

Regulation JICKA Las Cruces Public Schools

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

STUDENT HARASSMENT BASED ON PROTECTED CHARACTERISTICS

I. PURPOSE

To implement the policy of the Board of Education prohibiting harassment of students based on protected characteristics.

The Board of Education is committed to maintaining an environment conducive to learning in which students are safe from harassment based on protected characteristics. Student harassment impairs the proper atmosphere for education, and creates an inequitable climate for learning. In addition to its negative effect upon education, student harassment based on protected characteristics negatively affects the characters of young people.

These procedures shall be available in every school site administrative office, posted on the School District website, and included in student handbooks.

II. DEFINITIONS

- A. “*Complainant*” – For complaints of harassment, a complainant is a student, employee or third party alleging prohibited action or treatment prohibited by Board Policy JICKA.
- B. “*Complaint Submission Date*” – the date on which a written complaint was received by the Responsible Administrator.
- C. “*Day*” – 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. “*Neutral and objective investigator/administrator*” – an administrator or designated investigator who is not the subject of a complaint or is not a Complainant.
- E. “*Respondent*” - the person alleged to be responsible for the prohibited conduct alleged in a complaint.
- F. “*Responsible Administrator*” – 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.

III. NOTICE OF PROHIBITION AGAINST HARASSMENT OF STUDENTS BASED ON PROTECTED CHARACTERISTICS

- A. The Superintendent or designee will provide notice of the Board of Education’s prohibition set forth in Board Policy JICKA against harassment of students based on protected characteristics 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 discrimination against any student on the basis of race, color, religion, national origin, age, sexual orientation, sexual identity or disability (referred to herein as “protected characteristics”), on school premises, at any school-sponsored activities, or during any school-supplied transportation, by any students, employees, non-employee volunteers, or any other persons who are subject to the control of school authorities.

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

- 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 JICKA and their responsibilities under the Policy. Employees will be provided with a copy of Policy JICKA 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 JICKA POLICY

- A. Any student who believes he or she has been the victim of harassment based on protected characteristics by another student or by an employee of the School District should immediately report any alleged violation of Policy JICKA or any alleged acts which may constitute prohibited harassment to any employee of the School District.
- B. Any School District employee who witnesses, or is aware of conduct which may violate Policy JICKA 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 harassment of a student based on protected characteristics, whether the report is given by a student, a parent, or another employee, or who himself or herself observes instances of prohibited 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 harassment based on protected characteristics 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.

V. PROCEDURAL REQUIREMENTS.

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 JICKA. 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:
 - information the law requires to be reported.
 - information imparted to others in supervisory positions in order to further an investigation or halt a discriminatory practice.
 - 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:

- the complainant’s age;
 - whether there have been other harassment complaints about the same individual; and
 - the alleged harasser’s rights to receive information under federal and State law and 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 PROCESS: 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 JICKA-E1 (Student Harassment Based on Protected Characteristics Complaint Form). All written complaints regarding students or employees in violation of Board Policy JICKA shall be submitted to:

For students:

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 Officer; 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. JICKA-E1 (Student Harassment Based on Protected Characteristics Complaint Form) and/or narrative shall contain information that describes the conduct that has violated the prohibitions in Board Policy JICKA 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 JICKA or who receives a complaint of discrimination, harassment or violence on the basis of protected characteristics 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 JICKA 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 JICKA, 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 JICKA, 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.

VII. 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.

VIII. 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.

IX. FALSE COMPLAINTS.

- A. Individuals who knowingly file a false or misleading complaints alleging a violation of Board Policy JICKA 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 JICKA 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, Chief Academic Officer
Erlinda Martinez*

*May 25, 2017
Date Approved*

History: Originated as JICK; last update to regulation 5.20.08; revised 05.03.10; revised with additional OCR language, Cuddy McCarthy, 05.25.17

Legal Reference: Title IV; IDEA, New Mexico Children's Code; FERPA; NMAC 6.60.9; *N.M. Stat. Ann. § 22-2-21 (2015) (Bullying and Cyberbullying Prevention Programs)*; § 6.12.7 NMAC (*Bullying Prevention*)