

**FISCAL NOTE**  
**Requested by Legislative Council**  
**04/13/2015**

Amendment to: Engrossed SB 2326

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill is related to the duties of the State Longitudinal Data System (SLDS) Committee and reporting the data fields maintained in the SLDS as well as schools protecting and reporting on the data they collect. No fiscal impact is anticipated.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

No fiscal impact. Section 3.4.c relates to biennial security and privacy audits. This should be addressed by the State Auditor's biennial SOC2 and security audits of ITD.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No impact

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No impact

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Dan Sipes

**Agency:** ITD

**Telephone:** 328-4317

**Date Prepared:** 04/14/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**03/30/2015**

Amendment to: SB 2326

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill is related to the duties of the State Longitudinal Data System (SLDS) Committee and reporting the data fields maintained in the SLDS. No fiscal impact is anticipated.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

No fiscal impact. Section 1-6c relates to biennial security and privacy audits. This should be addressed by the State Auditor's biennial SOC2 and security audits of ITD.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No impact

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Dan Sipes

**Agency:** ITD

**Telephone:** 328-4317

**Date Prepared:** 04/02/2015



**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/04/2015**

Amendment to: SB 2326

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill is related to the duties of the State Longitudinal Data System (SLDS) Committee and reporting the data fields maintained in the SLDS. No fiscal impact is anticipated.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

No fiscal impact. Section 1-6c relates to biennial security and privacy audits. This should be addressed by the State Auditor's biennial SOC2 and security audits of ITD.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No impact

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Dan Sipes

**Agency:** Information Technology Department

**Telephone:** 701.328.4317

**Date Prepared:** 01/27/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/23/2015**

Revised  
 Bill/Resolution No.: SB 2326

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$130,000		\$130,000	
Appropriations			\$130,000		\$130,000	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill is related to the duties of the State Longitudinal Data System (SLDS) Committee and reporting the data fields maintained in the SLDS. The cost for this fiscal note is for the annual audits provision and the annual training provisions in the bill.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1-6c related to annual security and privacy audits is slated at \$25,000 per year and assumes the auditors will use the results of ITD's biennial SOC2 audit as a starting point for the security/privacy audit.

Section 1-6f related to annual training makes up the remainder of the fiscal note at \$40,000 per year.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No impact

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

See 2B

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

These would be continuing general fund appropriations not included in the executive budget.

**Name:** Dan Sipes

**Agency:** Information Technology Department

**Telephone:** 701.328.4317

**Date Prepared:** 01/27/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/23/2015**

Bill/Resolution No.: SB 2326

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$200,000		\$150,000	
Appropriations			\$200,000		\$150,000	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill is related to the duties of the State Longitudinal Data System (SLDS) Committee and reporting the data fields maintained in the SLDS. Most of the cost for this fiscal note is for the annual audits provision and the annual training provisions in the bill.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1-6c related to security and privacy audits and Section 1-6f related to training constitute the majority of the costs for the fiscal note totaling \$130,000 for each biennium.

Section 2 requiring the publication of data fields that will be reported to PowerSchool or other state systems. This cost is higher in the first biennium at \$60,000 to expand the data dictionary and allow for custom elements that will be reported. This would allow schools to link to the SLDS application to publish the required data. \$10,000 in included in the 17-19 biennium for any minor modifications.

Section 1-6d,6e related to notification protocols and data retention policies are estimated at \$10,000 legal fees for the development and maintenance of applicable policies and protocols.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No impact

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

See 2B

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

These would be continuing general fund appropriations not included in the executive budget.

**Name:** Dan Sipes

**Agency:** Information Technology Department

**Telephone:** 701.328.4317

**Date Prepared:** 01/27/2015

**2015 SENATE EDUCATION**

**SB 2326**

# 2015 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Missouri River Room, State Capitol

SB 2326  
2/2/2015  
Job # 22942 (43:20)

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

### INITIAL HEARING

Relating to reportable data fields and duties of the state longitudinal data system committee

### Minutes:

3 Attachments

**Chairman Flakoll** called the committee to order at 9:00am with all committee members present.

**Nicole Poolman**, District 7 Senator (*see attachment #1*)

**Senator Davison**: Do you support the collection of data use for schools?

**Senator Poolman**: Yes, I support collecting and also protecting it.

**Senator Davison**: So this bill is for the communication and collaboration between parents and schools?

**Senator Poolman**: Correct. Senator Schaible served on this SDLS committee as well, so he would be good resource during your committee work. A lot of this has been happening already. This is simply placing it into code to ensure that we are doing that. At the local level our information is not as safe. I think of all of the technology that teachers increasingly use, and I don't know if teachers always understand if the district has a policy or not. Our district uploaded our entire student list to a textbook company for an online textbook. I don't know if that is acceptable under FERPA. Even at the national level, there are discussions that teachers and superintendents need more training to keep tabs on student information at the local level.

**Vice Chairman Rust**: You ask for annual training for data protection. How long would this training be?

**Senator Poolman**: In my discussions with the Department of Public Instruction, they want to start in continuing education requirements for superintendents, placing a data collection and privacy as part of that training. I don't want to tell people what they have to do. We are just beginning so what is affordable and practical for each school district can be figured out individually.

**Chairman Flakoll**: Is part of that because of the evolution of some of the systems and data are increasing exponentially and we may not know what will happen in the next few years in terms of other applicable systems?



**Senator Poolman:** Correct. This is exactly the issues that we experienced as we tried to draft this bill. We don't know how data collection will change, and we don't want to put something into code that cannot last for a while.

(6:30) **Mike Ressler**, State Chief Information Officer with the Information Technology Department (see *attachment #2*)

**Chairman Flakoll:** Please explain the Fiscal Note.

**Ressler:** Worst case scenario, I believe there are ways to lower this fiscal note. The biggest item currently is the annual audit. Today the Information Technology Department is audited annually but not necessarily the program of the SLDS. We assume that because it would be an annual audit, it's not something the auditor's office would do. It would probably have to be hired externally, and we don't know how much that would cost. We estimate about \$50,000 a year. So that is \$100,000 there with regards to the fiscal note. We put in \$80,000 for the annual training, but we are not sure how we would coordinate the training. It's just a matter of collaboration with the schools. An item we may have missed is publishing the information on the data fields of the data fields out at the school's websites. We didn't want to speak on behalf of the schools and what it would cost them so we estimated \$60,000, but there is potential for being lower or even for no charge. There's an opportunity for us to update this fiscal note.

(8:44) **Senator Marcellais:** What is the \$10,000 legal fees in the development of policies and protocol for?

**Ressler:** Any time we use the attorney general's office for anything because we are an internal service fund, we get a bill from the attorney general's office. That was an estimate.

**Senator Schaible:** We have concern about the amount of information that is collected and how that information will be used. Will this bill clear up some of that confusion?

**Ressler:** It will help explain what role ITD plays. The information that we have in the SLDS is very secure. It is not information people have access to, only workers of ITD. We create reports and other analysis that we report out at a very high level. More documentation like this gives confidence to the average person, that this isn't just data that sits out some place that anybody can request and receive access to. Having this in statute is good.

**Senator Marcellais:** will this system share data between schools themselves. For instance if a student transfers from one school to another, will that data be transferred with him or her?

**Ressler:** I will refer that question to the next speaker. It isn't like the data automatically comes in to the SLDS without a purpose. We have identified what data we need in the SLDS. Any information we collect already exists some place. It is probably out in the schools' computers and file cabinets. The SDLS is the most secure location of any of the entities that are storing data. When I look at the security of all the facilities where data is stored, I would argue that we are the most secure based on the technology and the dedicated staff.

**Senator Marcellais:** You mention that it is stored someplace else. It is a backup or the primary data? How often does it get updated?

**Ressler:** That all depends on the data you are referring to. There are certain pieces of data that the school collects due to the origination. If they store it to their systems, that data then gets transferred to the SLDS, so it could be a backup.

**Senator Davison:** Explain the \$60,000 for the expansion of the data dictionary. We've been using PowerSchool now for perhaps 3-5 years. What kind of custom elements are they anticipating? Where did you get that number?

**Ressler:** That would be how the schools would display that information on their websites. That is the portion I claimed I think there is no cost in doing that. We would have the data fields identified and then schools could publish that information on their websites so the average person could go out and see.

**Senator Davison:** The biggest challenge we have with PowerSchool and the data is the consistency in which it is put in at the school district level. Do you have any suggestions on how to make sure this is consistent and valuable for us?

**Ressler:** That is an advantage of the PowerSchool tool. It selects those data fields that are standardized across every school district. That brings us to data consistency among school districts.

**Chairman Flakoll:** Do you think this is open ended enough to allow us to react to the rapidly changing capabilities within IT?

**Ressler:** I do. As we learn things, this bill allows us both flexibility and accountability. I am more concerned about where my kids put their data rather than adults putting theirs.

(16:45) **Lisa Feldner**, SLDS representative (*see attachment #3*)

**Feldner:** On the picture of the data warehouses, the SLDS isn't one system with all of the data combined in it. Rather it is multiple data warehouses that have owners. They are all separate and in the capital data server just as the PowerSchool servers are. This data isn't going out into the cloud and coming back in.

**Chairman Flakoll:** What will be our balance in protecting privacy yet making sure we can stitch some of the important components?

**Feldner:** In the SLDS policy and practices, we use data sharing agreements that are legally binding agreements between agencies. The originators of the data are the owners and it is only shared with their permission. We have been effective with this and defining data that can be used in aggregate reporting. We have a good process in place and have been working at this since about 2007 to get the data sharing. They've been refined every year. We have the flexibility but keep privacy as our first priority.

**Chairman Flakoll:** Page 3 subsection F, It talks about the state employees in the ND University System office. Would your predecessor who is a contractual employee be subject to that?

**Feldner:** I am not certain. There are tight restrictions as to who has access as an employee to the SLDS. ITD employees who are part of the SLDS team are considered authorized representatives and need security training to do their jobs. However that is a good question.

**Chairman Flakoll:** How do we protect everyone involved from that type of scenario? What are the checks and balances?

**Feldner:** Audits are a good place to start. Each agency that participates in the SLDS is very particular with the data elements they share and who they are sharing them with and that the data be destroyed after use. We have those checks and balances in place but perhaps audits can assist in that.

**Chairman Flakoll:** In the case of Mr. Thursby, he was taking emails from his bosses. Are there consequences for this?

**Feldner:** I believe in each agency's human resources policy there are. There is that policy in the NDUS, it just wasn't enforced.

(22:20) **Senator Marcellais:** My granddaughter is enrolled in UND. In order to get the transcript there, you must get a hard copy. Is there anything that will be online?

**Feldner:** You are referring to e-transcript. We are halfway through training high schools. By the end of this school year, they will be electronically transmitting transcripts not just to public universities but private as well. This is how we will move data. From PowerSchool it will go through e-transcript so it won't have to be manual handled. We hope it lessens the workload and possibility of error.

