

2015 HOUSE EDUCATION

HB 1453

2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

HB 1453
2/9/2015
23464

- Subcommittee
 Conference Committee

Committee Clerk Signature

Donna W. Hetham

Explanation or reason for introduction of bill/resolution:

Relating to restrictions on the collection and dissemination of student information; and to provide a penalty.

Attachment # 1-13.

Minutes:

Chairman Nathe: opened the hearing on HB 1453.

Rep. Ben Koppleman: District 16, introduced HB 1453. (1:00-6:09) (See Attachment #1). I will be presenting amendments later.

Rep. Olson: You state that recent redefining of terms for sharing permitted uses of this data by the US Department of Education, could you explain what that means?

Rep. Koppleman: I could provide the particular decision that I am referencing, what they have done is redefined what for educational purposes would be and then are using that in a way to allow for data to be shared more easily. If a school district would like to contract through a third party to do certain comparisons they are basically opening the door by saying it is for educational purpose so they don't limit that, Family Educational Rights and Privacy Act (FERPA) doesn't limit it specifically. It has created a conflict between the original intent and application of FERPA. If school districts followed that interpretation it would change the way data is handled.

Rep. Mock: When you define state agencies what are you pertaining to?

Rep. Koppleman: I was going to put a definition in there but was told that State agency is clearly defined as a political subdivision, so school districts are not considered a state agency. There instances like the School for the Blind or the School for the Deaf, that has

oversight by a state agency, so this would be a blurred line and they will be dealt with in the amendment.

Rep. Mock: Some agencies will express concern that your allowable data, lines 10 through 20 in the bill, I think will conflict from us and federal requirements. Do you know where we require information that is different than what is allowed in this bill?

Rep. Koppelman: I talk about the immunizations records, they are not in my list that would need to and I have researched from various stakeholders that could identify areas that might have conflict. The list on page 1 was the list I received from the Superintendent of Public instruction. That is basically what is in this bill, but not allowing the list to be expanded without coming back to legislature for consent. I believe when the amendment is there it will take care of all the scenarios I have been made aware of. What you might hear in testimony is they don't like Line 21, because it says you can't expand this list at the whim of one agency, and that is on purpose.

Chairman Nathe: You talk about Line 21 and 22. Right now SLEDS provides information to K-12 and Higher Ed and policy makers. If this bill passes there would be no reports on remediation, dual credit, graduation etc., so how do we get our information?

Rep. Koppelman: I don't know that it would limit that. I did reach out to Lisa Feldner, who works on SLEDS. Take remediation for example, under this you would know in K-12 what a student had completed then you could pick up with Higher Education to see what remediation they had to take. So if you wanted to draw a parallel to this you would be able to. Same thing is true with Job Service, if you are drawing a parallel with the student information. They could use the data sharing agreement to do that. I would be happy to consider if there is one or two things missing in amendments.

Chairman Nathe: So us as policy makers and we tell SLEDS we want information for A, B, C that is outside of this list, we need that information to make decisions on \$100 million dollar issues yet according to line 21 and 22, they would not be able to give us any information outside of this list, is that correct?

Rep. Koppelman: Quite honestly state agencies as far as student data wouldn't have any information out of this list period. The only agency that would have information from this list would be a local school district.

Chairman Nathe: But if the legislature said we wanted information on this and this and it is not on the list we could not get that information according to the bill. Wouldn't that limit the ability for the legislature to make a policy decision?

Rep. Koppelman: That could be a possibility, if it is done through legislation. I believe the prudence data points are there that I gleaned from the agencies I have talked with. If you wanted to compare how many kids wanted to be firemen, you couldn't do that with this list, but I would argue, what reason would want to know that information.

Chairman Nathe: So we could make more informed decisions, especially since sometimes millions of dollars is attached.

Representative Nathan Toman: District 34. In support of HB 1453. This is a collaboration of parents to protect the data. We don't want the data breached for our children. (17:42)

Rep. D. Johnson: Is there any indication of breaches in North Dakota?

Representative Toman: It didn't specifically mention that. We have had the Blue Cross Blue Shield and University System data breach.

Rep. Kelsh: Is there an indication of who is doing the breaching?

Representative Toman: Data on the move has dropped since 2007, which is a category they have in the example, which is data sharing agreements. It was 25% and dropped to 10%. It is the percent of the out of the 675 million records that have been breached is the percentage of the data that was breached. Data on the move if I e-mail you something and put it in the cloud or inside the power schools and moving back and forth, where you are sharing information across the wire.

Chairman Nathe: Is that a North Dakota number or a National number?

Representative Toman: It is the national number, I don't have the North Dakota number but I can send it with the e-mail.

Jerry Ketterling: Information Security specialist. In support of HB 1453. (20:55-24:26) 80 million records have been breached lately. If you have ever had to replace your credit card you know what I am talking about. There has been 30 states introducing legislation to address this problem and 24 states have passed laws. This is an issue that transcends state boundaries. HB 1453 does not limit class room instruction. It does put in place a framework of what data can be shared and provides the circumstances under which data can be shared. I urge a do pass on HB 1453.

Chairman Nathe: Are the private schools subject to data breaching?

Jerry Ketterling: It doesn't seem to be a problem there.

Amy Jirsa-Smith: Parent. (25:19- 26:10) I support HB 1453. I had my credit card breached here also. I would like to see this bill pass also.

Rep. Mock: You are the second person to testify about credit card security breaches as why this bill should be passed, does this bill address that issue?

Amy Jirsa-Smith: It is an example of how data can be breached.

Tom Freier: Executive Director of ND Family Alliance.(27:26-27:49) (See Attachment #2) in support of HB 1453.

Loyal Karges: Parent. In support of HB 1453. It could be a fifth amendment issue. I have heard stories of people being coerced in to giving information that isn't relevant to a student situation or a student - teacher situation. It isn't clear on what information is deemed necessary.

Chairman Nathe: Any other support for HB 1453? None. Any opposition for HB 1453?

Jeff Fastnacht : Superintendent of Ellendale School (28:00-37:55) in opposition to HB 1453. (See Attachment # 3,4,5).

Rep. Koppleman: Once the amendments are done you will see some of your ideas are integrated into them. Looking at the list on top of page two about data collection by the state assessment, that data is right of the DPI sheet of what they collect. How can it be too restrictive if they are already doing it and in my conversations with the Superintendent it seems to be adequate data. How do you think it is too slim a list?

Jeff Fastnacht: I took that idea directly from my guidance counselor, who receives the boxes of ND State Assessment , maybe it will be different with Smarter Balance, or ACT from the state, on their boxes comes preprinted labels. On the preprinted label is Jeff, my name, that is not on the list.

Rep. Kelsh: Is the student data the problem or is the mining of the data the problem? What data doesn't people like to be accessible and what are you doing to make this more secure?

Jeff Fastnacht: I haven't had a person come to me specifically noting any data we keep. We believe we need to do due diligence when keeping all your data. Some people need the data and use it for the child's education. When we tell them we are using the data inside the school the people are saying ok, we are good.

Chairman Nathe: We have 50,000 parents who have children in the K-12 system , how much do you hear complaints on this issue?

Jeff Fastnacht: Little to none. We do a good job of informing parents. Maybe that dispels it.

Chairman Nathe: Has there been a breach or close calls or anything like that?

Jeff Fastnacht: None that I know of, the greater concern is the person going outside the walls of their classroom and talking about a child in the public ear.

Dr. Nick Klemisch: Director of Special Education for the Sheyenne Valley Special Education Unit: (43:00- 47:05) in opposition to HB 1453. (See Attachment #6).

Rep. Meier: Could you provide the committee a list of all the requirements you have to put in to your data collection.

Dr. Nick Klemisch: Yes.

Rep. Olson: Are you aware of the changes that Representative Koppelman referred to in his testimony?

Dr. Nick Klemish: I would defer to Department of Public Instruction.

Lisa Feldner: Vice Chancellor of North Dakota University System, (48:00-53:18) in opposition to HB 1453. (See Attachment # 7).

Rep. Olson: Are you aware of the changes that occurred in FERPA that Rep. Koppelman was referring to?

Lisa Feldner: FERPA has ongoing changes, I am not sure which ones he was referring to but they will be tightening up security regarding to third party vendors and they will be tightening that at the federal level as well.

Rep. Koppelman: As I read line 21 it says a state agency by means of a data sharing agreement may not expand the list. It doesn't say they can't use data sharing agreements. So if you wanted to know if children graduated early or not, line 17 says courses or units the student has completed together with the grades obtained and line 18 says the dates of student enrollment which would suggest they graduated early. How could you not have compiled this data without expanding this list through a data sharing agreement like you suggested?

Lisa Feldner: That is why I am concerned about the way the language is written? I don't know. I'm not sure that we could have. That would have required a new sharing agreement. Do you want to be in the position of not knowing if we can?

Rep. Meier: Can we receive a list of what North Dakota requires for current data collecting to go along side with what is collected with FERPA?

Lisa Feldner: Directory information is defined broadly in FERPA and then you can report less, it is a broad category.

Rep. Meier: We have requirements under FERPA in North Dakota correct?

Lisa Feldner: No, we don't report anything to FERPA. It is just a guideline to say what can't be reported as personal.

Lisa Feldner: I will go over the written testimony from Craig Nansen Director of Technology for Minot Public Schools (57:00- 59:45) In opposition to HB 1453. (See Attachment # 8).

Jody French: Director of the ND Educational Technology Council, in opposition to HB 1453. (1:00:00- 1:02:55). (See Attachment # 9).

Aimme Copas: Executive Director of North DCEL, in opposition of HB 1453. (See Attachment #10) .(1:03:08-1:04: 47)

Rep. Koppleman: You said you have a data bill for student privacy and there is one to tighten it up or is that the same bill?

Aimme Copas: That is the same bill, Senator Poolmans bill, it talks about how the SLEDS committees are formed and it tightens up some of the data and privacy issues within that.

Andy Peterson: President of Greater North Dakota Chamber(1:05:00 - 1:06:39) in opposition of HB 1453. (See Attachment # 11).

Steve Snow: Director of Management Information System. In opposition to HB 1453. (1:06:00- 1: 09:35). (See Attachment # 12).

Rep. Kelsh: How specific is the information is on family income or does it say it is below the threshold to get free and reduced meals?

Steve Snow: All we collect the indicator, the family income, so they qualify for the program.

Rep. Koppleman: The new language added in Section 2 prevents the youth risk behavior survey, in Section 2 where you are referencing without the prior written consent of a student age 18 or older or if the parent doesn't consent. So it is only prohibited if the student is over 18 don't consent. When researching this I was told they make it optional for a student. This would simply make the consent go back to the parent. That pertains to the non- curricular portion or non- standards based portion of the ACT where they ask what would you like to be or what profession would you like to go into and they use that data to make reports. Both would be allowable with parental consent would they not?

Steve Snow: I am not sure if the language would prevent that completely . The way I read it if the test requires either optional or mandatory a series of questions, religious behavior or preference being one of those, we cannot require the test if the bill is passed as written.

Rep. Koppleman: I would like to clarify that with you and get an opinion from counsel if that helps.

Jonathan Byers: Criminal and Regulatory Division Director for the Attorney General: (1:13:07- 1:14:37) The Attorney General is the agency that is tasked with administering ND offender registration program. For adults and students we gather a lot of data. We gather data on students such as cell phone numbers, age, birth date, etc. The plain language on page one prevents us from doing that. We gather treatment information, discipline records, police reports, and pre-sentence reports. We try to get the best picture out about

the offenders risk factor. We are in opposition because it limits a lot of what we do with registered offenders.

Kirby Kruger: Director of the Division of Disease Control for the North Dakota Department of Health. (1:15:00- 1: 17:49). In opposition to HB 1453. (See Attachment #13).

