

JKDRRegulation

Las Cruces Public Schools

Related Entries: JKD, JI, JI-R, JICK, JICK-R, JKA, JICA, JICA-R, EJA, ADC, JHCA, JKA, JKA-R

Responsible Office: Deputy Superintendent of Instruction [TL1]

Suspension or Expulsion of Students

I. PURPOSE

This regulation prescribes minimum requirements for detention, in-school suspension, and temporary, long-term or permanent removal of students from Las Cruces Public Schools. The procedures in this regulation apply only to disciplinary detentions, suspensions, and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence, or other requirements for valid enrollment.

II. POSITION

The authority of the state and of 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. PROCEDURES FOR LONG-TERM SUSPENSION OR EXPULSION OF STUDENTS WITH DISABILITIES

A. Initial Determination(s)

1. The following rules shall apply when a student with a disability violates a rule of conduct as set forth in this regulation which may result in:
 - a. long-term suspension or expulsion, or
 - b. any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing reauthorization of Individuals with Disabilities Education Act (IDEIA) 2004.
2. The following rules shall also apply when a disciplinary change of placement is contemplated for a child whom the district had knowledge, as provided in 34 CFR Sec. 300.527, that the child had

- a disability before the behavior that precipitated the disciplinary action occurred.
3. The principal or assistant principal shall conduct an informal administrative conference to determine if disciplinary action is warranted. The purpose of the conference shall be to:
 - a. conduct interviews;
 - b. afford the child an opportunity to explain the alleged misconduct;
 - c. determine whether the child has an individualized education program (IEP) in accordance with the IDEA or a plan in accordance with Section 504 of the Rehabilitation Act of 1973 (hereinafter "504") in effect, and if so whether the IEP or 504 plan contains alternative disciplinary strategies; and
 - d. determine whether a referral for formal evaluation should be made if an IEP or 504 plan is not in effect and a disability is suspected.
 4. The principal or assistant principal shall make a determination as to whether the conduct warrants long-term suspension or expulsion.
 5. Nothing herein shall preclude the principal or assistant principal from imposing a short-term suspension subject to further provisions and/or seeking an injunction from a court of competent jurisdiction or an order from an IDEA hearing officer or exclude or change the placement of a student when the principal/assistant principal believes that maintaining the current placement is substantially likely to result in injury to the child or others.

B. Parent/Guardian Notification

1. Upon a determination by the principal or assistant principal that long-term suspension or expulsion will not be pursued, the principal or assistant principal shall notify the parent/guardian of the incident.
2. Upon a determination by the principal or assistant principal that the student's IEP or 504 plan sets forth alternative discipline strategies for the behavior, the principal or assistant principal shall implement the alternative strategies and notify the

parent/guardian(s) accordingly.

3. Upon a determination by the principal or assistant principal that an IEP or 504 plan is not in effect for the student and that a referral for formal evaluation should be made, the principal or assistant principal shall refer the student for formal evaluation and shall notify the parent/guardian(s) in accordance with applicable requirements.
4. Upon a determination by the principal or assistant principal that long-term suspension or expulsion will be pursued and that an IEP or 504 plan is in effect for the student, the principal or assistant principal shall notify the parent/guardian(s) as follows:
 - a. scheduling of the IEP meeting in accordance with the requirements of the IDEA -Part B and 34 CFR Part 300, or Section 504, and 34 CFR Part 104, as applicable; and
 - b. contemplated disciplinary action.

C. Manifestation Inquiry

1. The principal or assistant principal shall convene the IEP or 504 meeting to determine if the student's behavior is a manifestation of the disability and whether the student's IEP or 504 plan is appropriate.
2. An IDEA manifestation inquiry shall be conducted by the IEP team and other required personnel pursuant to all applicable requirements of 34 CFR Sec. 300.523.
3. If the determination is made that the behavior is a manifestation of the disability, the IEP Team or 504 Committee shall revise the IEP or 504 plan as needed to address the needs of the student. The student may not be suspended or expelled from school for more than ten (10) school days in a school year unless such action is allowable under 34 CFR Sec. 300.519 without establishing a pattern of exclusion or unless the school district obtains an order from a court of competent jurisdiction to remove the student from school or to change the student's placement.
4. If the determination is made that the behavior is not a manifestation of the disability but behavior of concern was caused by a failure to implement the IEP/504, the IEP Team or 504 Committee shall revise the IEP/504 plan. The student may not be suspended or expelled from school for more than ten (10) school

days in a school year unless such action is allowable under 34 CFR Sec. 300.519 without establishing a pattern of exclusion or unless the school district obtains an order from a court of competent jurisdiction to remove the student from school or to change the student's placement.