(24:10) **Senator Davison:** With the REA's, if we want collective data from each of our 40 schools, we need to have them sign off on something so we can have access to that data at a collective level. Can schools refuse them to have access to student data at any time?

**Feldner:** I would say to a certain extent. It depends on the entity. In terms of building the SLDS at the K12 level, because the State Accepted State Fiscalization funds in 2009, we said we would build an SLDS. Therefore schools cannot opt out of sending data to the SLDS because we need 3 public reports that are in the aggregate. They are on the percentage of students who require remediation at post-secondary, the students who complete one year of post-secondary education, and another component that I cannot remember. Since we accepted 67 million dollars of fiscal stabilization funds, we were required us to build the SLDS.

**Senator Davison:** But they can opt out of giving any additional information that is in the SLDS regarding information taken from PowerSchool?

**Feldner:** That is correct. Most schools upload more data through the SLDS because they like the reporting that comes from it. We accommodate whatever they want to upload. None of the reporting is ever transmitted out of state. We don't send data or reports to the federal government or other states. This is all internal to the state of North Dakota.

(27:40) **Vice Chairman Rust:** There is a privacy concern for many people. I've had discussions about the amount of information collected by Common Core and also the ACT. When the SLDS gets information from ACT, do they get disaggregated data or everything they collect from ACT?

**Feldner:** All we include from the ACT is the test score, composite and the sub scores, district, the school, state student ID, and name so we can match it and upload the data elements.

**Vice Chairman Rust:** Do you get any other information?

**Feldner:** We ask ACT just for the fields that we want. We don't want to load those other fields because it can cause error.

**Chairman Flakoll:** If it is different, please email us.

**Steve Snow,** Department of Public Instruction is called to the podium

**Snow:** the Department of Public Instruction has a contract with ACT. We receive the complete files from ACT and upload with what we mentioned. We match the student based on some of that demographic information so we know that this student matches what we already have collected. We also bring in the scores. The rest of the data is not uploaded in any system.

**Vice Chairman Rust:** Is that information brought into the system and then remains there? Is it still in the system after it is retrieved?

**Snow:** It is not on the system at all. We only pull in the information we need, which is the scores. They send us a big file and we pull out the information we need to upload it to our

system. We have the ACT for the scholarship and we send that information over to the ITD system for the scholarships.

**Vice Chairman Rust:** So then you do have the information?

**Snow:** We do not. We get two different files. One of them is a CD file that we get rid of after we upload the data needed. The other is a file we download. We upload the information to match a student. We find the school district to match it to our system and then bring in the scores.

**Vice Chairman Rust:** How long do we keep this information on students? When do we start and how far into the future?

**Feldner:** We don't own that data, it is up to the school district. If it is part of their educational record, then it has to stay on their transcript. ACT scores at this point are part of the student's transcript so they stay there.

**Vice Chairman Rust:** Can we do a better job with public relations in regard to SLDS and the concerns that parents have?

**Feldner:** We can do a much better job of public relations. That is partly what this bill addresses. We need to make it clear what we do with data.

(36:55) **Senator Schaible:** You mentioned that no data is sent outside the state. Is it possible that a request can come from another state or from the federal level?

**Feldner:** There has been a case where we have denied a request. We haven't had a request from the federal government. That would have to come before the owners of the data. That would be up to the individual school districts and their permission to release that.

**Senator Oban:** There will be people who are either opposed to data collection or in support. Do you feel like this will alleviate the concerns that you are intending?

**Feldner:** I hope so, but to a certain element, no. Better communication of what we do is a good idea.

**Chairman Flakoll:** If Illinois state wants a transcript from a student in Bismarck and sends a request in, do they get denied?

**Feldner:** The student or parent releases that information.

**Chairman Flakoll:** So the only way Illinois can get that information is for the student to request that their transcript would be sent to them?

**Feldner:** Correct. The parent must sign off the student is under 18 years old.

**Vice Chairman Rust:** Suppose the University School of Medicine wants information with regard to North Dakota students who are applying there. What kind of information can they receive from ITD?

**Feldner:** They would have to request that data from the individual school districts. That is up to the schools to reply.

**Vice Chairman Rust:** Could they get information like how well they have performed or poor behavior records detailing detentions or suspensions? If so could they get it by name?

**Feldner:** No. we don't collect suspensions or expulsions. Even if we did, no. They would have to go to the individual school districts and I suspect they would be turned down because that is not directory information. It is covered by FERPA.

**Chairman Flakoll** requests an updated fiscal note.

**Senator Poolman:** The current bill calls for annual privacy and security audits. Everyone else in ITD does it biennially. It would result in a reduction for the fiscal note if we amended it that way.

**Chairman Flakoll** ends the hearing on SB 2326.

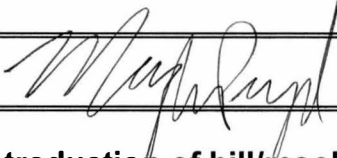
# 2015 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Missouri River Room, State Capitol

SB 2326  
2/3/2015  
Job # 23071 (8:50)

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Explanation or reason for introduction of bill/resolution:**

COMMITTEE ACTION

**Minutes:**

No attachments

**Chairman Flakoll:** The revised fiscal note drops it in the first year from \$200,000 down to \$130,000. We had also talked about if we need an annual audit if we are looking to save money. Do we prefer annual or biennial audits?

**Senator Davison:** Besides Senator Schaible, who else serves on that committee?

**Senator Schaible:** Representative Nathe also does.

**Chairman Flakoll:** On page 2, line 25 we will change annual training to biennial. For the record, hopefully it is electronic training

**Senator Schaible** moves that the amendment of changing annual audits to biennial audits.  
**Senator Oban** seconds the motion.

**A vote was taken: Yes: 6, No: 0, Absent: 0**

**Senator Davison:** The REA's received an email from the attorney general yesterday regarding recommendations to update data sharing agreement. Is there one form for everyone outside of the school district, or is there a specific form for REA's and each individual group? The Attorney General suggests that it should be specific to that vendor or third part. Is that how we understand this?

**Senator Schaible:** Yes, it is unique to the contract of what you are sharing. Obviously you can't use the same form because that also goes into job records and other things. They are specific to the type of information received.

**Senator Schaible** moves a do pass as amended and rereferred to Appropriations.  
**Senator Marcellais** seconds the motion.

**A vote was taken: Yes: 6, No: 0, Absent: 0**  
**Senator Schaible** will carry.

15.0956.01001  
Title.02000

Adopted by the Education Committee

February 3, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2326

Page 2, line 25, replace "annual" with "biennial"

Renumber accordingly

TD  
2/3/15

**2015 SENATE EDUCATION COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2326**

Senate Education Committee

☐ Subcommittee

Amendment LC# or Description: Annually to biennially to audits

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 Senator Schaible Seconded By Senator Oban

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	X		Senator Marcellais	X	
Vice Chairman Rust	X		Senator Oban	X	
Senator Davison	X				
Senator Schaible	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:  
Annually to biennially to audits on page 2 line 25



**2015 SENATE EDUCATION COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2326**

Senate Education Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

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 Senator Schaible Seconded By Senator Marcellais

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	X		Senator Marcellais	X	
Vice Chairman Rust	X		Senator Oban	X	
Senator Davison	X				
Senator Schaible	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Schaible

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

**REPORT OF STANDING COMMITTEE**

**SB 2326: Education Committee (Sen. Flakoll, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2326 was placed on the Sixth order on the calendar.

Page 2, line 25, replace "annual" with "biennial"

Renumber accordingly

**2015 HOUSE EDUCATION**

**SB 2326**

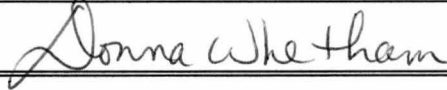
# 2015 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Pioneer Room, State Capitol

SB 2326  
3/10/2015  
24543

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to reportable data fields; and to amend and reenact relating to duties of the state longitudinal data system committee.

Attachment 1-5.

## Minutes:

**Chairman Nathe:** opened the hearing on SB 2326.

**Senator Nicole Poolman:** District 7, introduced SB 2326. (1:00- 2:58) (See Attachment #1).

**Rep Rohr:** In section 2 we talk about power school and some parents have asked about the issue of audits of power school as well?

**Senator Poolman:** We didn't talk about audits of power school, since that is at each local district. I didn't realize we could do that at the state level. We have the control over the SDLS so I put the audit in for that. That would be a question for ITD I think.

**Rep. Olson:** All the new points you added into this bill, is mostly things they are already doing? Do you know if they are not doing what you are asking right now?

**Senator Poolman:** They are establishing those protocols. They have not put that into practice yet. I think Chairman Nathe is on that committee so he can answer those questions as you work on the bill. They have started on some of those issues and they are working on others. The audits they haven't done in the past. Some of them are probably already happening.

**Mike Ressler: ND State Chief Information:** (4:31-5:19) in support of SB 2326. (See attachment #2)

**Chairman Nathe:** Are we doing some of this already?

**Mike Ressler:** I do believe in most cases we are following those practices already. The current audit that we are doing today doesn't look specifically into SLDS system but that is something we would make sure happens every other year. We have multiple audits that are done on different entities and we can incorporate the power school as well as SLDS in that audit.

**Rep Rohr:** Should we include that in this bill as well about power school?

**Mike Ressler:** We sure could.

**Rep Rohr:** I will work with you on that then.

**Rep Hunskor:** Would you tell us what this bill would do beyond what is already being done?

**Mike Ressler:** Today we are in the process of putting policy together. The policy is documenting current practice. Many of the policies are in place they are just not documenting policies. So that is the first thing we are doing. The audit is something else we would focus more on the SLDS system as well as the practices we wrap around Power school. We could do that as well. The training is an area we are not doing today and Jody French the director of Education Technology council can address that better. That group could provide a little better training with the schools. I am sure they are all doing some sort of training but it is not coordinated at a high level. We can assist in making sure the schools know how to handle that data and when they release data, who they release it to.

**Chairman Nathe:** So we are basically taking current policies and putting it into code. But the training language is the new stuff? Correct?

**Mike Ressler:** That is correct

**Rep Zubke:** Do you do any type of penetration testing, external penetration testing and do you have policies address if there is a data breach?

**Mike Ressler:** We do a very extensive process. For four years the legislature has authorized the state auditor's office to hire a firm to do breach attempts on ITD. It hasn't been specifically on the SLDS system but every session they pick about 5 systems they try to penetrate. Overall ITD has done very well. We never want to get arrogant when it comes to security. By the time we think we have everything protected we could see a breach. We do our own attempts to try to breach the system. We have a lot of confidential data so we take security very seriously.

**Rep Kelsh:** The people that hack into these systems, are they ever prosecuted?

**Mike Ressler:** Many times it is breached from outside of the country so we are unable to go after them. We have the system within our walls so we know where our data is at. We have a Trust Zero policy. We can direct who has access to what data and when you access

that data it tracks where the data is going and to who. We are going to see less convenience with our online applications. There will be more security protecting the data. In the event of a breach there is a lot of human service information that have federal regulations around, if ever data is disclosed inappropriately there are rules. So it is why you are seeing all the breaches reported today.