Chairman Nathe: Any more opposition of HB 1453? Seeing none? Closed the hearing on HB 1453.

2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

HB 1453
2/16/2015
23909

- Subcommittee
 Conference Committee

Committee Clerk Signature

Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to restrictions on the collection and dissemination of student information; and to provide a penalty.

Attachment # 1-3.

Minutes:

Chairman Nathe: reopened opened the hearing on HB 1453. This bill has to do with collection and dissemination of student information.

Rep. B. Koppelman: (2:00- 29:33). Explained proposed amendments 15.0452.03003. (See Attachment #1 &2).

Rep. Hunskor: When the bill was heard from we heard from the Attorney General, the Health Department and different entities did you talk with different people, are they satisfied with this?

Rep. B. Koppelman: The Health Department did make one final change in here and they are good. The Attorney General's office was going to let me know if there was any concern but they did not contact me. I tried to go through all the testimony and identify the concerns. The two things I could not fix was, some did not want a penalty and the second was don't put any restrictions on state agencies. I didn't allow it to be opened ended but I was sensitive to not take away their ability to collect the data they collect now.

Rep. Schreiber Beck: Your last statement " I believe" we have addressed this. I am really concerned. Who will benefit from this bill? I think it will be attorneys. I realize we are trying to limit the data collection.

Rep. B. Koppelman: When I say I believe it is because this is the third amendment. The first two amendments were available for all the parties to read that were involved and I have reached out to all the interested parties that I know of. That testified. If the chair wants us to take more time, we would be open to that. We wanted to be open ended.

I am not saying all the agencies will like this bill, because any bill that limits their authority they will not like. But it took care of the detailed concerns from the testimonies. I did speak to all the primary testifiers.

Chairman Nathe: I am concerned of unintended consequences. I know you have exemptions,. I wonder if it would allow tracking of adult and juvenile registered sex offenders and the levels that they are at. I know you have in here exemptions for the Department of Corrections and Rehabilitation, but are we restricting the Attorney General's office?

Rep. B. Koppelman: The Bureau of Criminal Investigation is part of the Attorney General's office. I did reach out to Liz at the Attorney General's office and she was going to let me know if they had concerns. If you want to allow some more time, I will talk with them.

Rep. Rohr: On page 2 line 13 it indicated "or from hosting student information system" can you give me some examples of that?

Rep. B. Koppelman: That would be power school or Ty-net which is the system that houses Special Education and individualized education plans and different details. It is important for the portability from school to school so if the Special Education student moves all their records go with them. They are not directly accessible to a state agency to just peruse for their data.

Rep. Rohr: On Page 7 a lot of parents have concerns about the biometric information issued on line 10 other than gym class what other curriculum would require biometric evaluation and information?

Rep. B. Koppelman: If you use biometric in a broad sense such as a heartbeat monitor or blood pressure cuff, a health class or some of the dual credit like pre-nursing programs.

Chairman Nathe: On Page 5 line 4 "a person willfully" how do we prove this is "willfully"? You say if it happens over and over, but how do we decide it is "willfully"?

Rep. B. Koppelman: According to Anita Thomas, she did not see the need to put that in there. There is definitions of "willfully" and it would be like anything else. They have to interview other people, find witnesses or find records that suggest that. There is times where a person could lie and say they didn't do it "willfully".

Rep. Mock: On Page 5 line 5. Why did you reduce the penalty to "up to ten thousand dollars" instead of "ten thousand dollars"?

Rep. B. Koppelman: Because it is a civil penalty. It was designed to give the judge latitude in those situations to decide the level of the violation.

Rep. Mock: The way you just described it though if it is a civil penalty the judge already has that discretion that he might not collect on a full penalty why would you further reduce it?

Rep. B. Koppelman: It was viewed that it was a ten thousand dollar penalty no matter what and that is not consistent with how civil circumstances normally play out. We wanted it to have some level of reasonable relationship.

Chairman Nathe: Committee please note the written testimony from : **Laurie Dechery** : Associate General Counsel for Lifetouch National School gave written testimony in opposition to HB 1453. (See Attachment # 3).

Rep. B. Koppelman: Moved to adopt amendment 15.0452.03003 to HB 1453.

Rep. Rohr: seconded.

A Roll Call Vote was taken. Yes: 12 No: 0 Absent: 1. Motion Carried

Rep. Rohr: Moved a Do Pass as Amended on HB 1453.

Vice Chairman Schatz: seconded.

Rep. Kelsh: On the survey part of it a parent cannot allow anyone under 18 to participate in any survey that is not related to school district contract standards and in the assessment section there it doesn't allow them to identify with a mental or psychological condition, does this limit the school district in knowing what the problems are?

Rep. Koppelman: I believe the answer is no. The survey portion is written different on purpose is getting parental consent on any of those details. If the district wanted to know like about learning disabilities they would have a parent sign a release for this. For the school district to pull and find all these things and do that in absence of parental knowledge and consent I think is troubling. They would need the parental consent.

A Roll Call Vote was taken. Yes: 4 No: 8 Absent: 1. Motion failed.

Chairman Nathe: Any other discussion?

Rep. Zubke: Moved Do Not Pass as amended on HB 1453.

Rep. D. Johnson: seconded.

A Roll Call Vote was taken. Yes: 8 No: 4 Absent: 1. Motion Carried

Rep. Schreiber Beck: will carry the bill.

SK
2/16/15
1/4

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1453

Page 1, line 11, replace "age" with "date of birth"

Page 1, line 13, after "race" insert "and ethnicity"

Page 1, line 15, after "student's" insert "teacher of record,"

Page 1, line 15, after the first "school" insert an underscored comma

Page 1, line 18, after "enrollment" insert "and attendance information"

Page 1, line 19, after the "j." insert: "The student's disciplinary record;

k."

Page 1, line 19, after "unique" insert "state"

Page 1, line 19, remove ", as used in PowerSchool"

Page 1, replace line 20 with:

"l. The student's participation in state and federal education programs."

Page 1, line 21, replace "A" with "Subsection 1 does not apply to:

a. The bureau of criminal investigation;

b. The center for distance education;

c. The department of corrections and rehabilitation;

d. The state department of health with respect to the collection and retention of student immunization records and the investigation and reportability of infectious diseases;

e. North Dakota vision services - school for the blind;

f. The school for the deaf;

g. The state board of higher education;

h. Workforce safety and insurance; or

i. The youth correctional center.

3. Nothing in this section precludes a state agency from entering a data sharing agreement or from hosting a student information system. However,
a"

Page 1, line 21, replace "a data sharing contract" with "such activity"

Page 2, line 1, replace "state assessment administrator" with "entity other than school district"

Page 2, line 3, replace "An entity administering" with:

"1. If an entity other than a school district administers"

Page 2, line 3, after "students" insert ", that entity"

Page 2, line 5, replace "1." with "a."

Page 2, line 7, replace "2." with "b."

Page 2, line 8, replace "3." with "c."

Page 2, line 8, after "race" insert "and ethnicity"

Page 2, line 9, replace "4." with "d."

Page 2, line 10, replace "5." with "e."

Page 2, replace line 11 with:

"f. The student's participation in state and federal education programs.

2. This section does not apply to the administration of the ACT or the national assessment of educational progress."

Page 2, line 12, replace "**Disclosable**" with "**School district responsibility**"

Page 2, remove lines 13 through 31

Page 3, replace lines 1 through 29 with:

"1. The board of each school district shall determine what constitutes directory information within the district.

2. The board of each school district shall develop a policy to address the use and disclosure of directory information and shall identify, by name or title, those individuals who have access to directory information. The board shall review the policy annually.

3. Directory information about a student may be disclosed only if:

a. The student or the student's parent in the case of a student who is younger than eighteen has been notified of:

(1) The intent to disclose the directory information;

(2) The proposed recipient of the directory information; and

(3) The purpose of the proposed disclosure; and

b. The student or the student's parent in the case of a student who is younger than eighteen has been given an opportunity to opt out of the disclosure.

c. For purposes of this subsection, notification means a posting on the school district's website."

Page 4, line 2, after "person" insert "willfully"

Page 4, line 3, replace "the" with "an"

Page 4, line 3, replace the first "of" with "up to"

Page 4, line 22, remove the underscored colon

Page 4, remove lines 23 through 31

Page 5, replace lines 1 through 5 with "any matter not directly related to the state or school district content standards or the student's grade level curriculum."

Page 5, line 20, replace "implement a program under which" with "issue to"

Page 5, line 20, remove "is provided with"

Page 5, line 21, replace "his or her" with "the student's"

Page 5, line 23, remove "prohibit their child's participation in the program. A student age"

Page 5, line 24, replace "eighteen or older may refuse to accept such a device" with "decline permission for the student to bring the device home or to remove the device from the school"

Page 5, line 30, after "any" insert "individualized"

Page 6, line 2, after "expressions" insert: ", provided that the prohibition of this section does not extend to:

- a. School nurses or other health care professionals delivering health care services to students; or
- b. Classes or related activities in which the scanning, monitoring, or recording of such information is a required curricular element"

Page 6, line 3, replace "Scans, monitors, or records the" with "Reviews a"

Page 6, line 3, replace the underscored semicolon with an underscored comma

Page 6, line 4, remove "3. Monitors or tracks the student's"

Page 6, line 4, after "communications" insert an underscored comma

Page 6, line 4, after "storage" insert ", except if there is a reasonable suspicion that a law is being broken, that a policy is being violated, or that an individual is in imminent danger"

Page 6, line 5, replace "4." with "3."

Page 6, line 5, after "location" insert ", except as necessary for the provision of transportation services"

Page 6, line 8, remove "Survey items -"

Page 6, after line 8 insert "1."

Page 6, line 11, replace "1." with "a."

Page 6, line 12, replace "2." with "b."

Page 6, line 14, replace "3." with "c."

Page 6, line 16, replace "4." with "d."

Page 6, line 18, replace "5." with "e."

Page 6, line 20, replace "6." with "f."

Page 6, line 21, replace "7." with "g."

Page 6, line 23, replace "8." with "h."

Page 6, line 24, replace "9." with "i."

Page 6, line 25, replace "10." with "j."

Page 6, after line 26, insert:

"2. Nothing in this section precludes a student from taking a survey in accordance with the requirements of section 2 of this Act.

SECTION 6. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Additional requirements - Penalty.

1. In order to validate that student data is protected, as required by law, a school district may consult with the information technology department, or a designee of the department, before the district acquires or initiates the utilization of any technology options.
2.
 - a. A school district may not enter an agreement with a vendor of technology, including software, if the agreement permits the vendor to collect and retain student data for any purpose, unless the district contractually and specifically requests or requires that the data be collected and retained by the vendor. Such a requirement by the district is limited to school district or educational purposes.
 - b. Any vendor that willfully violates an agreement under this section is subject to a class A misdemeanor and to a civil penalty in an amount up to ten thousand dollars per violation.
3. Each school district shall develop and implement a policy that clearly sets forth which individuals, by name or title, are authorized to access specified student data. The board shall review the policy annually."

Renumber accordingly

Date: 2/16/15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1453

House Education Committee

Subcommittee

Amendment LC# or Description: 15.0452.03003

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider

Motion Made By Rep. Koppelman Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe	✓		Rep. Hunskor	✓	
Vice Chairman Schatz	✓		Rep. Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Mock	✓	
Rep. B. Koppelman	✓				
Rep. Looyen	✓				
Rep. Meier	A				
Rep. Olson	✓				
Rep. Rohr	✓				
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

amendment passed.

