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WHAT DOES THE NEW IPRA DECISION FROM THE NM SUPREME COURT MEAN FOR SCHOOL DISTRICTS?

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INTRODUCTION

- ❑ School officials know that “letters or memoranda that are matters of opinion in personnel files” and “attorney-client privileged information” are among the exceptions to disclosure under IPRA.
- ❑ In late May, the New Mexico Supreme Court significantly narrowed the meaning of those two exceptions.
- ❑ The case: *Albuquerque Journal v. Board of Education of Albuquerque Public Schools*, Docket Number S-1-SC-40671 (decided May 28, 2026).



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FACTUAL BACKGROUND

- ❑ This case centered around an investigation report prepared by an outside attorney investigator for the Albuquerque Public Schools regarding former Superintendent, Winston Brooks.
- ❑ The school district withheld the entirety of the report (known as “the Padilla Report”) from a media request, based on two IPRA exceptions.
- ❑ After a lengthy dispute, the Court determined that the district must release the report, with possible redactions.

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STATUTORY EXCEPTIONS

- ❑ The following are the two statutory exceptions APS relied on as its basis for withholding:
 - ❑ “Letters or memoranda that are matters of opinion in personnel files or students' cumulative files.” NMSA 1978, § 14-2-1(C).
 - ❑ “Attorney-client privileged information.” NMSA 1978, § 14-2-1(G).

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CONTENTS OF THE REPORT (FROM THE S.CT. DEC'N)

- ❑ “We have examined the contents of the Padilla Report to resolve the questions surrounding the applicability of the two IPRA exceptions at issue here. The report, formally titled ‘Preliminary Inquiry Superintendent Winston Brooks’ and bearing a ‘Confidential Attorney Client Privilege’ stamp, was directed to ‘Dr. Analee Maestas, Board President’ individually.”
- ❑ “The report is twelve pages long and contains seven distinct sections: (I) Description of Allegation, (II) Applicable Policies, (III) Witnesses, (IV) Inquiry Findings, (VI) [sic] Additional Information, (VI) Conclusion, and (VII) Exhibits and Evidence.”
- ❑ “Three of the identified sections are a single paragraph, while three others—including the Conclusion—do not exceed a half-page each. The remaining eight-and-a-half pages of the report are devoted to the factual findings of the investigation under the ‘Inquiry Findings’ heading.”
- ❑ “In the report Attorney Padilla notes that she personally interviewed Brooks, in addition to seven other persons—all present or former APS employees or Board members—to develop facts for this report.”

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MATTERS OF OPINION IN
PERSONNEL FILE

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NM S.Ct. RULING

- ❑ We granted certiorari and reverse the Court of Appeals as well as the decision of the district court.
- ❑ “In doing so, we hold that ... the matters-of-opinion exception does not preclude inspection of the purely factual, nonopinion portions of the Padilla Report. We also hold that the Padilla Report is not wholly exempt from public inspection if it contains both exempt and nonexempt information under the matters-of-opinion exception in Section 14-2-1(C). Instead, Section 14-2-9(A) requires exempt information to be separated and removed or redacted and ‘nonexempt information [to] be made available for inspection.’ We abrogate recent Court of Appeals opinions that have held otherwise.”

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WHAT KINDS OF RECORDS DOES THIS COVER?

- ❑ According to the Attorney General’s IPRA Compliance Guide (2024):
 - ❑ “This exception’s coverage includes documents concerning
 - ❑ infractions and disciplinary action,
 - ❑ personnel evaluations,
 - ❑ opinions as to whether a person would be rehired or as to why an applicant was not hired, and
 - ❑ other matters of opinion related to the working relationship between an employer and employee such as evaluations, promotion, demotion or termination information.”
 - ❑ “[W]hether or not a document is kept in a personnel file does not determine if it is covered by the exception but, instead, whether the document is a matter of opinion as described above.”

