

Regulation

Las Cruces Public Schools

Related Entries: ACA, ACA-RA, JI, JI-RA, JICK, JICK-RA, [JLF](#), KLG, KLG-RA
Responsible Office: Chief Operations Officer

Reporting Child Abuse

I. PURPOSE

To outline administrative procedures to be followed in suspected child abuse situations when a physical injury has been inflicted on a child by another person, including district employees, other than by accidental means. This procedure includes the sexual assault of a child, willful cruelty or unjustifiable punishment of a child, corporal punishment or injury, and the neglect of a child.

II. LEGAL REQUIREMENTS AND PROTECTION

A. Liabilities for Failure to Report

1. Any person mandated by law who fails to report any instance of child abuse or neglect that he/she knows or reasonably suspects to exist can incur criminal, civil, and/or professional liability.
2. All staff members who abuse or neglect a child or who fail to report as required by law and this policy, are subject to, in addition to other penalties, disciplinary action, including discharge.

B. Protection from Liability. No person shall incur any civil or criminal liability as a result of making any report authorized unless it can be proven that a false report was made and the person knew or should have known that the report was false.

III. DEFINITIONS

- ##### A. "abandonment" includes instances when the parent, without justifiable cause:
1. left the child without provision for the child's identification for a period of fourteen days; or
 2. left the child with others, including the other parent or an agency, without provision for support and without communication for a period of:

- a. three months if the child was under six years of age at the commencement of the three-month period; or
 - b. six months if the child was over six years of age at the commencement of the six-month period.
- B. "abused child" means a child.
1. who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;
 2. who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;
 3. who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;
 4. whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or
 5. whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child.
- C. "great bodily harm" means an injury to a person that creates a high probability of death, that causes serious disfigurement or that results in permanent or protracted loss or impairment of the function of any member or organ of the body;
- D. "neglected child" means a child:
1. who has been abandoned by the child's parent, guardian or custodian;
 2. who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;
 3. who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the

abuse and failed to take reasonable steps to protect the child from further harm;

4. whose parent, guardian or custodian is unable to discharge his responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or
 5. who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code [32A-1-1 NMSA 1978] shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;
- E. "physical abuse" includes but is not limited to any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:
1. there is not a justifiable explanation for the condition or death;
 2. the explanation given for the condition is at variance with the degree or nature of the condition;
 3. the explanation given for the death is at variance with the nature of the death; or
 4. circumstances indicate that the condition or death may not be the product of an accidental occurrence;
- F. "sexual abuse" includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law; and
- G. "sexual exploitation" includes but is not limited to:
1. allowing, permitting or encouraging a child to engage in prostitution;
 2. allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or

3. filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law.
- H. “Reasonable suspicion” is objectively plausible for a person to entertain such a belief if it is based upon a person's training and experience and upon facts or allegations that would cause a person of sound judgment in a like position to suspect child abuse or neglect. Child abuse or neglect should be suspected/reported when an allegation constituting child abuse or neglect is brought to the attention of a (mandated) reporter from any source, whether that source is the alleged victim, a friend of the alleged victim, anonymous, third party, spoken, or written
- I. Child abuse *does not* include:
1. Use of an amount of force that is reasonable and necessary for a person employed or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil.
 2. Mutual altercation between minors
 3. Use of an amount of force reasonable and necessary for a district employee to exercise, during the performance of his/her duties, to reasonably maintain order, protect property, and protect the health and safety of pupils.

IV. REPORTING PROCEDURES

- A. A school employee who knows or suspects the abuse or neglect of a child is to immediately report the matter to:
1. Children, Youth and Families Department (CYFD) 505-524-6400 or 1-800-797-3260; or
 2. a local law enforcement agency.
- B. No school employee, regardless of position within the school system, shall inhibit, prevent, obstruct or intimidate another school employee from reporting suspected child abuse or neglect to CYFD or a local law enforcement agency. There is no requirement that a school employee consult or obtain the approval of a supervisor before making a report of suspected child abuse or neglect [NMSA 30-6-4(A)].
- C. The school or its employees are not to conduct an investigation to determine if such abuse occurred.

- D. Anyone reporting an instance of alleged child neglect or abuse or participating in a judicial proceeding brought as a result of a report is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by the law, unless the person acted in bad faith or with malicious purpose (NMSA 32A-4-5).
- E. The employee reporting the possible abuse shall complete JLF-E1, Suspected Child Abuse/Neglect Report, and send a copy to his/her principal or supervisor, the school nurse, and the superintendent.