Date: 2/16/15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1453

House Education Committee

Subcommittee

Amendment LC# or Description: 15.0452.03003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Rohr Seconded By Rep. Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe		✓	Rep. Hunskor		✓
Vice Chairman Schatz	✓		Rep. Kelsh		✓
Rep. Dennis Johnson		✓	Rep. Mock		✓
Rep. B. Koppelman	✓				
Rep. Looyen		✓			
Rep. Meier	A				
Rep. Olson	✓				
Rep. Rohr	✓				
Rep. Schreiber Beck		✓			
Rep. Zubke		✓			

Total (Yes) 4 No 8

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion failed

Date: 2/16/15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1453

House Education Committee

Subcommittee

Amendment LC# or Description: 15.0452.03003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Zubke Seconded By Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe	✓		Rep. Hunskor	✓	
Vice Chairman Schatz		✓	Rep. Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Mock	✓	
Rep. B. Koppelman		✓			
Rep. Looyen	✓				
Rep. Meier	A				
Rep. Olson		✓			
Rep. Rohr		✓			
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 8 No 4

Absent 1

Floor Assignment Rep. Schreiber Beck

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1453: Education Committee (Rep. Nathe, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1453 was placed on the Sixth order on the calendar.

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- a. The bureau of criminal investigation;
 - b. The center for distance education;
 - c. The department of corrections and rehabilitation;
 - d. The state department of health with respect to the collection and retention of student immunization records and the investigation and reportability of infectious diseases;
 - e. North Dakota vision services - school for the blind;
 - f. The school for the deaf;
 - g. The state board of higher education;
 - h. Workforce safety and insurance; or
 - i. The youth correctional center.
3. Nothing in this section precludes a state agency from entering a data sharing agreement or from hosting a student information system. However, a"

Page 1, line 21, replace "a data sharing contract" with "such activity"

Page 2, line 1, replace "state assessment administrator" with "entity other than school district"

Page 2, line 3, replace "An entity administering" with:

"1. If an entity other than a school district administers"

Page 2, line 3, after "students" insert ", that entity"

Page 2, line 5, replace "1." with "a."

Page 2, line 7, replace "2." with "b."

Page 2, line 8, replace "3." with "c."

Page 2, line 8, after "race" insert "and ethnicity"

Page 2, line 9, replace "4." with "d."

Page 2, line 10, replace "5." with "e."

Page 2, replace line 11 with:

"f. The student's participation in state and federal education programs.

2. This section does not apply to the administration of the ACT or the national assessment of educational progress."

Page 2, line 12, replace "**Disclosable**" with "**School district responsibility**"

Page 2, remove lines 13 through 31

Page 3, replace lines 1 through 29 with:

1. The board of each school district shall determine what constitutes directory information within the district.
2. The board of each school district shall develop a policy to address the use and disclosure of directory information and shall identify, by name or title, those individuals who have access to directory information. The board shall review the policy annually.
3. Directory information about a student may be disclosed only if:
 - a. The student or the student's parent in the case of a student who is younger than eighteen has been notified of:
 - (1) The intent to disclose the directory information;
 - (2) The proposed recipient of the directory information; and
 - (3) The purpose of the proposed disclosure; and
 - b. The student or the student's parent in the case of a student who is younger than eighteen has been given an opportunity to opt out of the disclosure.
 - c. For purposes of this subsection, notification means a posting on the school district's website.

Page 4, line 2, after "person" insert "willfully"

Page 4, line 3, replace "the" with "an"

Page 4, line 3, replace the first "of" with "up to"

Page 4, line 22, remove the underscored colon

Page 4, remove lines 23 through 31

Page 5, replace lines 1 through 5 with "any matter not directly related to the state or school district content standards or the student's grade level curriculum."

Page 5, line 20, replace "implement a program under which" with "issue to"

Page 5, line 20, remove "is provided with"

Page 5, line 21, replace "his or her" with "the student's"

Page 5, line 23, remove "prohibit their child's participation in the program. A student age"

Page 5, line 24, replace "eighteen or older may refuse to accept such a device" with "decline permission for the student to bring the device home or to remove the device from the school"

Page 5, line 30, after "any" insert "individualized"

Page 6, line 2, after "expressions" insert: ", provided that the prohibition of this section does not extend to:

- a. School nurses or other health care professionals delivering health care services to students; or
- b. Classes or related activities in which the scanning, monitoring, or recording of such information is a required curricular element"

Page 6, line 3, replace "Scans, monitors, or records the" with "Reviews a"

Page 6, line 3, replace the underscored semicolon with an underscored comma

Page 6, line 4, remove "3. Monitors or tracks the student's"

Page 6, line 4, after "communications" insert an underscored comma

Page 6, line 4, after "storage" insert ", except if there is a reasonable suspicion that a law is being broken, that a policy is being violated, or that an individual is in imminent danger"

Page 6, line 5, replace "4." with "3."

Page 6, line 5, after "location" insert ", except as necessary for the provision of transportation services"

Page 6, line 8, remove "Survey items -"

Page 6, after line 8 insert "1."

Page 6, line 11, replace "1." with "a."

Page 6, line 12, replace "2." with "b."

Page 6, line 14, replace "3." with "c."

Page 6, line 16, replace "4." with "d."

Page 6, line 18, replace "5." with "e."

Page 6, line 20, replace "6." with "f."

Page 6, line 21, replace "7." with "g."

Page 6, line 23, replace "8." with "h."

Page 6, line 24, replace "9." with "i."

Page 6, line 25, replace "10." with "j."

Page 6, after line 26, insert:

"2. Nothing in this section precludes a student from taking a survey in accordance with the requirements of section 2 of this Act.

SECTION 6. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Additional requirements - Penalty.

1. In order to validate that student data is protected, as required by law, a school district may consult with the information technology department, or a designee of the department, before the district acquires or initiates the utilization of any technology options.
2.
 - a. A school district may not enter an agreement with a vendor of technology, including software, if the agreement permits the vendor to collect and retain student data for any purpose, unless the district contractually and specifically requests or requires that the data be collected and retained by the vendor. Such a requirement by the district is limited to school district or educational purposes.
 - b. Any vendor that willfully violates an agreement under this section is subject to a class A misdemeanor and to a civil penalty in an amount up to ten thousand dollars per violation.
3. Each school district shall develop and implement a policy that clearly sets forth which individuals, by name or title, are authorized to access specified student data. The board shall review the policy annually."

Renumber accordingly

2015 TESTIMONY

HB 1453

#1
HB 1453
2/9/15

2.09.2014

Testimony on HB 1453

Mr. Chairman and members of the Education Committee, I am Rep. Ben Koppelman from District 16 in West Fargo, ND, and am here to testify in favor of HB1453.

HB 1453 was introduced out of concerns for data privacy and security.

Parents are concerned with the idea that their child's data may be collected with very few restrictions as to the data points collected and to the use of that data. Traditionally FERPA has protected against the improper use of student data, but with recent redefining of terms for sharing and permitted uses of such data by the US Department of Education and the expansion of commercial data mining efforts, it has become necessary to put additional safeguards in place. The bill also recognizes the age of consent for a student within the state of ND, and when a parent needs to be involved for permission. I have worked with and plan to continue to work with the Supt. of Public Instruction, as well as representatives from the Ed. Tech. Council, SLDS, CDE, NDCEL, and local districts to work through concerns and clarifications, and make

appropriate amendments that will ensure the intent of this bill is carried out without unintended consequences.

Page 1 of the bill is intended to create a defined list of data points that may be collected and maintained by state agencies. This list appears to be appropriate as these items are items that the state currently collects and has collected in recent years, but stops short of allowing an open-ended amount of data point collection. For the purposes of this bill, local school districts are not considered state agencies. Some amendments may be needed for this section in relation to some institutions that blur the lines between a state agency and a political subdivision, as well as an allowance for the state to continue to collect the student immunization records.

Page 2 limits the data points that may be collected by a third party state assessment administrator. These data points are also consistent with current practices, but limit the expansion of that data collection. The use of directory information, commonly referred to as yearbook data, is also defined on this page as well the permitted uses of such data.

Parents may opt out of the sharing of such data.

Page 3 defines personally identifiable information that may be shared with parental consent, and whom it may be shared with.

Page 4 includes a penalty for violation of the aforementioned sections, as well as the applicability of those sections. Section 2 begins with defining surveys that include certain types of data that would require the consent of the parent prior to student participation. Such surveys would have to be available for viewing, and the parent would have to be notified if refusing such survey could cause a student to lose a benefit or opportunity.

On page 5, Section 3 would require parental input prior to the implementation of one-to-one devices that would be brought home by the student to complete coursework. Section 4 limits the types of electronic observation and monitoring that may be used without parental permission. This section is not intended to limit the use of internet content filters or electronic devices used by school nurses, but rather provide some parental oversight of the “next-generation” classroom observation and data collection techniques that may be used in the future, and that are highlighted in the US Dept. of Education’s publication titled “Grit, Tenacity, and Perseverance.

Section 5, on page 6, limits any questions or survey items on state assessments that do not directly pertain to the state standards.

In researching for this bill, I was pleased to find out that the SLDS system was housed inside the state and that third parties are not used to manage this data, thus limiting the opportunity for improper use of or hacking of student data. However, it was pointed out, by some discussions with the groups that I received input from, that the highest risk to student data is by personnel at the district level through the use of third party technology solutions and employee permissions/ logins. Many of our school districts do not have technology directors or staff to properly vet some of these technology solutions and create the proper protocols. Therefore, I plan to bring amendment to ensure proper policies are in place at the district level, and to encourage collaboration between ITD and the district when choosing and implementing technology solutions.

In closing, I want the committee to know that I have the utmost respect for those that work hard to ensure data privacy and protection within our state, and hope to continue to work with these individuals to make this bill workable and appropriate. As a parent of two school aged children, I don't believe in open-ended data collection, but I am supportive of a reasonable and responsible data collection effort.

Members of the committee, I respectfully request that you give this bill a Do-Pass recommendation, and I would be happy to stand for any questions.

North Dakota Family Alliance Action

A Trusted Voice Impacting Our Legacy

Tom D. Freier, EXECUTIVE DIRECTOR

#2
HB 1453
2/9/15

**House Education Committee
February 9, 2015
HB 1453**

Mr. Chairman and members of the House Education Committee, North Dakota Family Alliance wishes to go on record in support of HB 1453 as introduced.

NDFA supports the restrictions on the collection and dissemination of student information as safeguarding student data and protecting the identity of the children of North Dakota should be a priority of everyone.

As NDFA views all legislative bills dealing with education, we ask a number of questions. The questions that pertain to HB 1453 are:

- Does House Bill 1453 strengthen or weaken parental control of our children's education?
- Does House Bill 1453 strengthen or weaken its collection of data and tracking of our children or individual family units?
- Does House Bill 1453 impose ideals that strengthen or weaken conservative values or undermine Christian heritage or legacy?

Common Sense Media says that "Nine of ten American voters are concerned about advertisers using personal data to market to children, and an overwhelming bipartisan consensus has emerged in support of proposals geared towards safeguarding children's personal information." (2014 poll by Benenson Strategy Group).

Regarding the data collection on information of our children being secure, we all know that nothing is secure anywhere online as we have seen security breach after security breach in the local and national headlines. Safeguarding student privacy by ensuring data security should be a top priority for school officials especially when districts contract with outside vendors to store or manage student information.

Unfortunately, this isn't always the case. Almost every school district in the country uses cloud computing to house information such as grades, attendance records, bus routes, health records, along with details about students' achievements, activities, absences, disabilities and learning styles in an effort to tailor instruction to the individual child. The hope is that personalized, data-driven education will ultimately improve students' graduation rates and career prospects.

Dedicated To Strengthening Families

Most districts contract with a third-party vendor to house and manage the data. However, schools' contracts with vendors often do not clearly spell out how the information can and cannot be used. Parents may not be aware of the security and privacy risks to their children because schools are not required to notify parents or obtain their consent before sharing student's details with vendors who perform institutional functions.