**Rep Hunskor:** In federal law do you have to abide by federal law?

**Mike Ressler:** We do, so when the auditors come in that is what they are auditing to see if we are complying to all the state and federal regulations.

**Rep. Olson:** Regarding data sharing agreements, do you publish what data sharing agreements are in place. Do we need something in as an amendment to this bill or whether that is something that ITD is thinking about doing?

**Mike Ressler:** I think that is a good idea. I think transparency is the message I have loud and clear. We need to disclose who accesses that data.

**Rep Schreiber Beck:** Is the Trust Zero policy is that instituted at the district level or just at a state

**Mike Ressler:** That is just here.

**Rep Schreiber Beck:** When you talk about data breaches, are there rules or penalties in place and what is the penalty?

**Mike Ressler:** I am not familiar with the FERPA penalties if there are any. But I do know there is human services penalties around Medicaid data and I don't know them all. I could get you that information. If you have a disclosure of 50 people or more I believe there are penalties with caps as high as a million dollars. I believe there are penalties like that. We have not had a disclosure breach at this time yet.

**Rep Schreiber Beck:** When there is a breach people are after information like my credit card number or something of that nature. The information that is being held here is of a different nature.

**Mike Ressler:** Maybe that is why we have been successful because I am not sure what data they would want here.

**Chairman Nathe:** If they want to get data on students they can just go on their Facebook page. There is probably more data there than what you have on them. You might be right on that your data is not what they want, they can get it someplace else.

**Mike Ressler:** So my advice I tell everybody is do your credit reports every 4 months.

**Jody French : NDETC Director:** (14:40-16:25) in support of SB 2326. (See attachment #3).

**Lisa Feldner: Vice Chancellor for North Dakota University System and Chair of SLDS committee.**(16:30-17:38) in support of SB 2326. (See attachment #4).

**Rep Rohr:** I would like a copy of those drafts if you would email them to me.

**Lisa Feldner:** Sure.

**Amy Jirasa-Smith: Parent:** I am in support of SB 2326. I would like to see the amendments adopted.

**Brian Schimelfenig: Parent from Fessenden:** (19:40) I am in support of SB 2326 and with the amendments that are suggested. They will help us with our concerns and help us have a better understanding what data is collected.

**Stacey Castleman: Parent:** in support of SB 2326. It doesn't meet all of the needs of the parents. It doesn't cover the training and that was brought up today. Training on the higher level and also for teachers of knowing what data can be taken and such. One of the things is class Dojo that is used in many class rooms as behavior modification. It is a fabulous app for children who love monsters. It also encourages them to put in lots of personal information. This brings me to the question by Rep Schreiber Beck on credit cards. Why that is usable data and someone could get something with her credit card number? As far as kids and their information it doesn't just affect the children and their future. It affects the entire family. You can get 3 data points about the child and figure out where they are and who they are. It affects me and the entire family. We do not want this data out. If we would accept the amendments it would meet more of the parents needs also.

**Rep Schreiber Beck:** What was the name of the app you were talking about?

**Stacey Castleman:** Class Dojo.

**Todd Kranda: Lobbyist for Lifetouch National School Studios Inc.** (23:00-26:18) In support of SB 2326 and proposed an amendment to Rep B. Koppelman amendment. (See Attachment #5). We would like to be involved in the amendments.

**Rep Rohr:** There is a statement here that says once such data is no longer necessary it is destroyed. How long is the data kept?

**Todd Kranda:** It is a policy that we do not retain data longer than necessary. The minimum is one year and the amendment we have that you destroy it as soon as your purpose is accomplished or 1 year. The amendment attempts to set a deadline so the data is not stored indefinitely.

**Rep. Olson:** The part that concerns you is the part of the proposed amendments that would require a parental opt in, order to take any biometric information on a child such as figure prints, iris scans, facial expressions. That is where your industry doesn't want to

require an opt in, in order to have to take photos of kids. If he was to exclude directory information as defined by FERPA from the opt in, I believe that would address your concerns. Would that satisfy your needs?

**Todd Kranda:** I think it does but I would have to get back to the attorney I am working with to make sure it is consistent with them.

**Chairman Nathe:** That is something we can take up when we do committee work on the bill.

**Rep Mock:** I would appreciate the potential amendments.

**Chairman Nathe:** We will address the amendment during committee work.

**Chairman Nathe:** Any other support for SB 2326? Any opposition for SB 2326? Seeing none. Closed the hearing on SB 2326.



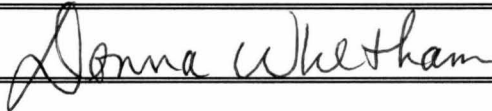
# 2015 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Pioneer Room, State Capitol

SB 2326  
3/16/2015  
24913

☒ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to reportable data fields; and to amend and reenact relating to duties of the state longitudinal data system committee.

Attachments #1 -5.

## Minutes:

**Chairman Nathe:** reopened the hearing on SB 2326.

**Rep B. Koppelman:** Explained 15.0956.02002 (1:10-4:09). (See Attachment #1 &2).

**Chairman Nathe:** I would just like to get Superintendent Baesler's opinion on the amendments.

**Kirsten Baesler: State Superintendent o Department of Public Instruction:** We do believe this amendment is good. There should be an expectation of transparency and identification of what is being collected. We try to do that at the state level but we don't have access to what each school district collects. So it will be good to add that policy. The only concern I have is on page 4, speaking of only.02002 version where it says "the board of each school district shall establish a policy addressing the manner in which a parent may opt out of any disclosure involving directory information or personally identifiable information". Speaking with Jerry Coleman with the DPI and our MIS director Steve Snow that will be a challenge for delivering the funding formula. Personally identifiable information is needed for the funding formula and it is not an opt out. When a person or parent opts out for the initial recording of STARS it essentially makes them a non-public school student. The only way we are to deliver funds and prevent duplication of payment is to provide that.

**Rep B. Koppelman:** I believe we have had a variation of that wording in the amendments as we are working through them. Counsel drafted the final verbiage for here. The intent wasn't to limit the use of person identifiable or directory information within the school or

within the function of the school has to work with DPI, etc. I think the idea is to a third party. I don't if you have any suggested changes or we can ask counsel. It wasn't intended to do that.

**Kirsten Baesler:** We will just have to clean up that language to say that. Parents have that opt out of information at the beginning of the year. It doesn't need to be part of the directory, but the way it is read that a parent may opt out of their disclosure of their child's personally identifiable information. When it is read that way we can't provide funding per student foundation aid formula.

**Chairman Nathe:** So the school loses payment?

**Kirsten Baesler:** Correct.

**Rep B. Koppelman:** I would suggest we get Anita here to help us with that.

**Chairman Nathe:** Anita Thomas is here now.

**Anita Thomas: Legislative Council:** We can put a coma and another phrase along the lines of ", except as required in order to administer the state finance formula." In Section 3, the end of subsection 3 on line 11.

**Rep B. Koppelman:** I move to adopt **Amendment 15.0956.02002** and Anita Thomas's additional language.

**Rep Rohr: Seconded**

**Voice vote taken. Motion carried.**

**Rep B. Koppelman:** (10:50-17:57) Explained amendment 15.0956.02003. (See Attachments # 3,4 &5). I hope this provided the compromise that people are looking for.

**Kirsten Baesler: State Superintendent of Department of Public Instruction:** Rep B. Koppelman and I have had many hours of discussion about this and I completely understand the good intentions that are provided in this bill. But I fundamentally do disagree with all three sections. Understanding the intent and I believe it is good intentions. When I read this it reminds me of school district policy which should be decided by the school board. We have tried to include many things, compromising and I think that is good work effort on our part but in doing so we were trying to cover every situation and predict every scenario out there and find a way. That is what board policy does and administrative rules. You just drill down to more finite detail as you get from state law to school board policy to administrative rules to deal with these things and be able to adjust more fluidly and flexibly. I don't believe it's the role of the legislature to be this detailed. It is It is dictating specific things to the school board. I do believe it would be enough to direct them to do this.

**Rep. Olson:** You would have preferred amendments that would have directed them to create rules and disclose how the use biometric information if they did?

**Kirsten Baesler:** If they do, I would feel much more comfortable directing school boards to create this type of policy.

**Chairman Nathe:** Do they create this kind of policy on their own right now?

**Kirsten Baesler:** Yes, when issues like this present themselves to the school board that is what the membership is for.

**Chairman Nathe:** Some do and some don't, would that be a fair assessment?

**Kirsten Baesler:** Yes. Again I am not sure, those are elected officials as well and I am not sure it is the role of a state legislative body to anticipate that. If some people are not doing it the way we want them to do it then we need to come in and make state law about it. There are elected officials locally for a reason.

**Rep. Olson:** Would say if they were collecting the biometric information that under the amendments that we just adopted requiring them to publish the list of data fields, that they would then be disclosing that fact within that publishing?

**Kirsten Baesler:** Exactly. I think we are missing an opportunity with this conversation. I think two things that would be extremely beneficial to North Dakota. I think it is very important to add to ITD staff a Chief data security officer. Someone educated, trained and continue with the most cutting edge on security. More and more large school districts are hiring those as well as more states. Right now we are having Tracy Korsmo with ITD who has another full time job and Steve Snow with DPI who also has a whole other full time job to be the data security people. It is outside their wheel house. They are doing the best5 they can but it is outside their degree area and their scope of experience. The second thing is these policies in school districts are led by superintendents and principals. I believe our most significant security breach is not really happening at the state level. I think information is leaked when a teacher receives an email if you fill in form, you will receive this free app loaded for all your students. It has been 3 years since I have been in the school system and I had numerous emails like that. I relied on my supervisors to communicate that at a school staff meeting. This training that is necessary for our principals and superintendents should be part of their continuing education credits. There are a whole avalanche of opportunities that are now being created from campuses around the country focusing on just this because it is a nationwide problem.

**Rep B. Koppelman:** When we discussed the officer that you were talking about in context to the amendments, that was in a previous version where it directed that school districts must do a lot of things to make sure that data security is protected. Since the is not in these amendments anymore, other than the penalty purpose, I don't know if that pertains to this amendment. In the sense of your comment, I don't know if you understand the point of these amendments. The point of these amendments are not geared toward data security other than possibly the penalty. These amendments are geared toward parents having some say in the expansion of data collected about their kids in non-curricular, non-conventional ways. If you had district policy, every school district I talked to I asked about district policy, that limited or restricted the use of biometric information gathering. They

don't have one. I asked them about their policy with survey's, sometime they had a thin policy about one or two. But generally they were one or two from outside the district but they weren't broad policy. If school districts had wanted to govern in this area or had felt obligated to govern they have had literally forever to do that and they haven't. This is trying to set that forward. To the point of the information officer, much like the local school districts who may not want these restrictions because they want to collect multiple forms of biometric information, without restriction. They may not be doing it now but they want the ability to collect biometric information without parental consent. That is why they don't like this and the security information officer about at ITD if that person's main job is to just keep security he may look at the more the better when it comes to different data points for whatever purpose he is there. I don't see any of those other things that you have offered as an alternative to this. Absent of saying they know what's best just let them do what they want and if the parents don't like it go to a private school or something. I don't know what the solution is that you can offer at a local level to offer equal protection across the state. Any suggestions?