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WHAT OTHER EXCEPTIONS MIGHT APPLY TO PERSONNEL RECORDS?

- ☐ NMSA 1978, § 14-2-1, subsection (B), letters of reference concerning employment, licensing or permits.
- ☐ NMSA 1978, § 14-2-1.1, protected personal identifier information, as defined in NMSA 1978, § 14-2-6, subsection (F); specifically:
 - ☐ All but the last four digits of a:
 - ☐ taxpayer identification number;
 - ☐ financial account number;
 - ☐ credit or debit card number; or
 - ☐ driver's license number.
 - ☐ All but the year of a person's date of birth
 - ☐ A social security number
 - ☐ With regard to a nonelected employee of a public body in the context of the person's employment, the employee's nonbusiness home street address, but not the city, state or zip code.

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WHAT OTHER EXCEPTIONS MIGHT APPLY TO PERSONNEL RECORDS?

- ☐ NMSA 1978, § 14-2-1, subsection (N), as otherwise provided by law; specifically:
 - ☐ NMSA 1978, § 22-10A-5 Criminal history record check, subsection (F) records and related information.
 - ☐ NMSA 1978, § 14-6-1. Health information; confidentiality; immunity from liability for furnishing; and 42 USC § 12112 of the Americans with Disabilities Act, subsection (d)(3) medical exams and inquiries.
 - ☐ Title IX, 34 C.F.R. § 106. 71 (Retaliation)
 - ☐ Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and FERPA regulations found at 34 CFR Part 99.

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DOES IT MATTER IF:

- ☐ The record is marked, “Confidential”?
- ☐ The record is marked, “Confidential Attorney-Client Privilege”?
- ☐ The record is marked, “Confidential Attorney Work Product”?

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WHAT IS A FACT?

- ☐ Factors from the NM Supreme Court in a defamation case, *Marchiondo v. Brown*, 649 P.2d 462, 1982-NMSC-076:
 1. the entirety of the publication;
 2. the extent that the truth or falsity may be determined without resort to speculation; and
 3. whether reasonably prudent persons reading the publication would consider the statement as an expression of opinion or a statement of fact.
- ☐ Statements concerning objectively verifiable historical facts
- ☐ Statements that are provably true or provably false

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WHAT IS AN OPINION?

- ☐ Thoughts
- ☐ Beliefs
- ☐ Inferences
- ☐ Predictions
- ☐ Projections
- ☐ Estimates
- ☐ Motives
- ☐ Intentions
- ☐ Other subjective evaluation
- ☐ Information that is uncertain and not objectively verifiable

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LET'S PLAY THE FACT VS. OPINION GAME

- ☐ On July 15, 2026, Employee 1 filed a complaint alleging that Employee 2 bullied her by yelling at her for missing her recess duty.
- ☐ In my opinion, Employee 1 failed to show up to recess duty.
- ☐ In my opinion, Employee 2 yelled at Employee 1.

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ATTORNEY-CLIENT PRIVILEGE

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NM S.Ct. RULING

- ☐ “We ... reverse the Court of Appeals as well as the decision of the district court.”
- ☐ In doing so, we hold that ... because the purpose of the Padilla Report was not primarily to provide legal advice, the attorney-client privilege exception does not apply here....”

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IMPLICATIONS FOR ATTORNEY COMMUNICATIONS

- ☐ The IPRA's attorney-client exception protects communications in which the primary purpose is to render or solicit legal advice.
- ☐ The attorney-client exception does not protect communications between an attorney and client when the attorney is acting in some other capacity, including when the purpose is to perform a factual investigation.
- ☐ According to the Court, "because the purpose of the Padilla Report was not primarily to provide legal advice, the attorney-client privilege exception does not apply here."

