. § 14-2-1 *et. seq.* (2005), as amended and re-codified in the future.

Step 4 – Notice of Resolution

(a) **Notice.** The Responsible Administrator shall notify both the Complainant and Respondent in writing within twenty (20) days from the Complaint Submission Date of the results of the investigation.

(b) **Written Determination.** The Responsible Administrator shall consider the totality of the evidence and determine whether the preponderance of the evidence establishes that a violation of Board Policy JICK occurred (i.e., it is more likely than not that the misconduct occurred).

(i) If the Responsible Administrator determines that the preponderance of the evidence does **not** support the allegations of misconduct in violation of Board Policy JICK, the Complainant may appeal the determination pursuant to Step 5, below.

(ii) If the Responsible Administrator determines that the preponderance of the evidence supports the allegations of misconduct by the Respondent in violation of Board Policy JICK, the Responsible Administrator shall provide written findings and conclusions supporting the determination. In addition, the written determination shall make recommendations for

(A) immediately ending the misconduct;

(B) ways to remedy the effects of any prohibited behavior on the complaining party and, if applicable, the School District’s educational environment, and

(C) the steps to be taken to prevent the recurrence of any misconduct found to have occurred.

The recommendations of the Responsible Administrator shall become final and shall be implemented as a remedy to the complaint unless either party appeals as provided in Step 5 – Appeal Rights. The recommendations of the Responsible Administrator under these Procedures shall not be binding to any other complaint or in other situation as it is compromise and specific remedy to the grievance at issue only to avoid further discord and/or possible litigation without admission of liability.

Step 5 – Appeal Rights

(a) A party not satisfied with the resolution in Step 4, above, may submit a written appeal within five (5) days to the Superintendent utilizing Form JI-E1 (Grievance Form). The written appeal shall state with particularity the nature of the disagreement, the reasons underlying such disagreement, and how the outcome would be changed by reconsideration of the determination.

(b) The Superintendent or designee shall conduct a review of the record to determine whether the preponderance of the evidence supports the determination made by the Responsible Administrator. The Superintendent or designee shall issue a written decision and mail it to the parties within ten (10) days of the receipt of the appeal. The Superintendent’s decision is a final decision.

Information for Complaints to an External Agency

Any person believing there has been a violation of the student’s civil rights may file a complaint with the Office of Civil Rights (“OCR”) in Denver, Colorado. More information is available at the Office of Civil Rights, Federal Office, 1244 Speer Blvd, Suite 310, Denver, CO 80204-3582, (303) 844-5695.

IV. DISCIPLINE

Employees and students may be disciplined if it is determined through this procedure that harassment or retaliation for complaining, has occurred in violation of federal or state laws or Board of Education policies. The Responsible Administrator shall refer the matter to the appropriate School District administrator to initiate disciplinary proceedings against the Respondent.

A. Students:

If the recommended disciplinary consequences involve either a long-term suspension or expulsion, the student is entitled to pursue the hearing and appeal rights pursuant to Board of Education policies and New Mexico state law.

B. Employees:

If the disciplinary consequence involves discharge or termination, the employee’s hearing and appeal rights will be governed by New Mexico law and Board of Education policies.

VII. NO RETALIATION

A. Students, employees or parents who make complaints in good faith, shall be free from retaliation, coercion, and reprisal in seeking resolution of their complaint. Furthermore, persons acting as witnesses to a complaint, in good faith, shall be free from reprisal.

B. Retaliation is a separate violation distinct from the initial underlying misconduct allegation. Claims of retaliation, submitted in good faith and in writing to the Responsible Administrator, shall be investigated pursuant to these procedures.

Individuals who engage in retaliation will be subject to discipline, regardless of whether there has been a finding of cause for the underlying complaint.

VIII. FALSE COMPLAINTS

- A. Individuals who knowingly file a false or misleading complaints alleging a violation of Board Policy JICK or retaliation are subject to appropriate disciplinary action, including, but not limited to, dismissal of the complaint.
- B. If the preponderance of the evidence supports a finding that the Complainant submitted a false or misleading complaint alleging a violation of Board Policy JICK or retaliation, the complaint will be dismissed, and the student or employee who submitted the complaint will be recommended for discipline in a manner consistent with Board of Education policies and procedures.



Approved, Erlinda Martinez
Chief Academic Officer

June 15, 2017
Date Approved

History: *Originated as JICK; Last update on regulation – 5.20.08; revised 05.03.10; Revised with new OCR language, 061517, Cuddy*

Legal Reference: Title IX; IDEA, New Mexico Children’s Code and FERPA