**Kirsten Baesler:** A bit, yes. You were a school board member yourself and you needed to get Reps.-elected every 3-5 years. You needed to be responsive to your constituents. I think you need to be responsive. I know I certainly was. To the point of the school districts that have it or don't have it and how do we insure there is equability across the state. The most prominent example is "the bullying bill". In 2009 when the legislature passed a bill to have all school districts to put a "bullying plan" in place. They didn't dictate what that policy said, they did have some reporting requirements, but immediately the School Boards Association went to work and created a boiler plate that schools could start with and discussed that at a local level based on what type of environment and situation they had. I don't think the first step to be taken is to create to state law because some school districts aren't doing it. I think there are directives, as was stated before, that come from the state that school boards do do that. The Chief information officer, again to the training that superintendents and principals need on this and what I think should be directed required training from the state is the fact that school boards, I don't think superintendents and principals don't want this because they want to do it without parental consent. I don't know if a superintendent or principal stated that to you. So If that is the case they need to be educated and that is our responsibility as a requirement because they need to be educated on what their responsibility is to respond to their community and students. This is about the time it takes away from what the superintendents and principals real job is. So that is my concern. I think local school boards should address exactly what they need to address and leave it up to the local school districts.

**Vice Chairman Schatz:** You mentioned teachers were asked to give information so they could get free downloads. Why aren't these solicitors being blocked by Send It? They block other things that come in, why wouldn't those be blocked?

**Kirsten Baesler:** It depends on security and I am not an IT person. You set a filter level and it has to be set for certain things. Some of those come from educational companies and so the address, or the IP settings may come from an educational institution. When we talk about what is being blocked in our schools because of the e-rate. More is blocked at school than anywhere else. Shared a personal story about internet access being blocked. (30:50).

**Rep D. Johnson:** I recommend a do not adopt the amendment 15.0956.02003.

**Rep Kelsh:** seconded .

**Rep B. Koppelman:** I think what I heard from individual superintendents when talking with them is that they did not like parts of this at times. Understand that this is compromised several times to make it easier for them. At one point when it was opt in to surveys, they said it is just more administrative work, we have to do this and the same thing was true about the biometrics. Then with several superintendents said don't you know the benefits of us collecting biometric information. They might not have said it that way, but they meant different types. If that proves to be good and we had to get an opt out from parents that would be terrible. Not quite those words, but difficult would be a word they used. We have to make a decision here. Before all this technology comes in we can deal with this, if we do we wait for something to become a problem and someone threatens to throw a school board out in election because they are offended by it and finally the district comes around to doing something about it. At which point they will have to undo things they started to do, under new practices as this technology unfolds. If that is what you want you should vote yes on the do not pass. If you believe in supporting what the parental rights have been historically where this has not been done and before the invasion of many, many surveys and before the expansion of the biometric information and where that might go, then you should vote against the do not pass. You have to pick a side here. You have to pick what is easier for school districts or and parental rights. I urge a no vote on the do not pass.

**Rep Schreiber Beck:** I disagree with what Rep B. Koppelman is saying, what is easier for school districts or if parents should have rights. We have talked about it numerous times and you cannot predict what ramifications this will have written as it is. That bothers me a lot because I don't know what is in the future and things can be changed but these are extremely prescriptive and every district is different and everyone deals with it differently. My dealings were with special Ed kids a lot and some of this makes me really nervous.

**Rep Kelsh:** Any time you set some hard and fast rules and then try to list a bunch or exceptions to them you can start getting into trouble. The example you used if you contact the parents and they don't answer you, you can go ahead. If they don't answer you in how long? 3 days, 3 weeks or 3 months at what time? If they want to come back at you they will and they will come back strong. You are opening things up for a lot of controversy.

**Chairman Nathe:** Seeing no other discussion the clerk will take the roll on the do not pass the amendment 15.9056.02003.

**A Roll Call Vote was taken. Yes: 9 No: 4 Absent: 0. Motion carried.**

**Rep. Olson:** Do Pass as Amended on SB 2326.

**Rep Meier:** seconded.

House Education Committee

SB 2326

3/16/2015

Page 6

**A Roll Call Vote was taken. Yes: 13 No: 0 Absent: 0. Motion carried and for the record it is first engrossment version 15.0956.02002 plus the added language from Anita Thomas.**

**Rep. Olson: will carry the bill.**

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2326

Page 1, line 1, after "enact" insert "three new sections to chapter 15.1-02 and"

Page 1, line 2, after the first "to" insert "the collection and maintenance of student data and"

Page 3, after line 18, insert:

"**SECTION 2.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Superintendent of public instruction - Identification of data - Rules.**

The superintendent of public instruction shall by rule identify:

1. All data fields that the superintendent collects or maintains about students;
2. The purpose for collecting or maintaining the data; and
3. Persons with whom the data are shared.

**SECTION 3.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Student data - Collection - School district responsibility.**

1. The board of each school district shall publish on the district's website a list of all data fields that the district collects or maintains about an individual student and indicate for each field:
  - a. Whether the field is classified as:
    - (1) Directory information;
    - (2) Personally identifiable information; or
    - (3) Non-personally identifiable information;
  - b. The purpose for which the data is collected or maintained; and
  - c. Any person, other than a school district employee, with whom the data are shared.
2. The board of each school district shall establish a policy and identify therein, by name or title, which school district employee has access to the data.
3. The board of each school district shall establish a policy addressing the manner in which a parent may opt-out of any disclosure involving directory information or personally identifiable information of that parent's child.

4. The board of each school district shall review the requirements of this section at least annually and modify the district's website and policies to ensure accuracy.

**SECTION 4.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Application of chapter.**

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

1. A court;
2. A governmental entity, if there is a reasonable belief that an individual is or may be in imminent danger; or
3. A vendor that provides to a school district a specific educational or administrative service or product, provided that prior to the release of any records the vendor contractually agrees to:
  - a. Limit the use of any student data that is collected and maintained to the authorized purpose set forth in the contract;
  - b. Protect the data from unauthorized access or use; and
  - c. Return or destroy any data that was collected and maintained by the vendor upon fulfillment of the authorized purpose set forth in the contract.

Renumber accordingly



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2326

Page 1, line 1, replace "a new section" with "three new sections"

Page 1, line 2, replace "; and" with ", student information and communication monitoring, and parental consent;"

Page 1, line 4, after "committee" insert "; and to provide a penalty"

Page 3, after line 25, insert:

**"SECTION 3.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Information and communication monitoring.**

1. Without the prior written consent of a student's parent, a school district may not utilize any individualized technology that scans, monitors, or records a student's biometric information, body temperature, vital signs, posture, or facial expressions. This subsection does not apply to:
  - a. A school nurse or other health care professional delivering health care services to a student or to a school district employee assisting a student with health-related issues;
  - b. Classes or related activities in which the scanning, monitoring, or recording of a student's biometric information, body temperature, vital signs, posture, or facial expressions is a required curricular element;  
or
  - c. Directory information, including photographs.
2. A school district may review a student's internet browsing habits, electronic communications, and data storage, if there is a reasonable suspicion that:
  - a. A law is being broken;
  - b. A policy is being violated; or
  - c. An individual is in imminent danger.

**SECTION 4.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Parental consent - Surveys - Assessments.**

1. Without prior written parental consent, a school district may not permit a student to participate in or respond to a survey, including an analysis, evaluation, or questionnaire, which seeks information pertaining to any matter not directly related to the state or school district content standards or the student's grade level curriculum, unless the survey is created and administered by the school district.

2.
    - a. The written consent required under subsection 1 must be specific to each identified survey.
    - b. A parent may direct that no survey may be given to the parent's child.
  3. If a student's failure to participate in a survey, as set forth in subsection 1, will or could cause a student to lose benefits, those consequences must be communicated to the student's parent in writing.
  4. Any individual from whom consent is required under subsection 1 must, upon request, be provided with a copy of the survey or be permitted to view the survey at the school in which the student is enrolled.
  5. If after making reasonable attempts to obtain parental consent, as required by subsection 1, a school district is unable to obtain a response from a student's parent, the student may participate in the specific survey provided:
    - a. The survey results are identifiable to each student; and
    - b. A lack of participation in the survey would substantially impair the student's ability to advance educationally.
  6. Nothing in this section precludes a student from participating in a required assessment, test, quiz, or examination, provided the assessment, test, quiz, or examination directly pertains to the state or school district content standards or to the student's grade level curriculum.

**SECTION 5.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Penalty.**

A person willfully violating this Act is subject to a class A misdemeanor. The unauthorized disclosure of student data is deemed to be a violation for purposes of this section."

Renumber accordingly

March 16, 2015

SA  
3/16/15  
1/2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2326

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  - a. Whether the field is classified as:
    - (1) Directory information;
    - (2) Personally identifiable information; or
    - (3) Non-personally identifiable information;
  - b. The purpose for which the data is collected or maintained; and
  - c. Any person, other than a school district employee, with whom the data is shared.
2. The board of each school district shall establish a policy and identify therein, by name or title, which school district employee has access to the data.
3. The board of each school district shall establish a policy addressing the manner in which a parent may opt-out of any disclosure involving directory information or personally identifiable information of that parent's child, except as required in order to administer the state finance formula.

- 27
4. The board of each school district shall review the requirements of this section at least annually and modify the district's website and policies to ensure accuracy.

**SECTION 4.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Application of chapter.**

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

1. A court;
2. A governmental entity, if there is a reasonable belief that an individual is or may be in imminent danger; or
3. A vendor that provides to a school district a specific educational or administrative service or product, provided that prior to the release of any records the vendor contractually agrees to:
  - a. Limit the use of any student data that is collected and maintained to the authorized purpose set forth in the contract;
  - b. Protect the data from unauthorized access or use; and
  - c. Return or destroy any data that was collected and maintained by the vendor upon fulfillment of the authorized purpose set forth in the contract."

Renumber accordingly

Date: 3-16-15  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2326

House Education

Committee

☐ Subcommittee

Amendment LC# or Description: 15.0956 .02002 with change by Anita Thomas

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. Hunsakor		
Vice Chairman Schatz			Rep. Kelsh		
Rep. Dennis Johnson			Rep. Mock		
Rep. B. Koppelman					
Rep. Looyesen					
Rep. Meier					
Rep. Olson					
Rep. Rohr					
Rep. Schreiber Beck					
Rep. Zubke					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

15.0956 .02002  
with change by Anita Thomas

*Motion carried*

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

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2326

House Education Committee

☐ Subcommittee

Amendment LC# or Description: 15.0956.02003

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider

☒ do not adopt amendment.