Schools are sharing student data with more educational technology providers and with other companies partly to keep up with mounting student testing and reporting requirements and partly to keep down internal technology costs. That outsourcing has been made easier because of changes to federal regulation under the Family Educational Rights and Privacy Act.

That law requires schools to obtain a parent's permission before sharing information in their children's records. But the Education Department updated its rules, allowing schools to disclose student information to contractors and other outside parties to whom they outsource school functions — without notifying parents.

Students are in school for a fixed number of years, but their data can live on in the district's student information system long after they graduate and turn 18. Vendors could also retain student data even after their contract with the district ends. Often cloud service agreements fail to provide data security or data deletion.

Other states are aligning with what data can be accessed; Oklahoma enacted a law that requires the State Board of Education to publicly post a list of the kinds of data it collects about individual students and to develop detailed student data privacy policies and security measures. The New York State Assembly recently passed a bill that prohibits schools from sharing personally identifiable data about students without parental consent.

As we look at HB 1453 we believe it is a step in the right direction giving the parents, not schools, the right to control their children's exact and specific information, even if it's in the hands of private companies. We believe HB 1453 strengthens the data collection process by giving explicit guidelines on what can and cannot be retrieved from the children and their family. HB 1453 strengthens North Dakota families' privacy regarding values and beliefs to include religious affiliation.

The North Dakota Family Alliance respectfully requests a Do Pass on HB 1453.

#3 AB 1453
2/9/15



Ellendale Public School **Superintendent**

Jeff G. Fastnacht

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Charlene Kinzler, Director
Michele Thorpe, Director

Date: Friday, January 30, 2015

To: Honorable Rep. B. Koppleman

From: Mr. Jeff Fastnacht, Superintendent, Ellendale Public School

RE: HB 1453 Data Security & Privacy

Rep. Koppleman I want to begin by thanking you for taking the time to review HB 1453 with me yesterday. During our review of the bill and its intended impact on state agencies and schools you asked me to provide some feedback on parts that we thought could be improved.

I have taken time today to discuss the bill more deeply with Mr. Allen Peterson, NDCDE, Mr. Rob Kaspari, EduTech, Mrs. Lisa Felder, NDUS, and several of my own faculty that deal with student data each and every day. It is with their insights and my own beliefs that I provide these thoughts to you today.

Section -01. Based on your intention that these limitations would only affect state agencies and not schools I would still argue that they are much too limited. I believe information such as immunization records should be on your list. This bill would strip the immunization data held by the ND Dept. of Health and reduce their ability to address medical needs in the time of a crisis. This is never truer than now, with the rampant spread of measles in our country.

Section -03. In all due respect school districts are already addressing these concerns under FERPA. Parents must be afforded the ability to opt-out of directory information dissemination. This section is duplicating the present duties of the local school board to determine what is and is not directory information and who it can be distributed. The list you have outlined in this section, in my view, is overly restrictive and I believe should again be set by a local school board.

Section -04. Per our conversation you indicated this section is to eliminate an expansion of FERPA by the DOE. However, based on the wording of this section, it would appear that even with parent permission schools would be unable to share directory, phone numbers, or emails with all for profit companies. One such example for Ellendale, and I believe most schools have a similar service, is ParentLink. This system provides automated calling, text, and emails to our parents. If I am unable to provide that service how do parents get important information about storm closures or campus emergencies? I believe parents today expect this type of service.

Section 3. As discussed this would be a deal breaker for Ellendale and our 1:1 iPad initiative. We are moving from paper bound static learning tools to dynamic engaging media rich tools due to our 1:1 program. This section would allow parents to completely opt out of our learning program. I realize some may have concerns but 24/7 filtering, application locks and training have provided enhanced security for our parents. We have had only a few concerns from parents and these have been dealt with successfully by our technology department. Opting out would be like not accepting any-all text books, but still expecting an education.

In short Rep. Koppleman I believe the intentions of HB 1453 can be better served by putting support behind SB 2326.

AN EQUAL OPPORTUNITY EMPLOYER

The Ellendale School District does not discriminate on the basis of race, national origin, sex, or handicap in its educational program, activities, and employment practices.



Ellendale Public School

ANNUAL NOTIFICATION of DIRECTORY INFORMATION

The Family Educational Rights and Privacy Act (FERPA), a Federal law, requires that Ellendale Public School, with certain exceptions, obtain your written consent prior to the disclosure of personally identifiable information from your child's education records. However, Ellendale Public School may disclose appropriately designated "directory information" without written consent, unless you have advised the District to the contrary in accordance with district procedures.

The primary purpose of directory information is to allow the Ellendale Public School to include this type of information from your child's education records in certain school publications. Examples include:

- A playbill, showing your student's role in a drama production;
- The annual yearbook;
- Honor roll or other recognition lists;
- Graduation programs; and
- Sports programs (students first & last name, grade, height & weight)
- NDHSAA web site (student first & last name, grade, height, & weight)
- District web site & social media (first name and photo only)

Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent's prior written consent. Outside organizations include, but are not limited to, companies that manufacture class rings or publish yearbooks. In addition, two federal laws require school districts receiving assistance under the Elementary and Secondary Education Act of 1965 (ESEA) to provide military recruiters, upon request, with three directory information categories - names, addresses and telephone listings - unless parents have advised the school district that they do not want their student's information disclosed without their prior written consent.

If you do not want Ellendale Public School to disclose directory information from your child's education records without your prior written consent, you must notify the District in writing by September 1st of any given school year. Ellendale Public School has designated the following information as directory information:

- | | | |
|--|--|--|
| • Student's name | • Address | • Telephone listing |
| • Date of birth | • Dates of attendance | • Degrees, honors, and awards received |
| • Grade level | • Participation in officially recognized activities and sports | • Photograph |
| • Weight and height of members of athletic teams | | |

For a complete copy of the district's student record policy or any questions, contact your school principal. If you wish to limit distribution of directory information for your child please complete the bottom portion and return it to your child's principal.

----- Cut Here -----

Request to Withhold Directory Information for the (List Years) _____ School Year:

Please **DO NOT** release ANY directory information.

Please **DO NOT** release the following part or parts of directory information: (check all that apply)

Name Telephone Number Photograph

Other (specify) _____

I **DO NOT** wish Directory Information, as defined above, to be released to military recruiters without my prior written consent.

Student's Name _____ Grade _____

Parent/Guardian Signature _____ Date _____

Note: If the student is a high school senior or is otherwise scheduled to graduate, this opt-out request will continue to remain effective after the student has graduated from high school.

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#4
HB 1453
2/9/15

Federal Fund Assurances

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SUBMITTED
1/20/2014 by
Jeff Fastnacht

- Will submit reports to DPI and the U.S. Department of Education to enable them to perform their duties under each program and maintain records, provide information, and afford access to the records to enable them to carry out their duties.
- Will submit data on truancy rates and the frequency, seriousness, and incidence of violence and drug-related suspensions and expulsions in elementary and secondary schools.
- Will not deny equal access or a fair opportunity to meet, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in Title 36 of the United States Code as a patriotic society that wishes to conduct a meeting within a designated open forum or limited public forum.
- Will provide, on a request made by military recruiters or an institution of higher education, access to secondary school students or their parents request that this information not be released without prior written parental consent. The school district shall notify parents of the option to make this request and shall comply with any such requests.
- Will administer the State's standards-based assessment in reading, math and science and will administer the State assessment with the highest level of inclusion of students following all accepted testing procedures. Failure to do so may result in loss of federal funding.
- Will participate, if selected, in the State National Assessment of Educational Progress in 4th and 8th grade reading and mathematics carried out under Section 411(b)(2) of the National Education Statistics Act of 1994.
- Will publicize and disseminate to parents, teachers, other staff, students, and community the results of the State standards-based assessment in individual school performance profiles that include statistically sound, disaggregated data.
- Maintained fiscal effort by expending combined state and local resources per student for the preceding fiscal year at a level of at least 90 percent of the combined fiscal effort for the second preceding fiscal year.
- Will administer the State's standard-based assessment in English language proficiency for those students who qualify as limited English proficient or English Language Learners.

Transferability

The participating School District assures that it:

- Will combine Title II Part A funds for authorized activities under Title I Part A or Title II Part A of the No Child Left Behind Act.

Google Apps for Education

Data Mining Exhibit

Google Login – personal email xxx.xxxxxx@gmail.com

The screenshot shows a Google search for "toaster". The search results include several sponsored links for retailers like JCPenney, Macy's, Amazon, and Walmart. On the right side, there is a "Shop for toaster on Google" section featuring a grid of product images with their respective prices and retailers. For example, a Cuisinart Classic 2-Slice toaster is listed for \$49.95 at Crate and Barrel, and a Hamilton Beach Keap toaster is listed for \$34.99 at Kohls. Below the product grid, there is a "Which Toasters To Buy?" link with a 4.6-star rating.

Google Apps for Education – xxx.xxxx@ellendale.k12.nd.us

This screenshot shows the same Google search for "toaster" but with a different layout. The sponsored product listings are absent. Instead, the search results focus on general information, including a link to "Toasters & Ovens - Home - Walmart.com", "Toasters & Ovens - Bed Bath & Beyond", and "Amazon.com: Toasters - Ovens & Toasters: Home & Kitchen". Below these links, there is a section for "Images for toaster" showing several images of different toaster models. At the bottom, there is a link to the Wikipedia page for "Toaster". A black-bordered box on the right side of the page contains the text: "Ads removed in our Google Apps for Education Account."



Ellendale Public School

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5
HB 1453
2/9/15
Superintendent
Jeff G. Fastnacht

House Education Committee
Monday, February 9, 2015
Testimony in Opposition of HB 1453
by Jeff Fastnacht, Superintendent

Good Morning Chairman Nathe & House Education Committee Members.

I am Jeff Fastnacht, Superintendent at Ellendale Public School. I am also the President of the North Dakota Educational Technology Council, appointed by Governor Dalrymple. I serve on the North Dakota Education Data Management Committee, and am the Vice-President of the ND Assoc of School Administrators.

Before I share my concerns with HB 1453 let me say everyone here I am sure is concerned about student data and data privacy. I have two children in school and I hope that I treat every one of my students with the same concern about their personal and data safety as I would for my own. None of my comments today will diminish that fact.

I have spoken to Rep. Koppleman about this bill previously and shared some of my concerns while keeping an open ear to his concerns. As we discussed this bill, in several areas we had differing views on how the bill would actually be interpreted. I will share these with you. Rep. Koppleman did ask me to craft alternate language which I did earnestly attempt, but I will tell the committee now it became apparent to me that too much was needed to fix this bill, so I recommend support to SB 2326. *attachment 1*

In part 02. – the bill restricts the collection of state assessment administrators. This very narrow list I believe applies to schools as we administer the state assessment (NDSA, ACT, and MAP).

Directory information in part 03 is also strictly limited in the scope of what we can disclose and to whom. This section of the bill is an opt-out, which is preferable, but the limitations on whom the information can be disclosed is overly restrictive. Based on this bill schools would not:

- Put sports scores in the Aberdeen News (Aberdeen SD) newspaper or send them to the AP.
- Distribute a program listing couples at a prom.
- Identify students earning a 4.0 on an honor roll.
- Identify actors on a play bill.
- Recognize any student on a schools web site. Even if they were the ND Distinguished Student.

The concerns addressed by this section of the bill are already legislated by FERPA and annual notifications of directory information, that all schools must distribute annually. *attachment 2*. We are also bound by federal legislation and ND Assurances that we will provide access to directory information to institutions of higher education and the military

AN EQUAL OPPORTUNITY EMPLOYER

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unless the parents opt-out. Again, I believe we are addressing the concerns of the bill.
attachment 3

The concerns become paramount in section 04. In this section the bill address personally identifiable information and strictly limits this to directory information plus a few items.