V. REPORTING INCIDENTS INVOLVING DISTRICT EMPLOYEES

- A. Any employee, who becomes aware of facts that lead them to reasonably suspect another employee has engaged in child abuse with a student, shall do the following:
 - 1. comply with mandated reporting requirements,
 - 2. notify the principal or appropriate site administrator,
 - 3. the principal or site administrator, who is notified of an incident or becomes aware of an incident alleging child abuse by an employee, shall do the following:
 - a. ensure the reporting requirements are met by the reporting employee, and
 - b. contact the Department of Human Resources for assistance relating to the school principal's role and responsibility
 - 4. The Human Resources administrator, who is notified of an incident alleging child abuse by an employee, shall determine the appropriate course of action with respect to the accused employee, including personnel and legal actions.
 - 5. The Human Resources administrator will inform the superintendent of all incidents of suspected child abuse involving district employees (see Policy 216).
 - 6. Investigation By Law Enforcement or CYFD Protective Services
 - a. The CYFD social worker and/or law enforcement may interview an employee at school who has been accused of child abuse.

- b. The CYFD social worker and/or law enforcement investigator is to report to the school principal or designee upon arrival, provide his/her credentials, and state who they wish to see. The principal will record that the investigation occurred and the information will remain confidential. The principal will report to the office of the superintendent that the interview is occurring.
- c. The principal will provide a place for the interview that insures privacy for the employee away from students and staff.
- d. When the principal summons the employee for the interview, the principal will tell the employee that a CYFD social worker and/or law enforcement officer would like to interview him/her regarding an accusation that has been made against him/her. This will be done in privacy where others cannot hear and will not be discussed by the principal with other employees.
- e. The employee may choose whether to talk with the CYFD social worker and/or law enforcement at that time or to meet with them at another time and place. If the employee so chooses, he/she must inform the investigator directly of this choice. The employee may choose to have a representative of his/her choice present during the interview, including legal representation if so desired. Although these are the rights of the employee, the school cannot legally bring this to the attention of the employee at the time of the investigation as it could be construed as interfering with the investigation process.
- f. It is the responsibility of the CYFD social worker and/or law enforcement officer to inform the individual being investigated that no party may be compelled to participate in a conference, produce any papers, or visit any place (32A-4-4). Law enforcement is responsible to advise the employee of his/her Miranda rights; it is not the responsibility of the school to do this.
- g. Following the initial contact, CYFD and/or law enforcement will disclose sufficient information to the superintendent/designee so that children may be protected.

- h. A copy of these policies and regulations will be available in the school office so that the employee may request time to review them prior to any investigatory interview
7. Investigation By School Official
- a. The district is responsible for conducting an investigation of any employee accused of child abuse. The superintendent will designate the persons to conduct the investigation. The district's investigation will follow and be coordinated with that conducted by CYFD and/or law enforcement. Should the investigation become lengthy and it is the feeling of the district that it is important to begin an internal investigation; this will be coordinated with law enforcement.
 - b. The district's investigation will be conducted in accordance with any applicable negotiated agreement. The district will inform the individual that he/she has the right to representation during the interview and the employee may reschedule the interview to another reasonable time in order to secure representation.
 - c. Prior to any interview relevant to a child abuse accusation that may result in disciplinary action, the district will inform the employee that anything they say may ultimately be used against them. The employee may refuse to answer questions that probe possible criminal conduct until the employee has obtained legal advice and/or counsel.
 - d. The length of administrative leave shall be kept to a minimum depending upon the seriousness of the allegations and the complexity of the investigation.

VI. INTERVIEWING STUDENTS IN SCHOOLS

When CYFD and/or law enforcement find it necessary to interview students at school in child abuse or neglect investigations, the procedures listed below will be followed.

- A. Administrative contact is required.
 - e. The CYFD social worker and/or law enforcement shall first contact the principal or designee regarding the visit and state the reason.

- f. Official identification will be requested and carefully inspected. A photograph should be on the identification card. If further identification is required, the CYFD county office manager/designee or law enforcement supervisor should be contacted. If the identification is not verifiable, then law enforcement should be contacted immediately.

- B. The school shall facilitate a prompt interview. The school, social worker and/or law enforcement shall cooperatively work to facilitate the investigation and minimize the educational disruption. If the social worker/officer states this an emergency situation, the principal or designee shall arrange immediate access to the child.