Motion Made By Rep. Johnson Seconded By Rep. Kelsh

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

Total (Yes) 9 No 4

Absent 0

Floor Assignment \_\_\_\_\_

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

15.0956.02003

Motion Carried

Date: 3-16-15  
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2326

House Education Committee

☐ Subcommittee

Amendment LC# or Description: 15. .0956.02004

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. Olson Seconded By Rep. Meier

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

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Olson

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

**REPORT OF STANDING COMMITTEE**

**SB 2326, as engrossed: Education Committee (Rep. Nathe, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2326 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "three new sections to chapter 15.1-02 and"

Page 1, line 2, after the first "to" insert "the collection and maintenance of student data and"

Page 3, after line 18, insert:

**"SECTION 2.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Superintendent of public instruction - Identification of data - Rules.**

The superintendent of public instruction shall by rule identify:

1. All data fields that the superintendent collects or maintains about students;
2. The purpose for collecting or maintaining the data; and
3. Persons with whom the data are shared.

**SECTION 3.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Student data - Collection - School district responsibility.**

1. The board of each school district shall publish on the district's website a list of all data fields that the district collects or maintains about an individual student and indicate for each field:
  - a. Whether the field is classified as:
    - (1) Directory information;
    - (2) Personally identifiable information; or
    - (3) Non-personally identifiable information;
  - b. The purpose for which the data is collected or maintained; and
  - c. Any person, other than a school district employee, with whom the data is shared.
2. The board of each school district shall establish a policy and identify therein, by name or title, which school district employee has access to the data.
3. The board of each school district shall establish a policy addressing the manner in which a parent may opt-out of any disclosure involving directory information or personally identifiable information of that parent's child, except as required in order to administer the state finance formula.
4. The board of each school district shall review the requirements of this section at least annually and modify the district's website and policies to ensure accuracy.



**SECTION 4.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Application of chapter.**

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

1. A court;
2. A governmental entity, if there is a reasonable belief that an individual is or may be in imminent danger; or
3. A vendor that provides to a school district a specific educational or administrative service or product, provided that prior to the release of any records the vendor contractually agrees to:
  - a. Limit the use of any student data that is collected and maintained to the authorized purpose set forth in the contract;
  - b. Protect the data from unauthorized access or use; and
  - c. Return or destroy any data that was collected and maintained by the vendor upon fulfillment of the authorized purpose set forth in the contract."

Renumber accordingly

**2015 CONFERENCE COMMITTEE**

**SB 2326**

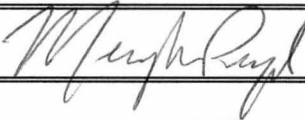
# 2015 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Missouri River Room, State Capitol

SB 2326  
4/2/2015  
Job # 25780 (20:06)

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Initial Conference Committee  
relating to reportable data fields and duties of the state longitudinal data system committee

## Minutes:

1 Attachment

**Chairman Schaible** called the committee to order at 4:00pm with all conference committee members present: Senator Flakoll, Senator Oban, Representative Schreiber Representative Schreiber Beck:, Representative Zubke and Representative Mock.

**Representative Schreiber Beck:** (see attachment #1) On version 15.0956.02004 you can see the amended section begins on page 3 line 19 and continues on to the bottom of page 4. Representative Koppelman proposed this amendment, and we did not object in committee.

**Senator Flakoll:** Were these amendments put in separately or as a whole?

**Representative Schreiber Beck:** They were all put in at one time.

**Representative Zubke:** We had two amendments: one set was proposed had failed to pass, but what we have in the bill right now is one set that did pass.

**Senator Schaible:** Section 2 item 1 claims the superintendent shall identify "all data fields". That is an excessive amount of data fields.

**Representative Schreiber Beck:** I see Superintendent Baesler is in the room. Perhaps she can speak to this.

**Senator Schaible:** This is your bill. We'd like to know your intent.

**Representative Zubke:** The intent it is to simply have the superintendent identify what fields she is collecting and what the purpose of collecting and maintaining that data is. It is a broad outline of the whole process. It goes on to encourage school districts to do the same and publish that information on a website. The final section is not to prohibit any government entity or agency from having access if needed.

**Senator Oban:** If you're identifying something, it is to go somewhere or to someone. To whom does the Superintendent of Public Instruction identify these fields to?

**Representative Schreiber Beck:** This was parental information. In code this had to be identified, but you are correct the bill is silent as to where this should be published.

**Senator Flakoll:** How will this impact information that may be shared with REAs or other entities wherein there is a potential joint power agreement or the like?

**Representative Schreiber Beck:** It doesn't specifically address this other than that if they have a right to have that information; however it is not listed under any of the agencies that can or cannot have it.

**Senator Flakoll:** Page 3 line 25 reads "the persons with whom the data is shared". Are those general categorical areas? Would they list "parents" or is the intent that if someone makes a request, that requestor would then be memorialized as making a request for data? Would it be the by the University System or by an individual campus?

**Representative Mock:** It is more categorical. As you note in section 3 of the bill, granted that is not pertaining specifically to the superintendent but a school district, the language was left vague enough so if the superintendent wanted to establish rules by which certain information could be shared with certain entities or categories of entities, it could- keeping in mind all other laws that are applicable to the sharing of data.

**(10:10) Chairman Schaible:** Under section 3 any data that is collected by the school has to be the data points, so the category of some kind has to be listed. That seems to be everything they do every day all day. We would collect everything about them.

**Representative Schreiber Beck:** I do not disagree with your statement; it would be very cumbersome for the district.

**Chairman Schaible:** I understand the idea of categorizing information. This information is gathered and collected by your local school district which is what they do in the process of educating students. The more important issue is the data they share outside the school district. We are going about this the wrong way. We are tracking, notifying and categorizing the information they have, which is already what they do. The more worrisome avenue is where the released information is being shared.

**Representative Schreiber Beck:** Would you object to modification of section 3 lines 28-31 in specifying to whom the data is released to?

**Senator Schaible:** I understand the concerns that we have. Our schools have been collecting data of our kids on everything they do all of the time. The protection of that data is a school board issue. It is important that what we collect is secure and the release of that information to any source is more so the concern.

**Representative Mock:** Section 3 would be exhaustive at the beginning to indicate every bit of data that is collected. It wouldn't be impossible, but it would be a sizeable list. Our understanding during the presentation of these amendments is that this is already information that the school districts would have. The question is if they are exhaustive and thorough enough to satisfy the requirements of this amendment. For the most part it would be a presentation of the fields we collect, the rules by which the school district governs to share said information, and any of the policies surrounding the sharing of the data. The

presentation and the author of the amendment most assured the committee that this would not be as overwhelming of a task as it may seem because most of the school districts if not all already have the existing policies. It is a matter of transparency rather than establishing a new rule.

**Chairman Schaible:** Do you have an example of what a school would not record of a student that would not be a data point?

**Representative Mock:** I would defer that to a representative from the Department of Public Instruction or Legislative Council for insight. I don't know what would be exempt that would be noted, dictated or recorded that would not be subject to these if any. It is possible depending on interpretation and advisement from Council whether or not there is any information that could be collected that would not be subject to the requirements of this statute.

**Chairman Schaible:** Section 3 is school district responsibility; it's not data points that are collected by the Department of Public Instruction. Quite frankly that is out of their realm. It says "shall" collect, categorize and post. I don't know what would not be a data point and what benefit that would be to anyone to have this massive, categorized list.

**Representative Mock:** Do you have any feedback or considerations in reconciliation regarding the House amendment that you would like to further discuss?

**Chairman Schaible:** It is up to the schools to first collect and secondly allow the release of data for whatever reason. SDLS has just written and submitted their new policies which I think are very effective. The issues we have are with our school boards and that policy, but I don't want to delegate regulations on a school board when I think they can handle it themselves. Every situation for every school is going to be slightly different based on their community and the patrons that they service. This is going to go into something that will cover everything, but it is burdensome and quite frankly undoable.

**Representative Schreiber Beck:** I believe the House members are open to considerations the Senate has to make this more palatable. I concur that this would be burdensome to local school districts, and they should have some opportunity to control at the local level.

**Chairman Schaible:** I don't have suggestions right now, so we will meet later on this.

**Chairman Schaible** adjourns the conference committee on HB 2326.

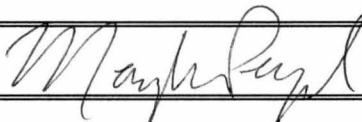
# 2015 SENATE STANDING COMMITTEE MINUTES

## Education Committee Missouri River Room, State Capitol

SB 2326  
4/6/2015  
Job # 25852 (14:40)

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Conference Committee Work

### Minutes:

1 Attachment

**Chairman Schaible** called the committee to order at 4:30pm with all conference committee members present: Senator Flakoll, Senator Oban, Representative Schreiber, Representative Schreiber Beck, Representative Zubke and Representative Mock. Anita Thomas with Legislative Council is also present.

**Chairman Schaible:** This section should have been in the IT code rather than the Department of Public Instruction. (*see attachment #1*)

**Thomas:** Section one you will recognize that is the data field requirement; that is section 2 of the senate bill and section 5 of the house version. Section 2 is the state-wide longitudinal data system committee. Again that comes from both bills. 1a has a minor change that the constitution of this state still references a commissioner of higher education rather than the chancellor. For the ND council of educational leaders on "h", the position is an Executive Director rather than a director.

The intent was to move the three sections that were in the Department of Public Instruction chapter over to the ITD chapter. While we were in the process of doing that, we thought we would do a rewrite and turn that one large section into an essentially 5 sections rather than having all of the multiple concepts into one. Section 3 is the state-wide longitudinal data system committee and the duties that come from 15.1-02-18 sections 4 and 5. The second half of page 2 subsection 4 is the new language added in the original senate bill and retained by the House. There were no changes to the duties of the committee.

On page 3 there is the section that consolidates the state longitudinal data system committee's powers. Those are again in current law to authorize studies and appoint additional work groups. Section 5 is the report to Legislative Management, which is in current law as well. The only thing is current law lists that the reports need to be made to the IT, education and economic development committees. Since this would be permanent law, we would suggest that you just reference one or more committees designated by the legislative management. The names of those committees do change from time to time. Section 6 is the continuing appropriation. Because the language was originally drafted by

fiscal people a number of years ago, they refer to the solicitation and receipt of monies and we generally use the phrase of "gifts, grants and donations". Section 7 is the second section that we would be moving from the Department of Public Instruction chapter into the ITD chapter. This is called "state-wide longitudinal data system committee information technology department" and it directs the ITD to maintain a state longitudinal data system. There were no changes in that from the current law. Section 8 is the third section that we would be moving. This allows the ITD to request certain information from any state agency. In order to make this happen, the three sections that are currently sitting in the Department of Public Instruction chapter need to be repealed and that is what section 9 is intended for.

**Representative Schreiber Beck:** The section one amendments may encompass a tremendous amount of data. Do we want to include that and what would that entail?

