

<b>LFC Requester:</b>	<b>Anne Hanika-Ortiz</b>
-----------------------	--------------------------

**AGENCY BILL ANALYSIS  
2017 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

<b>Original</b>	<input checked="" type="checkbox"/>	<b>Amendment</b>	<input type="checkbox"/>	<b>Date</b>	<u>2/10/17</u>
<b>Correction</b>	<input type="checkbox"/>	<b>Substitute</b>	<input type="checkbox"/>	<b>Bill No:</b>	<u>SB251</u>

<b>Sponsor:</b>	<u>Senator Linda M. Lopez</u>	<b>Agency Code:</b>	<u>924</u>
<b>Short Title:</b>	<u>CERTAIN STUDENT MISCONDUCT REPORTS TO PARENTS</u>	<b>Person Writing</b>	<u>Aguilar/Pahl/Mastalir</u>
		<b>Phone:</b>	<u>505-827-6519</u>
		<b>Email</b>	<u>Paulj.aguilar@state.nm</u>

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	None Noted		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Section 29-14-4 NMSA/ Investigations of Peace Officers.

Potentially conflicts with IPRA exception for law enforcement investigations at 14-2-1(A)(4) NMSA.

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

Senate Bill 251 creates a new section to the Investigation of Public Records Act, requiring investigation reports to be provided to the parent of a minor student involved in an investigation when misconduct has been alleged against a school district law enforcement

officer.

## **FISCAL IMPLICATIONS**

None Noted

## **SIGNIFICANT ISSUES**

The Inspection of Public Records Act (IPRA), may not be the appropriate location for this legislation in the New Mexico Statutes Annotated. IPRA does not generally impose affirmative obligations upon the part of governmental entities to produce records in the absence of the receipt of a request for records, whereas, this proposed legislation places an affirmative duty on the investigatory entity to produce records even in the absence of a request for them.

This new provision might be more appropriately placed in Section 29-14-4, addressing the Investigations of Peace Officers.

The term “School District Law Enforcement Officer” is not a term previously defined in statute. Many school districts contract with various law enforcement agencies for the provision of services, and such officers remain peace officers employed by the law enforcement agency, but are assigned to the school, and are traditionally, but not by statutory definition that can be found, referred to as “School Resource Officers.” It appears that the Albuquerque Public Schools (APS) are the only school district that has its own police force. As such, it appears that the provisions of this bill are focused solely on APS.

Section 1 states that “[t]he findings and disposition of an internal or external investigation of a school district law enforcement officer’s misconduct while performing the officer’s duties as a public official shall be provided to a parent if a student was involved in the alleged misconduct.”

This provision doesn’t state whose investigation must be produced; an investigation by the law enforcement authorities, an investigation by the school district, school or charter school, or an investigation obtained by one of those entities. Unless there is a contractual provision that would allow a school district to engage in such an investigation, this probably refers to an investigation by the officer’s employing law enforcement agency, but the provision should clarify.

Additionally, the provision should probably use the word “alleged” before “misconduct” if the intent is that all such records would be released despite any determination of actual misconduct by the investigating entity.

The use of the term “public official” may not be legally correct; using “law enforcement officer/school resource officer” may be more accurate and consistent.

It isn’t clear how a student can “be involved in the alleged misconduct” of the officer. They may be affected by it, but it isn’t clear how they can be involved with the misconduct.

I’m assuming that the disclosure requirement is intended to apply only to the parent of the affected student, not just “a student”, if so, the language should state that the documents/information shall be provided to “the parent or legal guardian of any student who was directly affected by the alleged misconduct of the officer”, or something similar.

If this provision is not included in IPRA, deadlines, etc., would have to be addressed and included.

### **ADMINISTRATIVE IMPLICATIONS**

FERPA compliance should not be implicated because FERPA excludes “records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement” from the definition of “education records.” Section 1232g(a)(4)(B)(ii). FERPA may be an issue if the “investigation” is one that is conducted by a school district and included in the education records of a student.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

If this information does fall within the IPRA exception for law enforcement investigations, it might be easier to amend Section 14-2-1(A)(4) to state that the exception does not apply to such records. That would, however, require parents to request such records, pursuant to the regular IPRA procedures.

### **ALTERNATIVES**

Modify/amend the law enforcement exception of IPRA.