- C. The CYFD social worker and/or law enforcement officer shall be permitted to interview the child with respect to a report without permission of the child's parent, guardian, or custodian (NMSA 32A-4-5C). Notification of the child's parent, guardian, or custodian shall be exclusively done by the agency conducting the investigation.

- D. The principal/designee will provide a place which insures privacy of the child. The child shall be summoned for interview in a manner that does not disclose the fact of investigation or interview, or otherwise embarrasses the child. Students shall not be used to summon the child.

- E. When reasonable and possible, employees of CYFD and/or law enforcement shall conduct interviews in a manner and place that protects the child and family from unnecessary trauma and embarrassment. It is the sole discretion of the social worker or law enforcement agency where the student is to be interviewed, either at home or at school.

- F. At the beginning of the interview, it is the responsibility of the social worker and/or law enforcement to afford the child the option of being interviewed in private or selecting any adult who is a member of the school staff, including any administrative, certified or classified employee, who is not subject to the investigation, to be present at the interview.
 - a. The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible.
 - b. The member of the staff shall not participate in the interview.

- c. The member of the staff shall not discuss the facts or circumstances of the case with the child.
 - d. The member of the staff is subject to the confidentiality requirements of this regulation, a violation of which is punishable.
 - e. A staff member selected by a child may decline the request to be present at the interview.
- B. If the principal has concerns about the way the investigation was conducted, these concerns should be reported to the superintendent who will then report these concerns to the CYFD county office manager/designee or law enforcement agency.

VII. ACCESS TO SCHOOL RECORDS, PERSONNEL, AND COLLATERAL WITNESSES

- A. A law enforcement agency or CYFD social worker shall have access to any of the school records pertaining to a child abuse or neglect case (NMSA 32A-4-3F). The principal or designee is responsible to ensure that the pertinent records are made available in a prompt manner. If there is a dispute on what records should be disclosed, the superintendent is to be called, who will then confer with the CYFD county office manager or designee.
- B. During the course of the investigation, it may be necessary to interview school personnel who may be able to provide additional information pertaining to the investigation. The time and place of such interview shall be coordinated through the principal or designee so as not to unduly disrupt school operation and teaching schedule.

VIII. PROTECTIVE CUSTODY AND LEGAL CUSTODY

- A. A child may be taken into protective custody by a law enforcement officer who in turn may give custody to CYFD.
- B. When CYFD has taken a child into custody, the responsibility for parental notification rests with that agency.
- C. When a child is in the legal custody of CYFD, the social worker assigned to the child's case shall introduce him/herself to the principal and give the principal a copy of the Legal Custody Order. This order and any subsequent order is to be treated as a confidential document.

- D. When CYFD has legal custody of a child, school personnel shall recognize that CYFD has the authority to determine where and with whom the child shall live and make educational decisions concerning the child. This authority replaces that of the child's parent/guardian while the custody order is in effect, e.g., all permission slips, medical cards, etc. School personnel shall cooperate with CYFD accordingly.

IX. CONFIDENTIALITY OF INVESTIGATION

- A. The fact of a child abuse/neglect investigation and any details of such known to school employees shall be kept confidential. Only the school principal and/or designee and school employees involved in the investigation should have any knowledge of the actual investigation.
- B. The principal or designee shall instruct school employees who know of the investigation about the confidentiality of what they know and learn, and caution them against disclosure to others, both within and out of the school system. Specifically, there shall be no disclosure of an investigation to personnel at other schools where siblings attend, as this may jeopardize the investigation.
- C. An inquiry of school personnel by a parent, guardian, custodian, or another member of the public regarding an abuse-neglect investigation is to be referred to the agency responsible for the investigation. This does not apply to the police, attorneys representing the child, or parties involved, nor does it prevent testifying in court if lawfully subpoenaed.
- D. The investigative report done by CYFD/law enforcement personnel is statutorily mandated to be kept strictly confidential. Only investigative records, which may concern the child's social or educational needs, may be disclosed to school personnel involved with the child, unless further disclosure is ordered by a district court. As a standard procedure, the CYFD will notify the reporting school personnel if the report is being investigated and the name of the social worker.

Regulation History: Formerly Procedures 216, 446 and 363.8, Revised 01.17.06

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Approved, Chief Operations Officer

01.17.06

Date