**Lisa Feldner** with SLDS was called to the podium

**Feldner:** That is a lot of information. That would include bussing, lunch reporting, special education, immunization registry, title 1, state scholarships, employee compensation, teacher certification, after school programs, etc. The list goes on. Somehow I thought we were just reporting on Power School. I recommend the committee to take a look at that piece because that will be really tedious.

**Senator Flakoll:** When we talk about "all fields", is it just categorically one area eligible for free and reduced or do you need to make things more granular below that as you read it?

**Feldner:** It says "all". In my opinion if you are going to have school boards do a policy, maybe you could even take that data field reportable list out. It almost looks like a solution looking for a problem. There could be unintended consequences in that section.

**(10:05) Chairman Flakoll:** After the 2001 session, we required teacher compensation to be published. The person responsible for that misinterpreted what we were hoping for. We wanted to know their salary and benefits. They put together a spread sheet of 151 cells per person of spreadsheet, which was a waste of resources. We don't want this to be the same case.

**Representative Mock:** Section one of the amendment is the same language as section two of the engrossed senate version of the bill. Are these new concerns that senate is having on this language? Is the senate interested in further amending their version of the bill to remove section one either in part or in whole?

**Chairman Schaible:** I see concern in this language that incorporated over.

**Representative Mock:** That language was the same as your bill, but it still leaves the unintended consequences window open.

**Chairman Schaible:** Correct.

**Representative Mock:** If we were to adopt your amendment without section one, the bill would move the SLDS committee and all that language from the 15.1 chapter of code to the ITD, but it wouldn't make any substantive change regarding reporting, correct?

**Chairman Schaible:** That would be correct. I will further this amendment.

**Chairman Schaible** adjourns the meeting on SB 2326.

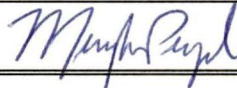
# 2015 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Missouri River Room, State Capitol

SB 2326  
4/10/2015  
Job # 26021 (8:14)

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Conference Committee Action

## Minutes:

1 Attachment

**Chairman Schaible** called the committee to order at 2pm with all committee members present: Senator Flakoll, Senator Oban, Representative Schreiber Representative Schreiber Beck, Representative Zubke and Representative Mock.

*(see attachment #1- 2006 amendments)*

**Chairman Schaible:** The biggest section is section one, which concerns the policies.

**Representative Schreiber Beck:** I would like to confirm in an open statement that human services are covered.

**Chairman Schaible:** I agree with you.

**Representative Schreiber Beck:** In early discussions some of my concern was the third party vendor. From what we are aware, FERPA is providing new regulations.

**Chairman Schaible:** This is for local school districts and their data. They are able to create and enact more extensive policies that restrict their own access to their own information if they choose to do so. This is just to give the minimum basics.

**Representative Mock:** Regarding 3a in section 1, is it a list by name or by title of all individuals with whom the data would be shared?

**Chairman Schaible:** The intent is by title because names can change.

**Representative Mock:** In 3b it says a "list by title" whereas 3a says a "list of all individuals."

**Representative Zubke:** I believe 3a is looking more outward whereas 3b is more inward. It may be appropriate from that standpoint. The key phrase in 3a is "data is shared" whereas 3b it is "who has access to".



**Representative Mock** makes a motion for the House to recede from House amendments and further amend with the 15.0956.02006 amendments.

**Chairman Flakoll** seconds the motion.

**A vote was taken: 6 yays, 0 nays, 0 absent.**

**The motion carries.**

Senator Schaible will carry the bill.

April 10, 2015

4/10/15  
JSC  
10/24

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2326

That the House recede from its amendments as printed on pages 866 and 867 of the Senate Journal and pages 1021 and 1022 of the House Journal and that Engrossed Senate Bill No. 2326 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-07 and seven new sections to chapter 54-59 of the North Dakota Century Code, relating to reportable data fields and the statewide longitudinal data system; to repeal sections 15.1-02-18, 15.1-02-18.1, and 15.1-02-18.2 of the North Dakota Century Code, relating to the statewide longitudinal data system; and to provide for a continuing appropriation.

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

**SECTION 1.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Protection of student data - School district policy.**

1. The board of each school district shall adopt a policy regarding the protection of student data.
2. The policy must require that permission be obtained from the board before any student data is shared with an individual who is not a school district employee or shared with any other entity. This provision does not apply to the sharing of data with a student's parent or to the sharing of data, if required by law.
3. The policy must require the school district superintendent to compile:
  - a. A list of all individuals with whom, and entities with which, student data is shared; and
  - b. A list, by title, of all school district personnel who have access to student data.
4. A school district shall make copies of the policy available upon request.

**SECTION 2.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Membership.**

1. The statewide longitudinal data system committee consists of:
  - a. The commissioner of the board of higher education or the commissioner's designee;

- 2012
- b. The superintendent of public instruction or the superintendent's designee;
  - c. The chief information officer or the officer's designee;
  - d. The director of the department of career and technical education or the director's designee;
  - e. The director of job service North Dakota or the director's designee;
  - f. The commissioner of commerce or the commissioner's designee;
  - g. The director of the department of human services or the director's designee;
  - h. The director of the North Dakota educational technology council;
  - i. The executive director of the North Dakota council of educational leaders or the executive director's designee;
  - j. The director of the North Dakota workforce development council or the director's designee; and
  - k. Two members of the legislative assembly appointed by the chairman of the legislative management.
2. The governor shall designate the chairman of the committee.

**SECTION 3.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Duties.**

- 1. The statewide longitudinal data system committee shall manage a statewide longitudinal data system that:
  - a. Provides for the dissemination of management information to stakeholders and partners of state education, training, and employment systems; and
  - b. Uses data from educational and workforce systems as central sources of statewide longitudinal data.
- 2. The statewide longitudinal data system committee shall establish policies and adopt rules addressing access to and the collection, storage, and sharing of information and the systems necessary to perform those functions, subject to applicable federal and state privacy laws and interagency agreements and restrictions relating to confidential information required to conform to applicable federal and state privacy laws.
- 3. The statewide longitudinal data system committee shall provide operational oversight for information sharing activities and make recommendations for and provide oversight of information sharing budgets.
- 4. The statewide longitudinal data system committee in consultation with the information technology department shall:

- 3/24
- a. Establish the terms and conditions under which a person may be authorized to access data through the statewide longitudinal data system;
  - b. Direct that all statewide longitudinal data system administrators implement approved data protection practices to ensure the security of electronic and physical data, provided that the practices include requirements for encryption and staff training;
  - c. Provide for biennial privacy and security audits of the statewide longitudinal data system;
  - d. Establish protocols, including procedures, for the notification of students and parents in the event of a data breach involving the statewide longitudinal data system;
  - e. Require that data retention and disposition by the statewide longitudinal data system be governed by the same policies as those instituted for the information technology department; and
  - f. Require the provision of annual training regarding data protection to any individuals who have access to the statewide longitudinal data system, including school district employees, employees of the North Dakota university system office and institutions under the control of the state board of higher education, and elected or appointed state or local governmental officials.

**SECTION 4.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Powers.**

1. The statewide longitudinal data system committee may authorize studies to benefit and improve workforce training and education.
2. The statewide longitudinal data system committee may appoint additional work groups and task forces to serve in an advisory capacity.

**SECTION 5.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Report to legislative management.**

During each interim the statewide longitudinal data system committee shall provide a report regarding the statewide longitudinal data system to one or more committees designated by the legislative management and shall provide recommendations for further development, cost proposals, proposals for legislation, and recommendations for data sharing governance.

**SECTION 6.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

H 24

**Statewide longitudinal data system committee - Continuing appropriation.**

The statewide longitudinal data system committee may solicit and receive gifts, grants, and donations from public and private sources. Any moneys received in accordance with this section are appropriated on a continuing basis for the support of the statewide longitudinal data system.

**SECTION 7.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Information technology department.**

1. The information technology department, at the direction of the statewide longitudinal data system committee, shall maintain a statewide longitudinal data system among education, workforce, and training entities.
2. The information technology department and the statewide longitudinal data system committee may, subject to federal and state privacy laws, enter interagency agreements, including agreements designating authorized representatives of the educational agencies participating in the system, pursuant to the Family Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99].
3. The information technology department shall staff and provide other necessary support to the statewide longitudinal data system committee.

**SECTION 8.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**State agencies - Mandatory provision of information - Confidentiality.**

1. The information technology department may request from any state agency:
  - a. All information required by 20 U.S.C. 9871(e)(2)(D); and
  - b. Any other educational information the statewide longitudinal data system committee determines is required for a longitudinal data system to comply with state or federal law.
2. Subject to applicable restrictions on the use and disclosure of confidential information required to comply with federal and state privacy laws, any state agency receiving a request for information under subsection 1 shall provide the information at the time and in the manner required by the information technology department.

**SECTION 9. REPEAL.** Sections 15.1-02-18, 15.1-02-18.1, and 15.1-02-18.2 of the North Dakota Century Code are repealed."

Renumber accordingly

Date: 4/10/2015  
Roll Call Vote #: 1

**2015 SENATE CONFERENCE COMMITTEE  
ROLL CALL VOTES**

SB 2326 as engrossed

Senate "Enter committee name" Committee

- Action Taken    ☐ **SENATE accede to House Amendments**  
                      ☐ **SENATE accede to House Amendments and further amend**  
                      ☐ **HOUSE recede from House amendments**  
                      ☒ **HOUSE recede from House amendments and amend as follows**
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Mock                      Seconded by: Chairman Flakoll

Senators	4/2	4/6	4/10	Yes	No		Representatives	4/2	4/6	4/10	Yes	No
Chairman Schaible	X	X	X	X			Representative Schreiber Beck	X	X	X	X	
Senator Flakoll	X	X	X	X			Representative Zubke	X	X	X	X	
Senator Oban	X	X	X	X			Representative Mock	X	X	X	X	
Total Senate Vote				3			Total Rep. Vote				3	

Vote Count                      Yes: 6                      No: 0                      Absent: 0

Senate Carrier Senator Schaible                      House Carrier No carrier

LC Number 15.0956.02006 . 04000 of amendment

LC Number \_\_\_\_\_ . \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**SB 2326, as engrossed:** Your conference committee (Sens. Schaible, Flakoll, Oban and Reps. Schreiber Beck, Zubke, Mock) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1021-1022, adopt amendments as follows, and place SB 2326 on the Seventh order:

That the House recede from its amendments as printed on pages 866 and 867 of the Senate Journal and pages 1021 and 1022 of the House Journal and that Engrossed Senate Bill No. 2326 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-07 and seven new sections to chapter 54-59 of the North Dakota Century Code, relating to reportable data fields and the statewide longitudinal data system; to repeal sections 15.1-02-18, 15.1-02-18.1, and 15.1-02-18.2 of the North Dakota Century Code, relating to the statewide longitudinal data system; and to provide for a continuing appropriation.