5. If the determination is made that the misbehavior is not a manifestation of the disability and the child's program is appropriate, the principal or assistant principal may proceed to initiate long-term suspension or expulsion proceedings in accordance with Subsection G of 6.11.2.12 NMAC.

D. Special Rule

1. This rule shall apply, pursuant to 34 CFR Sec. 300.520(a)(2), when a child with a disability is determined to have:
 - a. Brought a weapon to school or a school function
 - b. Knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at school or a school function.
 - c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency. Serious *bodily injury* is defined as bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
2. A student who has a disability in accordance with Part B of the IDEA and who is determined to have engaged in any conduct described in Paragraph 1 above may be immediately placed in an interim alternative educational setting for not more than forty-five (45) school days during the manifestation inquiry. The interim alternative educational setting shall be determined by the IEP Team, which includes the student's parent/guardian(s), in compliance with all applicable requirements of 34 CFR Sec. 300.522. Parent/guardian consent to the alternative placement is not required.
3. If the parent/guardian(s) of a student placed in an alternative educational setting pursuant to this Special Rule request(s) a due process hearing pursuant to Part B of the IDEA, the hearing shall

be expedited and the student shall remain in the alternative educational setting during the pendency of any proceedings, unless the parent/guardian(s) and principal or assistant principal agree otherwise or the IDEA hearing officer orders otherwise.

4. If, upon final determination, it is decided that the offense involving the weapon or drug was not a manifestation of the student's disability, the principal or assistant principal may proceed to initiate long-term suspension or expulsion proceedings.
- E. **Functional Behavioral Assessments and Behavioral Intervention Plans:** The principal or assistant principal shall ensure that a functional behavioral assessment is conducted and a behavioral intervention plan for each student with a disability under the IDEA is developed or reviewed and revised by the IEP team in compliance with 34 CFR Sec. 300.520(b) and (c) not later than ten (10) business days after first removing the child from his or her current educational placement for more than ten (10) school days in a school year or commencing a removal that constitutes a change of placement under 34 CFR Sec. 300.519.
- F. **Alternative Educational Services During the Period of Long-Term Suspension or Expulsion**
1. Alternative educational services for a student with a disability upon whom a long-term suspension or expulsion has been imposed for behavior that was not a manifestation of the disability shall be provided as follows:
 - a. During the period of disciplinary exclusion from school, each student who is disabled pursuant to the IDEA must continue to be offered a program of appropriate educational services that is individually designed to meet his or her unique learning needs and provides a free appropriate public education (FAPE) pursuant to 34 CFR Sec. 300.121(d). Such services may be provided in the home, in an alternative school, or in another setting.
 - b. The district may cease educational services to students who are disabled pursuant to Section 504 during periods of disciplinary exclusion from school that exceed ten (10) school days, if students who are not disabled do not continue to receive educational services in similar circumstances.
 2. **Provision of Alternative Educational Services**

- a. The parent/guardian(s) shall be notified of the IEP/504 meeting.
 - b. An IEP is developed to reflect the alternative educational services and placement to be provided to the student during the period of the long-term suspension or expulsion, pursuant to 34 CFR.
 - c. If the parent/guardian(s) of an IDEA student request a due process hearing, the hearing shall be expedited pursuant to 34 CFR Sec. 300.528 and Paragraph 11 of Subsection I of 6.31.2.13 NMAC and the student shall remain in the alternative educational setting during the pendency of any proceedings, unless the parent/guardian(s) and principal or assistant principal agree otherwise or the IDEA hearing officer orders otherwise pursuant to 34 CFR Sec. 300.526 and Paragraph 20 of Subsection I of 6.31.2.13 NMAC.
3. The board of education shall adopt policies stating whether a student will receive grades and/or credit during the period of long-term suspension or expulsion, subject to the requirements of 34 CFR Sec. 300.121 that an IDEA student must receive services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

IV. PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS

- A. *Post-Suspension Placement of Students:* Any student suspended from school shall be delivered directly by a school official to the student's parent/guardian or an adult designated by the parent/guardian or kept on school grounds until the student dismissal time.
- B. *Students with Disabilities:* This section does not apply to long-term suspension or expulsion of students who are disabled pursuant to the IDEA or Section 504, except as provided for in Subsection C, Paragraph (1) of Section 6.11.2.11 NMAC. The procedures for long-term suspension or expulsion of disabled students are set forth in Section 6.11.2.11 NMAC.
- C. *Immediate Removal:* Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school, subject to the following rules:
 1. A rudimentary hearing, as required for temporary suspensions, shall follow as soon as possible.