First, I do not support the opt-in provision. I fully support that schools can and should provide more information to parents on what and to whom they share information. However, it should remain an opt-out. An opt-in provision would dramatically increase the potential for mistakes, opt-in tracking (resulting in more data), and efficiencies of systems.

Secondly, this section would eliminate many of the valuable and worthwhile tools we use to achieve greater student achievement, enhance communication, and teach.

Examples of each – Greater Student Achievement

- DIBELS – a reading diagnostic, used bi-weekly in elementary schools to track reading fluency and decoding. *For Profit – so we could not share data with them.
- NWEA MAP – a state supported interim assessment. *For Profit – so we could not share data with them.

Enhance Communication

- ParentLink or AlertNow – used to message/call families to inform them of what is happening in the school or during emergencies. *More identifiable information and for profit.
- District Apps – used to share attendance, grades, announcements, news, etc with parents.

Teaching

- MyBigCampus – digital instructional tool.
- Overdrive – e-library service.
- Google Apps for Education

In regard to GAFE Rep. Koppleman and others are concerned with data mining. Which is a concern of ours as well and due to pressure from schools was changed in the spring of 2014. *attachment 4*

Lastly, Ellendale is a K-12 1:1 school. Section 3 is a concern to us not because we believe parents should not have a voice, to the contrary they need more of a voice. However, when the decision is made to move to a digital curriculum supported by a device, opting out, does not leave the family with many options. The content and learning tools are now 100% etools. Opting out is like opting out of everything. You can view our parent information at http://www.ellendale.k12.nd.us/tech/parent_ipad.html

I could continue on with my concerns but let me offer some alternatives.

- Support SB 2326.
- Support funding to educate and train a data steward in each and every school. We need to build the skills of those supporting technology in even the smallest schools.
- Support the DPI and EduTech with funding to create informational portals for all parents on what data is kept and how it is used.

Thank you for your time, I will stand for any questions you may have.

#6
HB 1453
2/9/15

Chairman Nathe and Members of the Committee

My name is Dr. Nick Klemisch and I serve as the Director of Special Education for the Sheyenne Valley Special Education Unit. I oversee special education and related services for six school districts in Eastern North Dakota. I am also the Chairman of the ND Special Education Study Council and am the Vice-President of the ND Education Technology Council, appointed by the Governor.

Currently, all school districts in the state of North Dakota utilize a web-based program called Tienet. Tienet is a FERPA compliant paperwork-management system that is used to fulfill the compliance components under the Individuals with Disabilities Education Act, as well as state requirements. From within Tienet, all documents pertaining to students who meet special education eligibility requirements can be found. The information within these documents is extremely detailed in an effort develop a comprehensive plan to meet the individual needs for our special education students. Tienet is comprised of things like Individualized Education Programs, Integrated Written Assessment Reports, Student Profiles, Assessment Plans, etc...The IEPs, for example, provide a complete overview of the student containing all contact information, date of birth, present level academic functioning, annual goals, adaptations, services...it is a comprehensive document.

Tienet has created a platform to make life much more simplified for special education teachers and administrators to readily access and compile information. It is a unified process, whereas before Tienet, districts were left to develop their own system for the completion of paperwork. In addition, Tienet has allowed educators across the state to develop a greater consistency between districts, which is apparent when students transfer within the state. It has allowed the North Dakota Department of Public Instruction direct access to our special education students that allow them to complete the necessary information that they must report to the federal government.

As I read the HB 1453, specifically Section 1, it would put Tienet in jeopardy. The documents contained within are filled with an immense amount of information, much greater than those items allowed in this Bill. Should this Bill pass, it would force the state and districts to go back in time to the days of old. We would no longer have direct access to student information for the purpose of special education. When students transfer from within the state to another district, the new school would have to wait until that information is received. This can and would put districts in compromising situations, especially when the new student requires a plethora of services.

I would encourage this committee to consider alternatives that work with schools and the state. Thank you.

HB 1453

House Education

February 9, 2015

Lisa Feldner, Vice Chancellor

701.328.1510 | lisa.feldner@ndus.edu

Chair and Committee Members: my name is Lisa Feldner, Vice Chancellor for the NDUS and I'm here today in opposition to HB1453 as introduced. Representative Koppelman and I have talked a couple of times about sections of the bill that raise very serious concerns for me as the Chairman of the ND Statewide Longitudinal Data System.

Lines 8-20 on page 1 talk specifically about the data that state agencies would be allowed to collect about a student. This list fails to include important fields needed by the Health Department for immunizations, a very real concern considering we are experiencing a measles outbreak. The School for the Deaf, School for the Blind, the Center for Distance Education, and the State Industrial School are state agencies and would need to collect more information on their students than what is contained in this list.

Lines 21-22 would limit the ND Statewide Longitudinal Data System from providing the reports that it currently provides to K-12, higher education, workforce, and policy makers. Data sharing agreements are the fundamental instrument by which the SLDS performs its function. The agreements provide the authorization and permission by owners of the data for its use. The agreements provide the audit trail and documentation for the SLDS. There would be no reports on remediation, AP & Dual credit effects, graduates employed in ND, or predictive analytics, to name a few.

Subsections 3 & 4 on pages 2-3 define directory information which conflicts with the federal Family Educational Rights and Privacy Act (FERPA). This would put schools in the position of not knowing whether to follow state law and federal law. In addition, there is existing century code directing the SLDS to provide directory information of high school students to all institutions of higher education in ND.

Line 3 on page 6 violates the Children's Internet Protection Act that directs all entities receiving Universal Services Funds to use Internet filtering techniques to protect children from harmful online content. The state network provided to schools by ITD utilizes filters that scan Internet content as it enters the K-12 network.

I ask for a do not pass on HB 1453 and am available to answer your questions. Thank you.

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Chairman Nathe & House Education Committee Members.

I am Craig Nansen, Director of Technology for Minot Public Schools. I am also a board member for the Educational Technology Committee, appointed by Governor Dalrymple.

I have questions and concerns about HB 1453.

What constitutes a state agency? Is an REA (Regional Education Agency) a state agency? Some of the REAs are managing data for the schools in their region and they are collecting more detailed data than HB 1543 permits.

The State Longitudinal Data System (SLDS), which funded by the ND Legislature and is hosted by the state ITD, is becoming the data warehouse for most schools in North Dakota. It is replacing Viewpoint and other locally hosted data warehouses in most school districts and contains more student specific data than this bill allows. Current information that is being uploaded to SLDS that would not be allowed under this bill includes addresses, phone numbers, homeless or student in transition data, daily attendance, native language, and possibly discipline records.

This bill would limit the information collected using the special education TIENET system which is done through DPI and hosted by the state. The data in TIENET includes IEPs and evaluations, including psychological evaluations. In the words of the person who manages TIENET for Souris Valley Special Services this would be "crippling" to the special education units in North Dakota.

In Minot and Grand Forks we need to know if the student is a military dependent. This is used to prepare funding reports to receive Impact Aid from the federal government. This would not be allowed under this bill.

Parents income level is needed for Free and Reduced reporting for many federal programs.

In HB 1453 there are several statements about the use of technology in schools:

"may not use any technology to measure or record student's biometric information"

In my opinion, based on reading this bill, this would not allow the use of scales for weighing which is essential in some programs such as wrestling. It would not allow physical education instructors to measure students heart rate. It would not allow adaptive technologies that allow handicapped students to control computers and carry on conversations with their facial expressions such as blinking and eye movements.

"may not use any technology to monitor or track the student's internet browsing habits"

This would eliminate software that teachers use to monitor computers in their labs and classrooms which helps them keep students on task and check for understanding.

This would eliminate the use of filter reports on a specific computer for a date and time when a student was suspected of browsing to unacceptable sites.

This would eliminate methods we use to find students who are intentionally bypassing the state filter which we are required to use for rate funding and CIPA (Child Internet Protection Act).

"may not use any technology to monitor or track student's electronic communications or data storage"

This bill would not allow schools to track threatening or bullying email messages or other electronic communications. We have always had access to archived email through Sendit - and legal authorities such as the FBI have had access to it.

We provide data storage for students and periodically check for videos and games stored there in violation of copyright law. We also check for software that the student may have in their data storage area for bypassing our network security.

"may not use any technology to monitor or track student's location"

This may eliminate schools using gps tracking on school and activity buses. This is helpful in inclement weather where we want to know where the bus is and we know who is on the bus.

Sincerely,

Craig Nansen,
Director of Technology
Minot Public School District #1
215 2nd St SE
Minot, ND 58701
craig.nansen@minot.k12.nd.us

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HB 1453 Testimony
Education Committee
By: Jody French, NDETC Director
February 9, 2015

Mr. Chairman and members of the committee, my name is Jody French and I serve as Director of the ND Educational Technology Council. The North Dakota Educational Technology Council (ND ETC) is the state board responsible for developing technology systems and coordinating their use to enhance and support educational opportunities for elementary and secondary education as cited in NDCC 54-59.

The Educational Technology Council is made up of twelve members representing eleven stakeholder groups including Superintendents, Teachers, NDDPI, NDCEL, NDSBA and several others. EduTech and the ND Center for Distance Education are under the ETC and all are employees of the Information Technology Department.

This bill presents challenges for state agencies to provide daily services to school administrators and educators. By identifying only eleven pieces of student data that are allowed to be collected, the bill offers little flexibility for state agencies to respond to their customer's needs.

For example, students enrolling in courses at the Center for Distance Education would not be able to place an online request and payment for a course they wish to take due to the ability to collect payment information. EduTech would not be able to use their password reminder system because it collects responses to questions to help students change their password on demand. Educational research from the State Longitudinal Data system would be limited to the eleven approved data items. Any new research would need to wait until the next biennium when this legislation could possibly be adjusted.

School districts, including the NDCDE, will be challenged with managing multiple parental consent forms in order to comply with the items in Section 4. Educators would have to manage checklists for each item indicating which students can and cannot participate in use of that specific technology.

This survey participation section eliminates a wide range of legitimate assessment topics, some of which are necessary for NDCDE and local schools to maintain current curriculum without censoring sections that are perceived to be covered by this section. Also, because NDCDE is required to attract revenue, it must concern itself with customer satisfaction and continual improvement so the use of surveys is critical.

When I first read the bill, I was unable to understand the limitations. I found it hard to comprehend that EduTech wouldn't be able to support their customers in efficient ways, that the State Longitudinal Data System wouldn't be able to continue their work to improve teaching and learning and that the Center for Distance Education couldn't conduct commerce with students in ND.

State agencies and schools have working committees and policies that work to ensure student data privacy. ETC organizations have conducted training for administrators, teachers, counselors and anyone who has access to our data systems. Our organizations continue to research and embrace ways to improve the ways we manage student data. Limiting collection and flexibility will likely not result in improved security but significant loss of service.

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HB 1453 - Testimony
Relating to restrictions on the collection and dissemination of student information.

Aimee Copas
North Dakota Council of Educational Leaders
2/9/2015

Chairman Nathe, members of the House Education Committee, for the record my name is Aimee Copas, and I serve as the Executive Director for the North Dakota Council of Educational Leaders. My testimony is in opposition to the HB 1453 as it is currently is written in relation to student data collection and dissemination.

A number of individuals have spent a good deal of time has been spent with Rep. Koppelman in an honest attempt to understand the type of data protection he is looking for. However, after much intense conversation, we believe truly is important that we enter into this conversation with a level of trust for the system and our educators and public officials to do their job - the good North Dakotan's who protect information, and our ability to appropriately train and assure student data is held sacred. We do have safeguards that currently in place. As a parent, this is just as important to me as any legislator in the state.