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

**SECTION 1.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Protection of student data - School district policy.**

1. The board of each school district shall adopt a policy regarding the protection of student data.
2. The policy must require that permission be obtained from the board before any student data is shared with an individual who is not a school district employee or shared with any other entity. This provision does not apply to the sharing of data with a student's parent or to the sharing of data, if required by law.
3. The policy must require the school district superintendent to compile:
  - a. A list of all individuals with whom, and entities with which, student data is shared; and
  - b. A list, by title, of all school district personnel who have access to student data.
4. A school district shall make copies of the policy available upon request.

**SECTION 2.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Membership.**

1. The statewide longitudinal data system committee consists of:
  - a. The commissioner of the board of higher education or the commissioner's designee;
  - b. The superintendent of public instruction or the superintendent's designee;
  - c. The chief information officer or the officer's designee;
  - d. The director of the department of career and technical education or the director's designee;



- e. The director of job service North Dakota or the director's designee;
  - f. The commissioner of commerce or the commissioner's designee;
  - g. The director of the department of human services or the director's designee;
  - h. The director of the North Dakota educational technology council;
  - i. The executive director of the North Dakota council of educational leaders or the executive director's designee;
  - j. The director of the North Dakota workforce development council or the director's designee; and
  - k. Two members of the legislative assembly appointed by the chairman of the legislative management.
2. The governor shall designate the chairman of the committee.

**SECTION 3.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Duties.**

- 1. The statewide longitudinal data system committee shall manage a statewide longitudinal data system that:
  - a. Provides for the dissemination of management information to stakeholders and partners of state education, training, and employment systems; and
  - b. Uses data from educational and workforce systems as central sources of statewide longitudinal data.
- 2. The statewide longitudinal data system committee shall establish policies and adopt rules addressing access to and the collection, storage, and sharing of information and the systems necessary to perform those functions, subject to applicable federal and state privacy laws and interagency agreements and restrictions relating to confidential information required to conform to applicable federal and state privacy laws.
- 3. The statewide longitudinal data system committee shall provide operational oversight for information sharing activities and make recommendations for and provide oversight of information sharing budgets.
- 4. The statewide longitudinal data system committee in consultation with the information technology department shall:
  - a. Establish the terms and conditions under which a person may be authorized to access data through the statewide longitudinal data system;
  - b. Direct that all statewide longitudinal data system administrators implement approved data protection practices to ensure the security of electronic and physical data, provided that the practices include requirements for encryption and staff training;



- c. Provide for biennial privacy and security audits of the statewide longitudinal data system;
- d. Establish protocols, including procedures, for the notification of students and parents in the event of a data breach involving the statewide longitudinal data system;
- e. Require that data retention and disposition by the statewide longitudinal data system be governed by the same policies as those instituted for the information technology department; and
- f. Require the provision of annual training regarding data protection to any individuals who have access to the statewide longitudinal data system, including school district employees, employees of the North Dakota university system office and institutions under the control of the state board of higher education, and elected or appointed state or local governmental officials.

**SECTION 4.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Powers.**

- 1. The statewide longitudinal data system committee may authorize studies to benefit and improve workforce training and education.
- 2. The statewide longitudinal data system committee may appoint additional work groups and task forces to serve in an advisory capacity.

**SECTION 5.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Report to legislative management.**

During each interim the statewide longitudinal data system committee shall provide a report regarding the statewide longitudinal data system to one or more committees designated by the legislative management and shall provide recommendations for further development, cost proposals, proposals for legislation, and recommendations for data sharing governance.

**SECTION 6.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Continuing appropriation.**

The statewide longitudinal data system committee may solicit and receive gifts, grants, and donations from public and private sources. Any moneys received in accordance with this section are appropriated on a continuing basis for the support of the statewide longitudinal data system.

**SECTION 7.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Information technology department.**

- 1. The information technology department, at the direction of the statewide longitudinal data system committee, shall maintain a statewide

longitudinal data system among education, workforce, and training entities.

2. The information technology department and the statewide longitudinal data system committee may, subject to federal and state privacy laws, enter interagency agreements, including agreements designating authorized representatives of the educational agencies participating in the system, pursuant to the Family Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99].
3. The information technology department shall staff and provide other necessary support to the statewide longitudinal data system committee.

**SECTION 8.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**State agencies - Mandatory provision of information - Confidentiality.**

1. The information technology department may request from any state agency:
  - a. All information required by 20 U.S.C. 9871(e)(2)(D); and
  - b. Any other educational information the statewide longitudinal data system committee determines is required for a longitudinal data system to comply with state or federal law.
2. Subject to applicable restrictions on the use and disclosure of confidential information required to comply with federal and state privacy laws, any state agency receiving a request for information under subsection 1 shall provide the information at the time and in the manner required by the information technology department.

**SECTION 9. REPEAL.** Sections 15.1-02-18, 15.1-02-18.1, and 15.1-02-18.2 of the North Dakota Century Code are repealed."

Renumber accordingly

Engrossed SB 2326 was placed on the Seventh order of business on the calendar.

**2015 TESTIMONY**

**SB 2326**

#1  
2/2/15

Testimony on SB2326

Nicole Poolman

District 7

Good morning, Chairman Flakoll and members of the Education committee, my name is Nicole Poolman, State Senator from District 7 representing Bismarck and Lincoln.

I am here today to introduce and ask for your support on Senate Bill 2326. The bill places responsibilities of the SLDS committee into the code and requires local school districts to publish the data fields collected on their district website at the beginning of each school year.

There are a number of reasons we have introduced this bill. Regardless of one's opinion of the Common Core, one of the concerns brought to me by parents has been one of data privacy. Even though I trust the good people working in the information technology department, our parents need to feel a bit more secure when it comes to data collection. This bill mandates the committee to establish: terms and conditions to authorize information, rules and practices to ensure security of data, protocols for the notification of parents and students in the event of a data breach, and requirements for annual training to any individuals dealing with student data. It is this last requirement that I believe is the most important and reflecting a shift in how we think about and protect student information.

We have been so concerned with the SLDS and ensuring its safety, that we have not discussed the issues surrounding data collection in our local districts. I believe districts need and want more guidance when it comes to student privacy, and this is the first step in providing that.

I believe that providing training to district employees and asking them to publish the data fields collected will not only protect student data, but it will force us all to evaluate why we collect it and ensure that we only collect what is necessary to improve student achievement and effectively communicate with parents.

I have worked with both DPI and ITD on this bill, so it really is common sense regulation that suits North Dakota's system. I respectfully ask for your support and will take any questions at this time.

# 2  
2/2/15

***SB 2326 TESTIMONY***  
***SENATE EDUCATION COMMITTEE***  
***BY: MIKE RESSLER, CIO***  
***INFORMATION TECHNOLOGY DEPARTMENT (ITD)***  
***FEBRUARY 2, 2015***

Chairman Flakoll and members of the committee, my name is Mike Ressler. I am the State Chief Information Officer with the Information Technology Department. I am here to indicate ITD is in support of the language changes in Senate Bill 2326.

We believe the changes proposed represent best practices and should be implemented in the State Longitudinal Data System (SLDS) program.

This concludes my remarks. I would be happy to answer any questions.

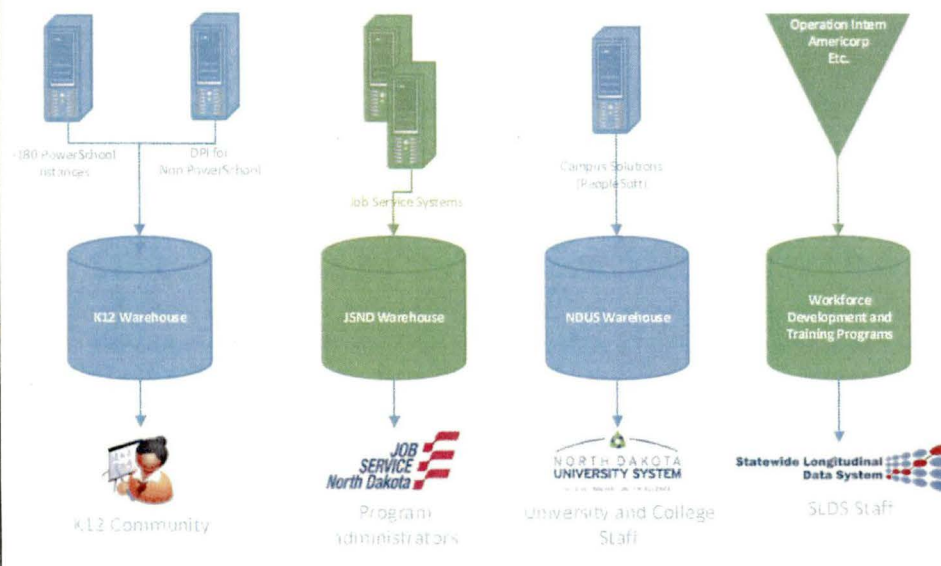
Mike Ressler  
ND Chief Information Officer  
Information Technology Department  
(701) 328-1001  
mressler@nd.gov

1/1

## Statewide Longitudinal Data System

- What is the Statewide Longitudinal Data System?
  - Provides data for educators to evaluate their programs
  - Provides data for accountability at the state and local levels
  - Helps legislators, educators, and workforce development administrators make informed decisions
  - Governed by a statute 15.1-02-18
  - Records are protected through the Family Education Rights & Privacy ACT (FERPA)
  - Security is provided by the ND ITD

## ND SLDS



## SLDS Research

- Math and English Remediation in post secondary
- Effects of remedial courses on Associate Degree Completion
- Students who take dual credit courses complete degrees on-time
- Studying Advanced Placement performance of ND students
- Percentage of NDUS Graduates employed in North Dakota
  
- Predictive Analytics
  - High School GPA, ACT score, NDSA score, or coursework – what best predicts college success?
  - Using data, we can now at 7<sup>th</sup> grade which students are not college ready and provide additional guidance to students and parents



Lisa Feldner, Chairman of ND SLDS    [lisa.feldner@ndus.edu](mailto:lisa.feldner@ndus.edu)

Testimony on SB2326 - House Education Committee

Tuesday, March 10, 2015

Nicole Poolman, District 7

Good morning, Chairman Nathe and members of the Education committee, my name is Nicole Poolman, State Senator from District 7 representing Bismarck and Lincoln.

I am here today to introduce and ask for your support on Senate Bill 2326. The bill places responsibilities of the SLDS committee into the code and requires local school districts to publish the data fields collected on their district website at the beginning of each school year.

There are a number of reasons we have introduced this bill. Regardless of one's opinion of the Common Core, one of the concerns brought to me by parents has been one of data privacy. Even though I trust the good people working in the information technology department, our parents need to feel a bit more secure when it comes to data collection. This bill mandates the committee to establish: terms and conditions to authorize information, rules and practices to ensure security of data, protocols for the notification of parents and students in the event of a data breach, and requirements for annual training to any individuals dealing with student data. It is this last requirement that I believe is the most important and reflecting a shift in how we think about and protect student information.

We have been so concerned with the SLDS and ensuring its safety, that we have not discussed the issues surrounding data collection in our local districts. I believe districts need and want more guidance when it comes to student privacy, and training is the first step in providing that.

