

State of South Dakota

EIGHTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2014

952V0192

HOUSE ENGROSSED NO. **SB 63** - 03/03/2014

Introduced by: Senators Otten (Ernie), Begalka, Brown, Jensen, Krebs, Novstrup (Al), Rampelberg, Rave, Rhoden, Tieszen, and Van Gerpen and Representatives Stalzer, Bolin, Cronin, Kaiser, Lust, Nelson, Sly, and Westra

1 FOR AN ACT ENTITLED, An Act to protect the privacy of the records of individual students.

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

3 Section 1. That chapter 13-3 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Terms used in this Act mean:

6 (1) "Aggregate data," information from education records in which all personally
7 identifiable information has been removed;

8 (2) "Department," the South Dakota Department of Education;

9 (3) "Disclosure," "education records," and "personally identifiable information," as
10 defined in 34 C.F.R. § 99.3, as amended to January 1, 2014;

11 (4) "Privacy protection laws," the federal Family Educational Rights and Privacy Act (20
12 U.S.C. 1232g), the Protection of Pupil Rights Amendment (20 U.S.C. 1232h), the
13 Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.), and any other
14 state or federal law relating to the confidentiality and protection of personally



1 identifiable information, as amended to January 1, 2014.

2 Section 2. That § 13-3-51 be amended to read as follows:

3 13-3-51. The secretary of the Department of Education shall establish a uniform system for
4 the gathering and reporting of educational data for the keeping of adequate educational and
5 financial records and for the evaluation of educational progress. Any school district or school
6 seeking state accreditation shall submit enrollment data, personnel data, and shall verify all state
7 and federal standards for accreditation and approval of schools, including those related to safety
8 and educational equity of the school district or school by October fifteenth of each year. If the
9 due date falls on a weekend or state holiday, the due date is the next business day following the
10 scheduled due date. An annual written evaluation of the educational progress in the state and
11 in each school district shall be submitted to the Legislature and shall be made available in each
12 school district to the general public. The South Dakota Board of Education may promulgate
13 rules pursuant to chapter 1-26 to further define the data required pursuant to this section.
14 However, nothing in this section authorizes the collection of information not necessary for the
15 calculation of funding for public education, the determination of student academic progress,
16 state and federal reporting requirements, or other duties prescribed to a school district, the
17 department, or the state board of education by law.

18 Section 3. That chapter 13-3 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 No elementary school or secondary school student shall be required to submit to a survey,
21 analysis, or evaluation that reveals information concerning:

- 22 (1) Political affiliations or beliefs of the student or the student's parent;
23 (2) Mental or psychological problems or aspects of the student or the student's family;
24 (3) Sex behavior or attitudes of the student or the student's family;

- 1 (4) Illegal, anti-social, self-incriminating, or demeaning behavior;
- 2 (5) Critical appraisals of other individuals with whom respondents have close family
- 3 relationships;
- 4 (6) Legally recognized privileged or analogous relationships, such as those of lawyers,
- 5 physicians, and ministers;
- 6 (7) Religious practices, affiliations, or beliefs of the student or student's parent;
- 7 (8) Personal or family gun ownership; or
- 8 (9) Income (other than that required by law to determine eligibility for participation in
- 9 a program or for receiving financial assistance under such program);

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

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

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

20 Section 4. That chapter 13-3 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The department may not, as part of any reporting requirement tied to federal funds, report
23 personally identifiable information from education records to the United States Department of
24 Education. However, this section does not apply to information required to be reported pursuant

1 to 20 U.S.C. § 6398 to improve programs for migrant students.

2 Section 5. That chapter 13-3 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Personally identifiable information is confidential and is not a public record, and the
5 department shall develop security measures and procedures intended to protect personally
6 identifiable information from release to unauthorized persons or for unauthorized purposes. Any
7 collection, maintenance, or disclosure of education records by the department shall comply with
8 privacy protection laws in all respects.

9 Section 6. That chapter 13-3 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Nothing in this Act prohibits the disclosure of aggregate data if otherwise allowed by
12 privacy protection laws.

13 Section 7. Nothing in this Act prohibits the disclosure of aggregate data necessary to make
14 an application for impact aid pursuant to Title VIII of the Elementary and Secondary Education
15 Act.