The bill as written has a number of unintended consequences that are very real within the language. Examples of consequences include:

- Limits/prohibits data sharing agreements between state agencies that well serve the legislature of North Dakota to make informed decisions.
- Limitations of educational leaders to make good decisions regarding curriculum with related technology. (1/1 technology, software decisions that should be locally vetted)
- Student safety (both involved student and surrounding students) with regard to medical information, protection from themselves and others while utilizing tools such as the internet.
- Potential risks to validity of information with surveys such as the Youth Risk Behavior Survey.

As educational leaders, it is incumbent upon us to value and protect student data and student information at every level. We are assisted in this process with already existing FERPA laws. We certainly support data privacy training and would take that role very seriously. However, there are also expectations to utilize information to inform instruction and to allow excellence in practice. For these reasons we are unable to support HB 1453 and recommend a do not pass.

There is currently a bill in the senate that works with our Data Privacy law as it stands and tightens it to assure students and citizens are protected. NDCEL supports that prudent approach.

Testimony of Andy Peterson
Greater North Dakota Chamber of Commerce
HB 1453
February 9, 2015

Chairman Nathe and members of the committee, my name is Andy Peterson; I am the President/CEO of the Greater North Dakota Chamber. GNDC is working on behalf of our more than 1,100 members to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group, we stand in opposition to House Bill 1453.

The Greater North Dakota and the business community as a whole takes great pride in having an educational system that produces the future's business leaders. We discussed last week how North Dakota's current standards are the best to achieve that goal. Another integral component to producing a highly educated future workforce is the sharing of information in a respectful and responsible manner.

We trust educational leaders

The bill in front of you seeks to limit the sharing of data about a student in the North Dakota educational system. To pass this bill would do a huge disservice to the youth of North Dakota. We trust our educational leaders. We trust that the information being shared is in the best interest of students and that no data is being collected or shared with any intent other than to encourage the success of students.

Better Outlook for the Future

The business community is concerned that this bill arbitrarily limits the information that can be shared and we'll see some distinctive gaps. At the end of the day, why wouldn't we want more information? Why wouldn't we want to have the appropriate information gathered to get the best and clearest picture of how our students are doing compared to each other, compared nationally and compared globally. The more information we have, the better the outlook for the future.

We at GNDC trust our educational leaders and trust that they have the best intentions for our students. We respectfully request a DO NOT PASS recommendation on House Bill 1453. Thank you for your time and I would be happy to answer any questions.

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TESTIMONY ON HB 1453
House Education Committee
09 February 2015
By: Steve Snow, MIS Director
701-328-2189
Department of Public Instruction

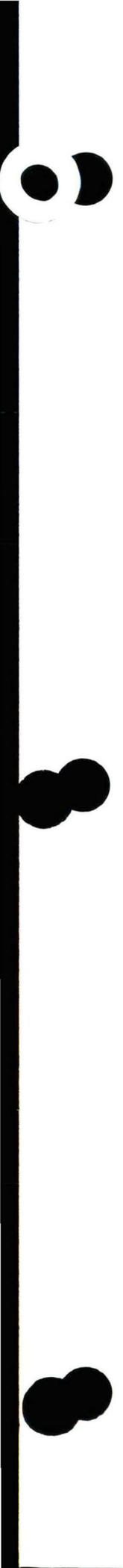
Chairman Nathe and Members of the Committee:

My name is Steve Snow and I am the director of the MIS (Management Information Systems) unit with the Department of Public Instruction (DPI). I am here to speak in opposition to HB 1453.

The list of exclusive student data elements prevents the collection of the Suspension/Expulsion/Truancy data as required by current federal and state law. This data is critical to decision makers (at both the school, district and state level) with program and service improvements, staff time allocations, and helping ensure student safety.

The newly added language in Section 2 of 15.1-19 (page 4 of the bill) prevents the Youth Risk Behavior Survey (YRBS). The results of the YRBS has been instrumental in securing millions in grant dollars for schools.

The newly added language in Section 5 of 15.1-21 (page 6 of the bill) prevents the state or districts from requiring and funding the administration of the ACT College readiness exam. The ACT is currently required as part of the state scholarship. The majority of North Dakota students will likely take the ACT exam as



part of their college preparations; without state funding, the cost is shifted to the student's parents or guardians.

DPI supports and encourages parental involvement in their student's education. DPI also supports transparency and providing parents (and other decision makers) with the information needed to make informed decisions while still ensuring the privacy rights of that student. In order to do this schools, districts and the state need to perform purposeful data collections. The level of specificity proposed can prevent schools, districts and the state from quickly adapting to changing needs of public education.

Chairman Nathe and members of the committee that concludes my prepared testimony and I will be glad to answers any questions you may have

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**Testimony
House Bill 1453
House Education Committee
February 9, 2015; 9:00 a.m.
North Dakota Department of Health**

Good morning Chairman Nathe and members of the House Education Committee. My name is Kirby Kruger, and I am the Director of the Division of Disease Control for the North Dakota Department of Health. I am here today to testify in opposition to HB 1453.

The Division of Disease Control relies on working cooperatively with schools to determine immunization and exemption rates in schools. Additionally, we work closely with schools to investigate and prevent cases of contagious diseases, such as meningitis, tuberculosis and vaccine-preventable diseases. With the current outbreak of measles in the United States, it is imperative that we be able to work with schools to collect important information on immunization and infectious disease investigations. The department is concerned that this bill would prohibit schools from working with us on important public health issues.

Furthermore, we believe that HB1453 would not allow health care providers to report immunizations to the state's immunization registry if the recipient of the immunization is a student, and would prohibit health care providers from reporting diseases diagnosed in students to the department.

Federal law included in the Federal Educational Rights and Privacy Act (FERPA) currently protects the privacy of student education records. FERPA allows educational agencies and institutions to disclose personally identifiable, non-directory information to appropriate officials in connection with a health or safety emergency. Additionally, the Health Insurance Portability and Accountability Act (HIPAA) protects any of the health information that the Department of Health collects on students.

This concludes my testimony. I am happy to answer any questions you may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1453

Page 1, line 11, replace "age" with "date of birth"

Page 1, line 13, after "race" insert "and ethnicity"

Page 1, line 15, after "student's" insert "teacher of record."

Page 1, line 15, after the first "school" insert an underscored comma

Page 1, line 18, after "enrollment" insert "and attendance information"

Page 1, line 19, after the "l." insert: "The student's disciplinary record;

k."

Page 1, line 19, after "unique" insert "state"

Page 1, line 19, remove ", as used in PowerSchool"

Page 1, line 20, replace "k." with "l."

Page 1, line 20, replace "A list of federal programs in which the student participates" with "The student's participation in state and federal education programs"

Page 1, line 21, replace "A" with "Subsection 1 does not apply to:

- a. The bureau of criminal investigation;
 - b. The center for distance education;
 - c. The department of corrections and rehabilitation;
 - d. The state department of health with respect to the collection and retention of student immunization records and the investigation and reportability of infectious diseases;
 - e. North Dakota vision services - school for the blind;
 - f. The school for the deaf;
 - g. The state board of higher education;
 - h. Workforce safety and insurance; or
 - i. The youth correctional center.
3. Nothing in this section precludes a state agency from entering a data sharing agreement or from hosting a student information system. However,
a"

Page 1, line 21, replace "a data sharing contract" with "such activity"

Page 2, line 1, replace "state assessment administrator" with "entity other than school district"

Page 2, line 3, replace "An entity administering" with:

"1. If an entity other than a school district administers"

Page 2, line 3, after "students" insert ", that entity"

Page 2, line 5, replace "1." with "a."

Page 2, line 7, replace "2." with "b."

Page 2, line 8, replace "3." with "c."

Page 2, line 8, after "race" insert "and ethnicity"

Page 2, line 9, replace "4." with "d."

Page 2, line 10, replace "5." with "e."

Page 2, line 11, replace "6." with "f."

Page 2, line 11, replace "A list of federal programs in which the student participates" with "The student's participation in state and federal education programs"

Page 2, after line 11, insert:

"2. This section does not apply to the administration of the ACT or the national assessment of educational progress."

Page 2, line 12, replace "**Disclosable**" with "**School district responsibility**"

Page 2, remove lines 13 through 31

Page 3, replace lines 1 through 29 with:

"1. The board of each school district shall determine what constitutes directory information within the district.

2. The board of each school district shall develop a policy to address the use and disclosure of directory information and shall identify, by name or title, those individuals who have access to directory information. The board shall review the policy annually.

3. Directory information about a student may be disclosed only if:

a. The student or the student's parent in the case of a student who is younger than eighteen has been notified of:

(1) The intent to disclose the directory information;

(2) The proposed recipient of the directory information; and

(3) The purpose of the proposed disclosure; and

b. The student or the student's parent in the case of a student who is younger than eighteen has been given an opportunity to opt out of the disclosure.

c. For purposes of this subsection, notification means a posting on the school district's website."

Page 4, line 2, after "person" insert "willfully"

Page 4, line 3, replace "the" with "an"

Page 4, line 3, replace the first "of" with "up to"

Page 4, line 22, remove the underscored colon

Page 4, remove lines 23 through 31

Page 5, replace lines 1 through 5 with "any matter not directly related to the state or school district content standards or the student's grade level curriculum."

Page 5, line 20, replace "implement a program under which" with "issue to"

Page 5, line 20, remove "is provided with"

Page 5, line 21, replace "his or her" with "the student's"

Page 5, line 23, remove "prohibit their child's participation in the program. A student age"

Page 5, line 24, replace "eighteen or older may refuse to accept such a device" with "decline permission for the student to bring the device home or to remove the device from the school"

Page 5, line 30, after "any" insert "individualized"

Page 6, line 2, after "expressions" insert: ", provided that the prohibition of this section does not extend to:

- a. School nurses or other health care professionals delivering health care services to students; or
- b. Classes or related activities in which the scanning, monitoring, or recording of such information is a required curricular element"

Page 6, line 3, replace "Scans, monitors, or records the" with "Reviews a"

Page 6, line 3, replace the underscored semicolon with an underscored comma

Page 6, line 4, remove "3. Monitors or tracks the student's"

Page 6, line 4, after "communications" insert an underscored comma

Page 6, line 4, after "storage" insert ", except if there is a reasonable suspicion that a law is being broken, that a policy is being violated, or that an individual is in imminent danger"

Page 6, line 5, replace "4." with "3."

Page 6, line 5, after "location" insert ", except as necessary for the provision of transportation services"

Page 6, line 8, remove "**Survey items** - "

Page 6, after line 8 insert "1."

Page 6, line 11, replace "1." with "a."

Page 6, line 12, replace "2." with "b."

Page 6, line 14, replace "3." with "c."

Page 6, line 16, replace "4." with "d."

Page 6, line 18, replace "5." with "e."

Page 6, line 20, replace "6." with "f."

Page 6, line 21, replace "7." with "g."

Page 6, line 23, replace "8." with "h."

Page 6, line 24, replace "9." with "i."

Page 6, line 25, replace "10." with "j."

Page 6, after line 26, insert:

"2. Nothing in this section precludes a student from taking a survey in accordance with the requirements of section 2 of this Act.

"**SECTION 6.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Additional requirements - Penalty.

1. In order to validate that student data is protected, as required by law, a school district may consult with the information technology department, or a designee of the department, before the district acquires or initiates the utilization of any technology options.
2.
 - a. A school district may not enter an agreement with a vendor of technology, including software, if the agreement permits the vendor to collect and retain student data for any purpose, unless the district contractually and specifically requests or requires that the data be collected and retained by the vendor. Such a requirement by the district is limited to school district or educational purposes.
 - b. Any vendor that willfully violates an agreement under this section is subject to a class A misdemeanor and to a civil penalty in an amount up to ten thousand dollars per violation.
3. Each school district shall develop and implement a policy that clearly sets forth which individuals, by name or title, are authorized to access specified student data. The board shall review the policy annually."

