

AN ACT

ENTITLED, An Act to protect the privacy of the records of individual students.

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

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

Terms used in this Act mean:

- (1) "Aggregate data," information from education records in which all personally identifiable information has been removed;
- (2) "Department," the South Dakota Department of Education;
- (3) "Disclosure," "education records," and "personally identifiable information," as defined in 34 C.F.R. § 99.3, as amended to January 1, 2014;
- (4) "Privacy protection laws," the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g), the Protection of Pupil Rights Amendment (20 U.S.C. 1232h), the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.), and any other state or federal law relating to the confidentiality and protection of personally identifiable information, as amended to January 1, 2014.

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

13-3-51. The secretary of the Department of Education shall establish a uniform system for the gathering and reporting of educational data for the keeping of adequate educational and financial records and for the evaluation of educational progress. Any school district or school seeking state accreditation shall submit enrollment data, personnel data, and shall verify all state and federal standards for accreditation and approval of schools, including those related to safety and educational equity of the school district or school by October fifteenth of each year. If the due date falls on a weekend or state holiday, the due date is the next business day following the scheduled due date. An annual written evaluation of the educational progress in the state and in each school district shall be

submitted to the Legislature and shall be made available in each school district to the general public. The South Dakota Board of Education may promulgate rules pursuant to chapter 1-26 to further define the data required pursuant to this section. However, nothing in this section authorizes the collection of information not necessary for the calculation of funding for public education, the determination of student academic progress, state and federal reporting requirements, or other duties prescribed to a school district, the department, or the state board of education by law.

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

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

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

without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent. The list of information in subdivisions (1) to (9), inclusive, is not an exclusive list. The secretary of the

Department of Education may add to the list of information in subdivisions (1) to (9), inclusive, other data, facts, or information that is of a similar nature that a student may not be required to disclose.

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

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

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

The department may not, as part of any reporting requirement tied to federal funds, report personally identifiable information from education records to the United States Department of Education. However, this section does not apply to information required to be reported pursuant to 20 U.S.C. § 6398 to improve programs for migrant students.

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

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

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

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

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

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I certify that the attached Act
originated in the

SENATE as Bill No. 63

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 63

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State