

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

587W0070

## SENATE BILL NO. 117

Introduced by: Senators Jensen (Phil), Greenfield (Brock), Haggar (Jenna), Holien, Monroe, Olson, Omdahl, and Van Gerpen and Representatives Greenfield (Lana), Anderson, Bolin, Brunner, Campbell, Craig, DiSanto, Feickert, Haggar (Don), Heinemann (Leslie), Hickey, Kaiser, Klumb, May, Qualm, Rasmussen, Russell, Stalzer, Verchio, and Zikmund

1 FOR AN ACT ENTITLED, An Act to further protect the privacy of certain student information.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 13-3-51.2 be amended to read as follows:

4 13-3-51.2. No elementary school or secondary school student ~~shall~~ may be required to  
5 submit to a survey, analysis, or evaluation that reveals the following information ~~concerning~~:

6 (1) Political affiliations or beliefs of the student or the student's parent;

7 (2) Mental or psychological problems or aspects of the student or the student's family;

8 (3) Sex behavior or attitudes of the student or the student's family;

9 (4) Illegal, anti-social, self-incriminating, or demeaning behavior;

10 (5) Critical appraisals of other individuals with whom respondents have close family  
11 relationships;

12 (6) Legally recognized privileged or analogous relationships, such as those of lawyers,  
13 physicians, and ministers;



1 (7) Religious practices, affiliations, or beliefs of the student or student's parent;

2 (8) Personal or family gun ownership; ~~or~~

3 (9) Income (other than that required by law to determine eligibility for participation in  
4 a program or for receiving financial assistance under such program);

5 (10) Biometric information;

6 (11) Social security number;

7 (12) Home internet protocol address; or

8 (13) External digital identity;

9 without the prior consent of the student (if the student is an adult or emancipated minor), or in  
10 the case of an unemancipated minor, without the prior written consent of the parent. The list of  
11 information in subdivisions (1) to ~~(9)~~ (13), inclusive, is not an exclusive list. The secretary of  
12 the Department of Education may add to the list of information in subdivisions (1) to ~~(9)~~ (13),  
13 inclusive, other data, facts, or information that is of a similar nature that a student may not be  
14 required to disclose.

15 The term, parent, for purposes of this section, includes a legal guardian or other person  
16 standing in loco parentis.

17 Nothing in this section is intended to supersede or modify any other state law or any  
18 provision in 20 U.S.C. § 1232h or 34 C.F.R. Part 98, as amended to January 1, 2014.

19 Section 2. No school district employee may provide personally identifiable student  
20 information to any member of the school board of the school district, any other person, or to any  
21 other public or private entity unless:

22 (1) The personally identifiable student information is provided solely for the purpose of  
23 satisfying state or federal reporting requirements or in accordance with applicable  
24 state and federal laws or regulations;

- 1       (2)    The personally identifiable student information is provided to the Department of  
2            Education for the purpose of satisfying state and federal assessment, auditing,  
3            funding, monitoring, program administration, or state accountability requirements,  
4            and enough personally identifiable information has been removed that the remaining  
5            information does not identify a student, and there is no basis to believe that the  
6            information alone can be used to identify a student. No employee of the Department  
7            of Education may share this information with any person or public or private entity  
8            located outside of South Dakota, other than for purposes of academic analysis of  
9            assessments;
- 10       (3)    The personally identifiable student information is provided to a person authorized by  
11            the state, including the auditor-general of the state, to audit processes including  
12            student enrollment counts;
- 13       (4)    The personally identifiable student information regarding a particular student is  
14            provided to another school district due to the transfer of the student from one school  
15            district to another; or
- 16       (5)    The personally identifiable information regarding a particular student is provided to  
17            any person or public or private entity if the sharing of the particular information with  
18            the particular recipient of the information has been authorized in writing by the  
19            parent or legal guardian of the student, or by a student who has reached the age of  
20            majority or is an emancipated minor.

21        Any person to whom personally identifiable student information is provided pursuant to this  
22        section shall maintain the confidentiality of this information. Any person who knowingly and  
23        willingly fails to maintain the confidentiality of this information is guilty of a Class 1  
24        misdemeanor.

1 Section 3. Except as provided in this section and in section 4 of this Act, no person or public  
2 or private entity may access a school district computer system on which student information is  
3 stored.

4 The following persons may access a school district computer system on which student  
5 information for students at a particular school is stored:

6 (1) A student who has reached the age of majority or is an emancipated minor and the  
7 parent or legal guardian of a student who has not reached the age of majority and is  
8 not an emancipated minor may only access information about that particular student  
9 and they may also authorize, in writing, another person to access the information  
10 about that particular student;

11 (2) A teacher of record may access information about the teacher's current students;

12 (3) The school principal;

13 (4) A school district employee employed at that school and designated by the principal  
14 to access only that information necessary for the employee to perform the employee's  
15 assigned duties;

16 (5) A person authorized by the superintendent of the school district to maintain or repair  
17 the computer system or to provide services that the school district would otherwise  
18 provide; and

19 (6) A person authorized by the state to audit student records.

20 Section 4. The following persons may access a school district computer system on which  
21 student information for students from throughout the school district is stored:

22 (1) The school district superintendent;

23 (2) A school district employee designated by the superintendent to access only that  
24 information necessary for the employee to perform the employee's assigned duties;

1       (3)    A person authorized by the superintendent to maintain or repair the computer system  
2            or to provide services that the school district would otherwise provide; and

3       (4)    A person authorized by the state to audit student records.

4       Section 5. Any person who is authorized in sections 3 or 4 of this Act to access a school  
5       district computer system, except a parent or guardian, shall maintain the confidentiality of any  
6       student information to which the person has access. Any person who knowingly and willingly  
7       fails to maintain the confidentiality of such information is guilty of a Class 1 misdemeanor.

8       Section 6. The school board of a school district may contract with a private entity for student  
9       and other education services, and pursuant to this contract, may provide for the transfer of  
10       student information, including personally identifiable information and cumulative records, to  
11       computers operated and maintained by the private entity if the transfer of student information  
12       is necessary to fulfill the terms of the contract. No contractor pursuant to this section may allow  
13       access to, release, or allow the release of student information to any person or entity except as  
14       specified in the contract. Any contractor who knowingly and willingly violates the provisions  
15       of this section is guilty of a Class 1 misdemeanor.

16       Section 7. Any contract established pursuant to section 6 of this Act shall include  
17       requirements regarding the protection of student information including the following:

18       (1)    Guidelines for authorizing access to computer systems on which student information  
19            is stored including guidelines for authentication of authorized access;

20       (2)    Privacy compliance standards;

21       (3)    Privacy and security audits performed under the direction of the school district  
22            superintendent;

23       (4)    Breach planning, notification, and remediation procedures;

24       (5)    Information storage, retention, and disposition policies; and

1       (6)    Disposal of all information from the servers of the contractor upon termination of the  
2                   contract, unless otherwise directed by an applicable legal requirement or otherwise  
3                   specified in the contract and subject to the privacy protection provisions established  
4                   in the contract pursuant to this section. Upon termination of the contract, all  
5                   information removed from the contractor's servers shall be returned to the school  
6                   district.

7       Section 8. No school district, local or state governmental agency, public or private entity,  
8   or any person with access to personally identifiable student information may sell, transfer, share,  
9   or process any student data for use in commercial advertising or marketing, or any other  
10   commercial purpose, unless otherwise stipulated in a contract for services as provided in section  
11   6 of this Act. However, the provisions of this section do not apply to a student's parent or legal  
12   guardian, or to a student who has reached the age of majority or is an emancipated minor.