Renumber accordingly

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1453

Introduced by

Representatives B. Koppelman, Rick C. Becker, Dosch, Kasper, Rohr, Sanford, Schatz,
Toman

Senators Larsen, Luick, Rust, Schaible

1 A BILL for an Act to create and enact chapter 15.1-02.1, a new section to chapter 15.1-19, and
2 three new sections to chapter 15.1-21 of the North Dakota Century Code, relating to restrictions
3 on the collection and dissemination of student information; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 15.1-02.1 of the North Dakota Century Code is created and enacted
6 as follows:

7 **15.1-02.1-01. Student information - Collection by state agency - Limitation.**

8 1. A state agency may not collect any information about a student other than the
9 following:

- 10 a. The student's name;
- 11 b. The student's ~~aged~~ date of birth;
- 12 c. The student's gender;
- 13 d. The student's race and ethnicity;
- 14 e. The student's grade level;
- 15 f. The student's teacher of record, school, and school district of enrollment;
- 16 g. The student's state assessment scores;
- 17 h. Courses or units the student has completed, together with the grades obtained;
- 18 i. The student's dates of enrollment and attendance information;
- 19 j. The student's disciplinary record;
- 20 k. The student's unique state identification number, as used in PowerSchool; and
- 21 k.l. A list of federal programs in which the student participates
22 The student's
23 participation in state and federal education programs.

2. ASubsection 1 does not apply to:

- a. The bureau of criminal investigation;
- b. The center for distance education;
- c. The department of corrections and rehabilitation;
- d. The state department of health with respect to the collection and retention of student immunization records and the investigation and reportability of infectious diseases;
- e. North Dakota vision services - school for the blind;
- f. The school for the deaf;
- g. The state board of higher education;
- h. Workforce safety and insurance; or
- i. The youth correctional center.

3. Nothing in this section precludes a state agency from entering a data sharing agreement or from hosting a student information system. However, a state agency may not, by means of ~~a data sharing contract~~ such activity, expand the list of permitted information set forth in this section.

15.1-02.1-02. Student information - Collection by ~~state assessment~~

administratorentity other than school district - Limitation.

~~—~~ An entity administering

1. If an entity other than a school district administers state assessments to public school students, that entity may not collect any information about a student other than the following:

- ~~1.~~ a. The student's unique identification number, as derived from a state or school district database;
- ~~2.~~ b. The student's gender;
- ~~3.~~ c. The student's race and ethnicity;
- ~~4.~~ d. The student's grade level;
- ~~5.~~ e. The student's school and school district of enrollment; and
- ~~6.~~ f. ~~A list of federal programs in which the student participates~~ The student's participation in state and federal education programs.

2. This section does not apply to the administration of the ACT or the national assessment of educational progress.

1 **15.1-02.1-03. Directory information - Disclosable School district responsibility.**

2 ~~1. A school district may disclose directory information about a student only if:~~

3 ~~a. The student or the student's parent in the case of a student who is younger than~~
4 ~~eighteen has been notified of:~~

5 ~~(1) The intent to disclose the directory information;~~

6 ~~(2) The proposed recipient of the directory information; and~~

7 ~~(3) The purpose of the proposed disclosure;~~

8 ~~b. The student or the student's parent in the case of a student who is younger than~~
9 ~~eighteen has been given an opportunity to opt-out of the disclosure; and~~

10 ~~c. The disclosure is limited to:~~

11 ~~(1) The student's school newspaper or yearbook;~~

12 ~~(2) A newspaper in this state;~~

13 ~~(3) A club or organization at the student's school;~~

14 ~~(4) An honor roll or other student recognition list;~~

15 ~~(5) A graduation program;~~

16 ~~(6) A sports-related publication that provides specific information about~~
17 ~~particular students for the purpose of an athletic activity or function; or~~

18 ~~(7) A parent teacher organization.~~

19 ~~2. For purposes of this section, directory information means a student's:~~

20 ~~a. Name;~~

21 ~~b. Age;~~

22 ~~c. Photograph;~~

23 ~~d. Grade level;~~

24 ~~e. Participation in school district sponsored activities; and~~

25 ~~f. Height and weight if required for participation in certain athletic activities.~~

26 ~~15.1-02.1-04. Personally identifiable student information - Requirements~~
27 ~~for disclosure.~~

28 ~~1. A school district may disclose a student's personally identifiable information only if:~~

29 ~~a. The student or the student's parent in the case of a student who is younger than~~
30 ~~eighteen has been notified of:~~

31 ~~(1) The intent to disclose the personally identifiable information;~~

- 1 ~~(2) The proposed recipient of the personally identifiable information;~~
2 ~~(3) The purpose of the proposed disclosure;~~
3 ~~b. The student or the student's parent in the case of a student who is younger than~~
4 ~~eighteen has provided written permission for the disclosure; and~~
5 ~~c. The recipient of the information is:~~
6 ~~(1) Another student enrolled in the school or the parent of another student~~
7 ~~enrolled in the school; or~~
8 ~~(2) A not for profit organization that requests the information for a specific~~
9 ~~purpose, which the student's school district determines is beneficial to the~~
10 ~~student, and agrees in writing to use the personally identifiable student~~
11 ~~information only for the stated purpose and to return or destroy the~~
12 ~~information upon the fulfillment of that purpose or within one year of the~~
13 ~~receipt, whichever comes first.~~

14 ~~2. For purposes of this section, "personally identifiable information" means:~~

- 15 ~~a. Any information listed as disclosable directory information if the information is to~~
16 ~~be disclosed for a purpose not permitted under section 15.1-02.1-01;~~
17 ~~b. The address, telephone number, and email address of a student; and~~
18 ~~c. The address, telephone number, and email address of a student's parent.~~

- 19 1. The board of each school district shall determine what constitutes directory information
20 within the district.
21 2. The board of each school district shall develop a policy to address the use and
22 disclosure of directory information and shall identify, by name or title, those individuals
23 who have access to directory information. The board shall review the policy annually.
24 3. Directory information about a student may be disclosed only if:
25 a. The student or the student's parent in the case of a student who is younger than
26 eighteen has been notified of:
27 (1) The intent to disclose the directory information;
28 (2) The proposed recipient of the directory information; and
29 (3) The purpose of the proposed disclosure; and
30 b. The student or the student's parent in the case of a student who is younger than
31 eighteen has been given an opportunity to opt out of the disclosure.

1 c. For purposes of this subsection, notification means a posting on the school
2 district's website.

3 **15.1-02.1-04. Penalty.**

4 A person willfully violating this chapter is subject to a class A misdemeanor and to a civil
5 penalty in the amount of up to ten thousand dollars per violation. The impermissible disclosure
6 of each student's information is deemed to be a violation for purposes of this section.

7 **15.1-02.1-05. Applicability of chapter.**

8 Nothing in this chapter limits the release of school district records to or the administrative
9 use of school district records by:

- 10 1. A court;
11 2. An employee of a school district, a state agency, or the bureau of Indian education,
12 provided that:
13 a. The individual is acting within the scope of the individual's employment; and
14 b. The individual's employment bears a direct relationship to the provision of
15 elementary or secondary education; or
16 3. Any other governmental entity if there is a reasonable belief that an individual is or
17 may be in imminent danger.

18 **SECTION 2.** A new section to chapter 15.1-19 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Participation in surveys.**

- 21 1. Without the prior written consent of a student age eighteen or older and without prior
22 written consent from a student's parent, in the case of a student under the age of
23 eighteen, a school district may not permit a student to participate in or respond to a
24 survey, analysis, evaluation, or questionnaire, which seeks information pertaining to:
25 ~~a. The political beliefs of the student, the student's parent, or a family member;~~
26 ~~b. Mental or psychological conditions of the student, the student's parent, or a family~~
27 ~~member;~~
28 ~~c. The sexual behavior of or attitudes regarding sexual behavior held by the~~
29 ~~student, the student's parent, or a family member;~~
30 ~~d. Illegal, antisocial, self-incriminating, or demeaning behavior engaged in by the~~
31 ~~student, the student's parent, or a family member;~~

- 1 ~~e. Critical appraisals of individuals with whom the student has a familial or close~~
2 ~~relationship;~~
- 3 ~~f. Legally recognized privileged relationships;~~
- 4 ~~g. Religious practices, affiliations, or beliefs of the student, the student's parent, or a~~
5 ~~family member;~~
- 6 ~~h. Gun ownership by the student, the student's parent, or a family member; and~~
- 7 ~~i. Income of the student, the student's parent, or a family member.~~ any matter not
8 directly related to the state or school district content standards or the student's
9 grade level curriculum.
- 10 2. The written consent required under subsection 1 must be specific to each identified
11 survey, analysis, evaluation, or questionnaire.
- 12 3. If a student's failure to participate in a survey, analysis, evaluation, or questionnaire,
13 as set forth in subsection 1, will cause or could cause a student to lose direct or
14 indirect benefits, those consequences must be specifically communicated to the
15 student and the student's parent, by means of a written document.
- 16 4. Any individual from whom consent is required, in accordance with this section, must
17 upon request be:
- 18 a. Provided with a copy of the survey, analysis, evaluation, or questionnaire; or
- 19 b. Permitted to view the survey, analysis, evaluation, or questionnaire, at the school
20 in which the student is enrolled.

21 **SECTION 3.** A new section to chapter 15.1-21 of the North Dakota Century Code is created
22 and enacted as follows:

23 **Provision of electronic devices to students.**

24 Before a school district may ~~implement a program under which~~ issue to a student is provided
25 with his or her ~~the student's~~ own laptop, netbook, tablet computer, or other mobile-computing
26 device, the student's parent, in the case of a student under the age of eighteen must be notified
27 of the program and provided with an opportunity to ~~prohibit their child's participation in the~~
28 ~~program. A student age eighteen or older may refuse to accept such a device~~ decline permission
29 for the student to bring the device home or to remove the device from the school.

30 **SECTION 4.** A new section to chapter 15.1-21 of the North Dakota Century Code is created
31 and enacted as follows:

1 **Information and communication monitoring.**

2 Without written parental consent in the case of a student under the age of eighteen and
3 without written consent from a student age eighteen or older, a school district may not utilize
4 any individualized technology that:

5 1. Scans, monitors, or records the student's biometric information, body temperature,
6 vital signs, posture, or facial expressions, provided that the prohibition of this section
7 does not extend to:

8 a. School nurses or other health care professionals delivering health care services
9 to students; or

10 b. Classes or related activities in which the scanning, monitoring, or recording of
11 such information is a required curricular element;

12 ~~2. Scans, monitors, or records the~~ Reviews a student's internet browsing habits;

13 ~~3. Monitors or tracks the student's~~ electronic communications, or data storage, except if
14 there is a reasonable suspicion that a law is being broken, that a policy is being
15 violated, or that an individual is in imminent danger; or

16 ~~4.3.~~ Monitors or tracks the student's location, except as necessary for the provision of
17 transportation services.

18 **SECTION 5.** A new section to chapter 15.1-21 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Assessment questions - ~~Survey items~~ - Limitations.**

21 1. Any assessment required by this state or by a school district may not include any
22 questions or survey items, whether mandatory or optional, that seek information
23 pertaining to:

24 ~~1.~~ a. The political beliefs of the student, the student's parent, or a family member;

25 ~~2.~~ b. Mental or psychological conditions of the student, the student's parent, or a family
26 member;

27 ~~3.~~ c. The sexual behavior of or attitudes regarding sexual behavior held by the
28 student, the student's parent, or a family member;

29 ~~4.~~ d. Illegal, antisocial, self-incriminating, or demeaning behavior engaged in by the
30 student, the student's parent, or a family member;

- 1 ~~5.~~ e. Critical appraisals of individuals with whom the student has a familial or close
- 2 relationship;
- 3 ~~6.~~ f. Legally recognized privileged relationships;
- 4 ~~7.~~ g. Religious practices, affiliations, or beliefs of the student, the student's parent, or a
- 5 family member;
- 6 ~~8.~~ h. Gun ownership by the student, the student's parent, or a family member;
- 7 ~~9.~~ i. Income of the student, the student's parent, or a family member; or
- 8 ~~10.~~ j. Any other matter not directly related to the content of the assessment, as
- 9 identified in state or school district standards.