2. Students shall be reinstated after no more than one (1) school day unless within that time a temporary suspension is also imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s).
3. The school shall exert reasonable efforts to inform the student's parent/guardian of the charges against the student and the action taken as soon as practicable.
 - a. If the school has not communicated with the parent/guardian by telephone or in person by the end of the day of the immediate removal, the school shall release the student to the appropriate law enforcement or community agency. Students shall not be released without prior notification to the parent/guardian, law enforcement or community agency.
 - b. Additionally, if the parent/guardian has not been contacted the school shall on that day mail a written notice with the required information to the parent/guardian's address of record.

D. Temporary Suspension (Short-term Suspension)

1. A board of education limits temporary suspensions to periods shall not exceed ten (10) school days.
2. A student facing temporary suspension shall first be informed of the charges against him/her and, if he/she denies them, shall be told what evidence supports the charge(s) and be given an opportunity to present his or her version of the facts. The following rules apply:
 - a. The hearing may be an informal discussion and may follow immediately after the notice of the charges is given.
 - b. Unless the principal or assistant principal decides a delay is essential to permit a fuller exploration of the facts, this discussion may take place and a temporary suspension may be imposed within minutes after the alleged misconduct has occurred.
 - c. A student who denies a charge of misconduct shall be told what act(s) he/she is accused of committing, shall be given

an explanation of the evidence supporting the accusation(s) and shall then be given the opportunity to explain his or her version of the facts. The principal or assistant principal is not required to divulge the identity of informants, although the principal or assistant principal should not withhold such information without good cause. The principal or assistant principal is required to disclose the substance of all evidence on which he/she proposes to base a decision in the matter.

- d. The principal or assistant principal is not required to allow the student to secure counsel, to confront or cross-examine witnesses supporting the charge(s), or to call witnesses to verify the student's version of the incident, but none of these is prohibited.
- e. The school shall exert reasonable efforts to inform the student's parent/guardians of the charges against the student and the possible or actual consequence as soon as practicable. If the school has not communicated with the parent/guardians by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent/guardian's address of record.

E. In-School Suspension

- 1. In-school suspension may be imposed with or without further restriction of student privileges. Any student who is placed in an in-school suspension which exceeds ten (10) school days must be provided with an instructional program that meets both state and local educational requirements. Student privileges, however, may be restricted for longer than ten (10) school days.
- 2. In-school suspensions of any length shall be accomplished according to the procedures for a temporary suspension as set forth above. The board of education may limit the length of in-school suspensions that may be accomplished under temporary suspension procedures. No in-school suspension student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.

F. Detention

- 1. Detention may be imposed in connection with in-school suspension, but is distinct from in-school suspension in that it does

not entail removing the student from any of his/her regular classes.

2. The authority of the schools to supervise and control the conduct of students includes the authority to impose reasonable periods of detention during the day or outside normal school hours as a disciplinary measure. No detained student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom. Reasonable periods of detention may be imposed in accordance with the procedures for temporary suspension.

G. Long-Term Suspension and Expulsion

1. The board of education authorizes principal or assistant principal to initiate procedures leading to long-term suspension or expulsion. Where prompt action to suspend a student long-term is deemed appropriate, a temporary suspension may be imposed while the procedures for long-term suspension or expulsion are activated. However, where a decision following the required formal hearing is delayed beyond the end of the temporary suspension, the student must be returned to school pending the final outcome unless the provisions of Subsection G, Paragraph (4), Subparagraphs (j) and (k) of Section 6.11.2.12 NMAC (b) apply.
2. A student who has been validly expelled or suspended is not entitled to receive any educational services from the district during the period of the exclusion from school. The board of education may provide alternative arrangements, including correspondence courses at the student or parent/guardian's expense pursuant to State Board of Education requirements, if the board of education deems such arrangements appropriate.
3. The board of education authorizes the superintendent to establish, appropriate processes for handling long-term suspensions and expulsions. Unless the terms expressly indicate otherwise, nothing in the procedures below shall be construed as directing that any particular person or body make any required decision or that the decision be made at any particular level of administration.
4. The following rules shall govern the imposition of long-term suspensions or expulsions:
 - a. *Hearing Authority/Disciplinarian:* The same person shall perform the functions of both hearing authority and disciplinarian.
 - b. *Review Authority:* The superintendent, or his/her designee,

shall serve as the review authority and shall have discretion to modify or overrule the hearing authority's decision, but may not impose a harsher punishment. The superintendent, or his/her designee, shall be bound by a hearing authority's factual determinations except as provided in 6.11.2.12 NMAC.