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ELEMENTS OF ATTORNEY-CLIENT PRIVILEGE

- ☐ A communication
- ☐ Made in confidence
- ☐ Between privileged persons
- ☐ For the purpose of facilitating the attorney's rendition of professional legal services to the client

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WHAT IS NOT PRIVILEGED

- ☐ Communications derived from an attorney giving business advice or acting in some other capacity.
- ☐ EXAMPLES
 - ☐ negotiating contracts,
 - ☐ analyzing potential transactions
 - ☐ investigating potential claims
- ☐ “Communications regarding business matters, management decisions, and business advice, which neither solicit or predominantly deliver legal advice, are not privileged.”

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PRIMARY PURPOSE TEST

- ☐ According to the Supreme Court, a communication between an attorney and client is presumptively privileged if its primary purpose is to render or solicit legal advice.

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LET'S PLAY THE PRIMARY PURPOSE GAME

- ☐ Redact responsive records under IPRA.
- ☐ Review proposed redactions for compliance with IPRA, to advise Custodian of Records regarding same including interplay between IPRA and FERPA.
- ☐ Draft Media Statement.
- ☐ Review proposed media statement, draft recommendations in light of privacy issues.
- ☐ Conduct investigation.
- ☐ Review draft investigation report and advise Human Resources Director regarding same to ensure compliance with Collective Bargaining Agreement, School Personnel Act and non-discrimination laws.

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PRACTICAL IMPLICATIONS

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PRACTICAL IMPLICATIONS

- ☐ **Your Superintendent needs to:**
 - ☐ Reexamine the skill set to be a Custodian of Records. How well does your Custodian of Records know IPRA and the confidentiality provisions of other laws such as Title IX, FERPA, HIPAA, School Personnel Act related to Background Checks
 - ☐ Reexamine the level of confidentiality necessary to be a Custodian of Records.
 - ☐ Consider appointing more than one Custodian of Records to handle different types of requests.
 - ☐ Use legal counsel to make sure your Custodian of Records has a good handle on the exceptions including “as otherwise provided by law” and the limits of those exceptions. (Example: FERPA rights of deceased student)
 - ☐ Not use legal counsel in place of your Custodian of Records. The Custodian of Records is the final decisionmaker, responsible for any denials.

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PRACTICAL IMPLICATIONS

- ☐ Be careful regarding how the Superintendent and Board use legal counsel.
- ☐ Do not routinely copy legal counsel on emails and expect that the communication is privileged.
- ☐ Communications should be sent to legal counsel for the purpose of soliciting or facilitating the rendering of legal advice:
 - ☐ Your communications should ask a legal question.
 - ☐ When forwarding documents and other communications, it should be to further your legal counsel’s ability to give you legal advice.
- ☐ Do not assume that documents marked “confidential” are protected and can be withheld.
- ☐ Do not assume your legal counsel’s billing statements are entirely covered by the privilege; expect to have to redact.

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PRACTICAL IMPLICATIONS

- ☐ When you ask your school district legal counsel to conduct an investigation, or contract with an investigator on the District or Board's behalf, make sure your attorney advises you regarding the implications including:
 - ☐ Likelihood the investigation is privileged based on its primary purpose and intended use.
 - ☐ Possible waiver of all privilege tied to the subject matter if your attorney is functioning in a dual role.
- ☐ When engaging an investigator, ask to see a sample report, and examine their style through the lens of IPRA and the possible implications for the employer/employee relationship.

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PRACTICAL IMPLICATIONS

- ☐ **Board communications:**
 - ☐ Be clear who shares the attorney-client privilege.
 - ☐ Remember that any communication of yours regarding school business is subject to IPRA even when on a personal device (e.g., personal cell phone or computer).
 - ☐ If you possess responsive records to an IPRA request, expect to have to provide those to the Custodian of Records to determine whether they fall within an exception.
 - ☐ When they concern personnel matters, if responsive to an IPRA request, the Custodian of Records will be redacting opinion from fact in your text messages and emails and will be providing facts (unredacted) to the Requester.

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ANY QUESTIONS

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