10 2. Nothing in this section precludes a student from taking a survey in accordance with the

11 requirements of section 2 of this Act.

12 **SECTION 6.** A new section to chapter 15.1-21 of the North Dakota Century Code is created

13 and enacted as follows:

14 **Additional requirements - Penalty.**

- 15 1. In order to validate that student data is protected, as required by law, a school district
- 16 may consult with the information technology department, or a designee of the
- 17 department, before the district acquires or initiates the utilization of any technology
- 18 options.
- 19 2. a. A school district may not enter an agreement with a vendor of technology,
- 20 including software, if the agreement permits the vendor to collect and retain
- 21 student data for any purpose, unless the district contractually and specifically
- 22 requests or requires that the data be collected and retained by the vendor. Such
- 23 a requirement by the district is limited to school district or educational purposes.
- 24 b. Any vendor that willfully violates an agreement under this section is subject to a
- 25 class A misdemeanor and to a civil penalty in an amount up to ten thousand
- 26 dollars per violation.
- 27 3. Each school district shall develop and implement a policy that clearly sets forth which
- 28 individuals, by name or title, are authorized to access specified student data. The
- 29 board shall review the policy annually.

3
HB# 1453
2/16/15

TESTIMONY ON HB 1453

HOUSE EDUCATION COMMITTEE

Chairman Nathe and House Education Committee members, for the record my name is Laurie Dechery, I am the Associate General Counsel for Lifetouch National School Studios Inc. (Lifetouch) which has been in the school photography business, partnering with schools to capture memories and celebrate achievements, for 78 years. Lifetouch is 100% employee-owned, and currently provide direct services to approximately 274 North Dakota schools, with 3 territory offices and 4 portrait studios in the state.

Lifetouch is committed to child safety and student privacy. We are extremely proud of our SmileSafe® child safety initiative in partnership with participating schools and the National Center for Missing and Exploited Children. Lifetouch is among the 13 initial signatories of the *K-12 School Service Provider Pledge to Safeguard Student Privacy* introduced in October 2014 (see www.studentprivacypledge.org). We fully support the North Dakota legislature's efforts to address the important issue of student data privacy and security.

However, at the same time, we have significant concerns with HB 1453, in particular as it pertains to mandating parental consent as a condition to any release of student data to school service providers. We believe that such a mandate would result in unintended consequences, notably by increasing the administrative burden of schools and districts. Moreover, the criminal sanctions and civil penalties associated with violation of HB 1453, however minor, could have a crippling effect on school personnel.

Schools routinely rely on outside parties, including volunteers and contractors, to perform basic administrative tasks, and these engagements often require sharing student information. Privacy laws generally – and the Family Educational Rights in Privacy Act (FERPA) in particular -- recognize that these third parties who act on behalf of an organization should be treated as an integral part of the organization itself, so long as the organization remains in control of the data. Inviting parents to opt-out of school systems simply because certain functions are outsourced could be disruptive to the overall functioning of the school.

In the case of Lifetouch, while the purchase of school pictures by parents is of course entirely voluntary, the school photographer is typically engaged to photograph every child in the school. We receive basic roster information from schools in order to facilitate Picture Day, and we deliver to schools and districts a variety of image-based products and services at no charge to the school. Examples include student ID cards for lunch, library and transportation purposes as well as digital images for the school to use for student recognition, awards, teacher tools, yearbooks, memory books and class composites. Pursuant to the requirements of FERPA – and because it's the right thing to do – we use school data only for the limited purpose for which it is disclosed, and securely destroy the information when it is no longer needed for that purpose.

We appreciate the opportunity to provide input on HB 1453 and would be more than happy to propose revisions or alternative legislation that would accomplish legislative goals to protect children while avoiding unintended consequences.

Presented by: Todd D. Kranda - Lobbyist for Lifetouch National School Studios Inc.



In the event a child goes missing, a Lifetouch SmileSafe Kids® ID card can be used by law enforcement, in conjunction with parents and the National Center for Missing & Exploited Children, to obtain a current photograph from a Lifetouch 24/7 rapid response team. SmileSafe Kids cards are complimentary in participating schools photographed by Lifetouch.

A MEASURE OF SECURITY FROM A SCHOOL PORTRAIT.

Since 2004, Lifetouch has produced more than 300 million cards and the company's portraits have assisted in the recovery of children in 20 states.



LIFETOUCH IN NORTH DAKOTA

In North Dakota, Lifetouch partners with 274 schools to distribute approximately 256,000 SmileSafe Kids cards annually.

Lifetouch®

lifetouch.com

ABOUT LIFETOUCH

Trusted nationally, represented locally, Lifetouch is one of the largest photography companies in the world. With more than 20,000 employees and 12 production facilities, Lifetouch is photography for a lifetime. Headquartered in Eden Prairie, Minnesota, the enterprise is organized around three primary business units.

Built on the tradition of school "Picture Day," Lifetouch National School Studios captures smiling faces, preschool age through high school graduation. Product lines include sports, events, and yearbooks.

Lifetouch Portrait Studios leads the company's retail presence with studio locations hosted by nationally recognized retailers and stand-alone facilities. Award-winning photographers explore the pinnacle of their craft in Flash Digital Portrait and Cilento Photography studios.

Churches and other organizations trust Lifetouch Church Directories and Portraits to connect membership with family portraiture and printed and online pictorial directories.

In North Dakota, Lifetouch owns and operates 4 studios and 3 territory offices.

LIFETOUCH IS EMPLOYEE OWNED

Since 1977, Lifetouch employees have owned the company through the Lifetouch Inc. Employee Stock Ownership Plan (ESOP), allowing employee owners to share in the financial success of Lifetouch.

Through the ESOP, retirement for Lifetouch employees is funded 100% by the company.

Employee ownership provides employees with the opportunity to achieve retirement security in an environment that inspires teamwork, accountability, and higher productivity.

In North Dakota, 46 families are supported by a Lifetouch employee.

LIFETOUCH GIVES BACK

For decades, Lifetouch has given generous support to families and children locally, nationally, and internationally. Employee owners give of their time in support of countless local causes across North America. Tens of thousands of hours and millions of dollars are given locally each year.

Employee volunteers embark on Lifetouch Memory Missions to locations domestically and internationally, constructing homes and schools and providing photographic gifts. Traveling to Kosovo, Haiti, Appalachia, the Gulf Coast, and the Southwest, these volunteers bring a sense of hope and give individuals and families, what is often, a first-ever portrait.

In North Dakota, Lifetouch employees support countless local causes.

Giving back is part of the Lifetouch culture.

IMPORTANT

Student & Staff Data Privacy FAQ for School Records Custodians

Lifetouch National School Studios Inc. ("Lifetouch") is a trusted provider of school services, providing portrait and photography services to schools and families throughout North America since 1936. In preparation for Picture Day, Lifetouch requires certain directory-type information from your school ("School Data"), to be used as follows:

- *To produce and deliver to schools the portrait-based products and services needed for the school's administrative purposes and/or for use in the school yearbook (the "School Service Items"); and*
- *To deliver Picture Day notices on behalf of your school and provide parents of students photographed opportunities to purchase portraits.*

The following FAQs are intended to further demonstrate Lifetouch's commitment to responsible stewardship of your School Data.

What School Data does Lifetouch collect?

The data we need for Picture Day depends upon the specific services and deliverables Lifetouch is providing your school. We limit collection to only that which is necessary for an authorized school purpose. We collect basic roster and classroom information in advance of Picture Day to ensure a perfect name-image match for each portrait and for efficient distribution within the school. If permitted, we collect parents' email addresses in order to deliver Picture Day-related communications on your behalf. In such cases, we do not retain or use such information for any other purpose unless the parent affirmatively opts in to receive updates and promotional offers from Lifetouch.

In addition, School Data may be incorporated into School Service Items. For example, if Lifetouch is producing student ID cards, we need the student ID number to do the job. Schools ultimately decide how much, or how little, information is used in producing School Service Items.

How does Lifetouch use School Data?

Lifetouch uses School Data solely as necessary to create, offer and deliver student images and school administrative services to the school and families of the students. Lifetouch will not sell or license such data to others. To the extent service providers are employed by Lifetouch to assist in fulfilling Lifetouch's obligations, we require compliance with strict confidentiality and security measures.

Lifetouch retains School Data only as necessary and permissible to promote the sale of portraits to parents, to retrieve the images to supply picture orders for the current school year and to support the school for an approved administrative purpose. Once such data is no longer needed for these purposes, it is securely destroyed. While retained, images remain under Lifetouch's control and treated as confidential information.

What about FERPA - does the law allow disclosure of School Data to Lifetouch?

Yes. Lifetouch acknowledges its obligations as a service provider to your school for student and staff photography pursuant to the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g and its implementing regulations, 34 CFR part 99. As such, we affirm that Lifetouch has a legitimate need for certain School Data to provide photographic services and products for the school's administrative needs. Your school retains the authority to control Lifetouch's use of School Data, including the right to require the return or destruction of any School Data provided to Lifetouch at any time.

Additionally, Lifetouch will strive to meet any additional data handling requirements as prescribed by state law and/or school district policies, as long as we are notified of the same prior to disclosure.

IMPORTANT

How does Lifetouch protect School Data?

Lifetouch employs a variety of physical, technical and organizational security measures to help protect School Data from unauthorized access and use.

Facilities. Lifetouch produces portraits and School Service Items within its own U.S.-based photo labs. Lifetouch network devices are located in secure datacenter facilities under direct control by Lifetouch employees. These facilities employ physical security controls such as restricted role-based access, entry logs and video monitoring.

Networks. Devices storing or providing access to School Data are protected with the same multi-layered security strategies that we use to protect Lifetouch's sensitive and confidential business records. Image databases supporting our photo processing labs and websites are separated from associated data files containing identifiable information, and all databases are protected by firewalls, monitoring, vulnerability scanning and authentication procedures. We perform regular network penetration testing and intrusion prevention methods. Our systems enable secure transmission of School Data from and to the Lifetouch network with encryption technologies.

Personnel. Lifetouch's policy is to collect, use and disclose personal information only in ways that are consistent with our respect for an individual's privacy. We require Lifetouch employees to sign confidentiality agreements as a condition of employment, and provide training on the appropriate use and handling of School Data. Access to School Data is limited to those who need it to perform their jobs. We take appropriate measures to enforce these policies.

Enterprise. A comprehensive set of IT policies based on ISO 27001/2 governs information systems practices and procedures throughout the Lifetouch enterprise. As a Level 2 merchant transacting over one million credit card transactions per year, Lifetouch is subject to annual third party certification of its compliance with the Payment Card Industry's Data Security Standard.

Lifetouch is greatly concerned about child safety and we take great pride in our SmileSafe Kids® child safety program. The SmileSafe Kids program was developed in 2004 in partnership with the National Center for Missing and Exploited Children (NCMEC), to provide to parents a picture ID card for their children that might be used by the parent in the event the child is missing. The card is a useful resource for parents in everyday situations – for example, to show store personnel in the event a child becomes lost while shopping.

Moreover, in the devastating event of actual child abduction, the SmileSafe Kids ID card may be used to facilitate 24x7 transfer of a high-quality portrait to NCMEC to assist in search efforts, but only if requested by the parent and confirmed by law enforcement that an open case exists. As of June 2014, this program has assisted in the recovery of 51 missing children and has been recognized by privacy authorities as a praiseworthy example of "Privacy by Design."