- c. *Disqualification:* No person shall act as hearing authority or review authority in a case where he/she was directly involved in or witnessed the incident(s) in question, or if he/she has prejudged, disputed facts or is biased for or against any person who will actively participate in the proceedings.
- d. *Initiation of Procedures:* A principal or assistant principal shall initiate procedures for long-term suspension or expulsion of a student by scheduling a formal hearing in consultation with the hearing authority and preparing and serving a written notice meeting the requirements of Subsection G, Paragraph (4), Subparagraph (h) of Section 6.11.2.12 NMAC.
- e. *Service of Notice:* The written notice shall be addressed to the student, through his/her parent/guardian(s), and shall be served upon the parent/guardian(s) personally or by certified mail.
- f. *Timing of Hearing:* The hearing shall be scheduled no sooner than five (5) nor later than ten (10) school days from the date of receipt of the notice by the parent/guardian(s). The hearing authority may grant or deny a request to delay the hearing in accordance with the provisions of 6.11.2.12 NMAC.
- g. *Contents of Notice:* The written notice must contain all of the following information, parts of which may be covered by appropriate reference to copies of any policies or regulations furnished with the notice:
 - i. the school rule(s) alleged to have been violated, a concise statement of the alleged act(s) of the student on which the charge(s) are based and a statement of the possible penalty;
 - ii. the date, time and place of the hearing, and a statement that both the student and parent/guardian

are entitled and urged to be present;

- iii. a clear statement that the hearing will take place as scheduled unless the hearing authority grants a delay or the student and parent/guardian agree to waive the hearing and comply voluntarily with the proposed disciplinary action or with a negotiated penalty, and a clear and conspicuous warning that a failure to appear will not delay the hearing and may lead to the imposition of the proposed penalty by default;
 - iv. a statement that the student has the right to be represented at the hearing by legal counsel, a parent/guardian or some other representative designated in a written notice filed at least seventy-two (72) hours before the hearing with the contact person named pursuant to Subsection G, Paragraph (4), Subparagraph (h), Sub-subparagraph (vi) of Section 6.11.2.12 NMAC;
 - v. a description of the procedures governing the hearing;
 - vi. the name, business address and telephone number of a contact person through whom the student, parent/guardian or designated representative may request a delay or seek further information, including access to any documentary evidence or exhibits which the school proposes to introduce at the hearing; and
 - vii. any other information, materials or instructions deemed appropriate by the principal/assistant principal who prepares the notice.
- i. *Delay of Hearing:* The hearing authority shall have discretion to grant or deny a request by the student or the appropriate principal or assistant principal to postpone the hearing. Such discretion may be limited or guided by board of education policies not otherwise inconsistent with this regulation.
 - j. *Student's Status Pending Hearing:* When a student has been suspended temporarily and a formal hearing on long-term suspension or expulsion will not occur until after the

temporary suspension has expired, the student shall be returned to school at the end of the temporary suspension unless:

- i. the provisions of Subsection G, Paragraph (4), Subparagraph (k) of Section 6.11.2.12 NMAC apply, or
 - ii. the student and parent/guardian(s) have knowingly and voluntarily waived the student's right to return to school pending the outcome of the formal proceedings, or
 - iii. the appropriate principal or assistant principal has conducted an interim hearing pursuant to a written board of education policy made available to the student that affords further due process protection sufficient to support the student's continued exclusion pending the outcome of the formal procedures.
- k. *Waiver of Hearing; Voluntary Compliance or Negotiated Penalty:* A student and his/her parent/guardian(s) may elect to waive the formal hearing and review procedures and comply voluntarily with the proposed penalty or may waive the hearing and review and negotiate a mutually acceptable penalty with the hearing authority. Such a waiver and compliance agreement shall be made voluntarily with knowledge of the rights being relinquished and shall be evidenced by a written document signed by the student, the parent/guardian(s), and the appropriate school official. A copy of the signed Waiver of Hearing will be sent to the Office of the Hearing Authority. Upon receipt of the signed waiver, the office of the Hearing Authority shall contact the parent/guardian(s) to ensure the waiver was signed voluntarily and with a full understand of the rights being relinquished.
- l. *Procedure for Hearing and Decision:* The formal hearing is not a trial. It is an administrative hearing designed to ensure a calm, orderly determination by an impartial hearing authority of the facts of a case of alleged serious misconduct. Technical rules of evidence and procedure do not apply. The following rules govern the conduct of the hearing and the ultimate decision:

- i. The school shall have the burden of proof of misconduct;
- ii. The student and his/her parent/guardians shall have the following rights: The right to be represented by legal counsel or other designated representative, however, the school is not required to provide or pay for representation; the right to present evidence, subject to reasonable requirements of substantiation at the discretion of the hearing authority and subject to exclusion of evidence deemed irrelevant or redundant; the right to confront and cross-examine adverse witnesses, subject to reasonable limitation by the hearing authority; the right to have a decision based solely on the evidence presented at the hearing and the applicable legal rules, including the governing rules of student conduct.
- iii. The hearing authority shall determine whether the alleged act(s) of misconduct have been proved by a preponderance of the evidence presented at a hearing at which the student and/or a designated representative have appeared.
- iv. If no one has appeared on the student's behalf within a reasonable time after the announced time for the hearing, the hearing authority shall determine whether the student, through the parent/guardians, received notice of the hearing. If so, the hearing authority shall review the evidence provided by the school to determine whether it is sufficient to support the charges(s) of misconduct.
- v. A hearing authority shall impose an appropriate sanction if he/she finds that the allegations of misconduct have been proved under the standards of either Subsection G, Paragraph (4), Subparagraph (1), Sub-subparagraph (iii) or Sub-subparagraph (iv) of Section 6.11.2.12 NMAC.
- vi. Arrangements to make a tape recording or keep minutes of the proceedings shall be made by the principal or assistant principal that scheduled the hearing and prepared the written notice. A verbatim written transcript is not required, but any minutes or other written record shall fairly reflect the substance

of the evidence presented.

- vii. The hearing authority may announce a decision on the question of whether the allegation(s) of misconduct have been proved at the close of the hearing. A hearing authority may also impose a penalty at the close of the hearing.
- viii. In any event, the hearing authority shall prepare and mail or deliver to the student, through the parent/guardians, a written decision within five (5) working days after the hearing. The decision shall include a concise summary of the evidence upon which the hearing authority based its factual determinations. A hearing authority shall include in the report a statement of the penalty, if any, to be imposed, and shall state reasons for the chosen penalty.
- m. *Effect of Decision:* If the hearing authority decides that no allegation(s) of misconduct have been proven, or declines to impose a penalty despite a finding that an act or acts of misconduct have been proven, the matter shall be closed. Any sanction imposed on the student shall take effect immediately upon notification to the parent/guardians and shall continue in force during any subsequent review.
- n. *Right of Review:* A student aggrieved by a hearing authority's decision after a formal hearing shall have the right to have the decision reviewed if the penalty imposed was at least as severe as a long-term suspension or expulsion, an in-school suspension exceeding one school semester or a denial or restriction of student privileges for one semester or longer. The board of education may grant a right of review for less severe penalties. A student request for review must be submitted to the review authority within ten (10) school days after the student is informed of the hearing authority's decision.
- o. *Conduct of Review:* A review authority shall have discretion to modify the hearing authority's decision, including imposing any lesser sanction deemed appropriate. A review authority shall be bound by the hearing authority's factual determinations unless the student persuades the review authority that a finding of fact was arbitrary, capricious or unsupported by evidence or that

new evidence which has come to light since the hearing and which could not, with reasonable diligence, have been discovered in time for the hearing would manifestly change the factual determination. Upon any such finding, the review authority shall have discretion to receive new evidence, reconsider evidence introduced at the hearing or conduct a de novo hearing. In the absence of any such finding, the review shall be limited to an inquiry into the appropriateness of the penalty imposed.

- p. *Form of Review:* A review authority shall have discretion to conduct a review on the written record of the hearing and decision in the case, to limit new submissions by the aggrieved student and school authorities to written materials and/or to grant a conference or hearing at which the student and his/her representative and school authorities may present their respective views in person. When a conference or hearing is granted, the record-keeping requirements of 6.11.2.12 NMAC apply.
- q. *Timing of Review:* Except in extraordinary circumstances, a review shall be concluded no later than fifteen (15) working days after the appropriate principal or assistant principal receives a student's written request for review.
- r. *Decision:* A review authority may announce a decision at the close of any conference or hearing held on review. In any event, the review authority shall prepare a written decision, including concise reasons, and mail or deliver it to the hearing authority and the student, through the parent/guardians, within ten (10) working days after the review is concluded.
- s. *Effect of Decision:* A review authority's decision shall be the final administrative action to which a student is entitled.

History: Formerly Procedure 336-10 through Procedure 336.13 and 336-17 through 336-28, revised 03.15.06; reviewed 11.29.18

Source: NMAC 6.11.2.11, NMAC 6.11.2.12



Deputy Superintendent of Instruction

11/29/18

Date