Providing training to district employees and asking them to publish the data fields collected will not only protect student data, but it will force us all to evaluate why we collect it and ensure that we only collect what is necessary to improve student achievement and effectively communicate with parents.

I have worked with both DPI and ITD on this bill, so I believe it is common sense regulation that suits North Dakota's system. I respectfully ask for your support and will take any questions at this time.

# 1  
SB 2326  
3/10/15



# 2

SB 2326

3/10/15

***SB 2326 TESTIMONY  
HOUSE EDUCATION COMMITTEE  
BY: MIKE RESSLER, CIO  
INFORMATION TECHNOLOGY DEPARTMENT (ITD)  
MARCH 10, 2015***

Chairman Nathe and members of the House Education Committee, my name is Mike Ressler. I am the State Chief Information Officer with the Information Technology Department. I am here to indicate ITD is in support of the language proposed in Senate Bill 2326.

We believe the changes proposed represent best practices and should be implemented in the State Longitudinal Data System (SLDS) program.

This concludes my remarks. I would be happy to answer any questions.

Mike Ressler  
ND Chief Information Officer  
Information Technology Department  
(701) 328-1001  
mressler@nd.gov

AMENDMENT TO THE  
PROPOSED AMENDMENTS FOR SB 2326

Insert at the end of the "Applicability of Chapter" section the following:

"4. An organization that is engaged by a school or school district to perform a specific educational or administrative function which the student's school district determines is beneficial to the school, district or students; provided, however that prior to any such disclosure, the organization agrees in writing to:

(a) limit its use of any student data collected and retained to the authorized purpose stated in the agreement;

(b) use reasonable technical, organizational and administrative measures designed to protect such student data from unauthorized access or use; and

(c) return or destroy any student data collected or stored by the vendor upon fulfillment of the authorized purpose."

#3  
SB 2326  
3/10/15

***SB 2326 Testimony  
House Education Committee  
By: Jody French, NDETC Director  
March 9, 2015, 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.

The NDETC sees SB 2326 as a good and appropriate bill for K-12 education. It provides accountability for both state agencies and K-12 schools. The NDETC staff are already working with schools to support the reportable data fields as indicated in Section 2.

Jody French  
NDETC Director  
Information Technology Department  
701-799-6883  
jody.french@k12.nd.us

## SB 2326

House Education

March 10, 2015

Lisa Feldner, Vice Chancellor

701.328.1510 | [lisa.feldner@ndus.edu](mailto:lisa.feldner@ndus.edu)

Chair and Committee Members: I am Lisa Feldner, Vice Chancellor for the ND University System and Chair of the ND Statewide Longitudinal Data System Committee. I'm here today in support of SB 2336. The bill would require the ND SLDS committee to provide additional privacy and security safeguards, and for school districts to annually publish the data fields that are reported in PowerSchool. In keeping with subsection 6, part a, the ND SLDS committee will be approving its privacy policies at their next meeting on March 18. The policies have already been through first reading. They will be published on the website shortly, and I can make the drafts available to this committee if there is interest.

I think this is a good bill and ask for a do pass on SB 2326 and am available to answer your questions. Thank you.

#5  
SB 2326  
3/10/15

## TESTIMONY ON AMENDMENTS PROPOSED FOR ENGROSSED SB 2326

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](http://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 the amendments being proposed for SB 2326, in particular as it relates to third party vendor arrangements with the release of student data to school service providers. We believe that there could be unintended consequences, notably by increasing the administrative burden of schools and districts. Moreover, the criminal sanctions and civil penalties associated with violation, 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. Certain functions that are outsourced could be significantly disrupted and unnecessarily impact negatively 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 would like to propose an amendment to the proposed amendment to SB 2326 that was circulated regarding student data privacy (see attached). The amendment will both protect student data and allow school districts to contract with vendors to perform necessary services. We appreciate the opportunity to provide input on SB 2326 to accomplish legislative goals to protect children while avoiding unintended consequences.

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

1



IMPORTANT

# Data Privacy FAQ for Parents

*Since 1936, Lifetouch National School Studios Inc. ("Lifetouch") has been a trusted provider of school services, providing portrait and photography services to schools and families throughout North America. Lifetouch is privileged to photograph children by agreement with our school hosts. We offer time-honored Picture Day products to the families of children we photograph while fulfilling a necessary role at no charge to the school.*

*In preparation for Picture Day, Lifetouch requires certain basic information from your child's school record, such as name, grade and homeroom teacher name. Below are a number of Frequently Asked Questions ("FAQs") regarding the basic information that Lifetouch needs in order to provide the portrait and photography services. These FAQs are intended to provide answers to questions that you may have about Lifetouch's use of such information and to demonstrate Lifetouch's commitment to your child's privacy and security.*

## **What student information does Lifetouch receive from schools?**

The information we need for Picture Day depends upon the specific services and deliverables Lifetouch is providing your school. We limit the information we collect to only that which is necessary for Picture Day and related authorized school purposes. We collect the basic information in advance of Picture Day to ensure a perfect name-image match for each portrait and for efficient distribution within the school. We may receive your email or mailing address in order to deliver Picture Day-related communications on behalf of the school. In such cases, we do not retain or use your contact information for any other purpose unless you opt in to receive updates and promotional offers from us.

In addition, the information may be incorporated into other items that we are providing to your school. For example, if Lifetouch is producing student ID cards, we need the student ID number to do the job. Our yearbook image product includes images of students sorted by name, grade and other classifying data per your school's requirements. Schools ultimately decide how much, or how little, information is used in producing School Service Items. Lifetouch never has access to sensitive information, such as grades or attendance data, from your child's record.

## **How does Lifetouch use the information it receives from schools?**

As part of our agreement with your child's school, Lifetouch provides various services that support the school's administrative needs, which may include student ID cards for lunch, library and transportation purposes and digital images for the school to use for student recognition, awards, teacher tools, yearbooks, memory books and class composites. These services are provided throughout the school year. Lifetouch uses the basic information that it collects solely as necessary to produce such items for the school, to deliver Picture Day-related notices on behalf of your school, and to provide you opportunities to purchase your child's portraits.

Lifetouch **will not** sell or license your child's data to third parties.

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



**IMPORTANT**

***Is it permissible for schools to provide basic information to Lifetouch without my permission?***

Yes, for the limited purpose described in these FAQs and subject to compliance with state and federal law and school policy. 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"). Your school retains the authority to control Lifetouch's use of the information it provides to Lifetouch and to require its return or destruction at any time. We will honor a parent's image deletion request, subject to verification and authorization of the school when deletion would impact our ability to deliver an item or service requested by the school.

***How does Lifetouch protect School Data?***

A comprehensive set of IT policies consistent with the Software & Information Industry Association's *Best Practices for the Safeguarding of Student Information Privacy and Security for Providers of School Services* governs information systems practices and procedures throughout the Lifetouch enterprise. We employ a variety of physical, technical and organizational security measures to help protect confidential information, including the basic information we receive from schools, from unauthorized access, use and disclosure. Lifetouch produces portrait packages and items to be delivered to the school within its own U.S.-based photo labs. To the extent we engage service providers to assist in fulfilling our obligations, we require compliance with strict confidentiality and security measures.

*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."*





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.



### LIFETOUGH IN NORTH DAKOTA

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

*Lifetouch®*

[lifetouch.com](http://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 Cileto 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.



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2326

Page 1, line 1, after "enact" insert "three new sections to chapter 15.1-02 and"

Page 1, line 2, after the first "to" insert "the collection and maintenance of student data and"

Page 3, after line 18, insert:

"**SECTION 2.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Superintendent of public instruction - Identification of data - Rules.**

The superintendent of public instruction shall by rule identify:

1. All data fields that the superintendent collects or maintains about students;
2. The purpose for collecting or maintaining the data; and
3. Persons with whom the data are shared.

**SECTION 3.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Student data - Collection - School district responsibility.**

1. The board of each school district shall publish on the district's website a list of all data fields that the district collects or maintains about an individual student and indicate for each field:
  - a. Whether the field is classified as:
    - (1) Directory information;
    - (2) Personally identifiable information; or
    - (3) Non-personally identifiable information;
  - b. The purpose for which the data is collected or maintained; and
  - c. Any person, other than a school district employee, with whom the data are shared.
2. The board of each school district shall establish a policy and identify therein, by name or title, which school district employee has access to the data.
3. The board of each school district shall establish a policy addressing the manner in which a parent may opt-out of any disclosure involving directory information or personally identifiable information of that parent's child.

4. The board of each school district shall review the requirements of this section at least annually and modify the district's website and policies to ensure accuracy.

**SECTION 4.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Application of chapter.**

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

1. A court;
2. A governmental entity, if there is a reasonable belief that an individual is or may be in imminent danger; or
3. A vendor that provides to a school district a specific educational or administrative service or product, provided that prior to the release of any records the vendor contractually agrees to:
  - a. Limit the use of any student data that is collected and maintained to the authorized purpose set forth in the contract;
  - b. Protect the data from unauthorized access or use; and
  - c. Return or destroy any data that was collected and maintained by the vendor upon fulfillment of the authorized purpose set forth in the contract.

Renumber accordingly

Sixty-fourth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2326

#2  
SB 2326  
3/16/15

Introduced by

Senators Poolman, Dever, Schaible

Representatives Nathe, Rohr, Schatz

1 A BILL for an Act to create and enact three new sections to chapter 15.1-02 and a new section  
2 to chapter 15.1-07 of the North Dakota Century Code, relating to the collection and  
3 maintenance of student data and reportable data fields; and to amend and reenact section  
4 15.1-02-18 of the North Dakota Century Code, relating to duties of the state longitudinal data  
5 system committee.

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

7 **SECTION 1. AMENDMENT.** Section 15.1-02-18 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **15.1-02-18. Statewide longitudinal data system committee - Membership - Powers and**  
10 **duties - Report to interim committee - Continuing appropriation.**

11 1. The statewide longitudinal data system committee consists of:

- 12 a. The chancellor of the board of higher education or the chancellor's designee;
- 13 b. The superintendent of public instruction or superintendent of public instruction's  
14 designee;
- 15 c. The chief information officer or the chief information officer's designee;
- 16 d. The director of the department of career and technical education or the director's  
17 designee;
- 18 e. The director of job service North Dakota or the director's designee;
- 19 f. The commissioner of commerce or the commissioner's designee;
- 20 g. The director of the department of human services or the director's designee;
- 21 h. The director of the North Dakota educational technology council;
- 22 i. The director of the North Dakota council of educational leaders or the director's  
23 designee;

- 1           j.    The director of the North Dakota workforce development council or the director's
- 2                designee; and
- 3           k.    Two members of the legislative assembly appointed by the chairman of the
- 4                legislative management.
- 5        2.    The governor shall ~~appoint~~designate the chairman of the committee.
- 6        3.    The committee may appoint additional ~~committees to~~work groups and task forces to
- 7                serve ~~the committee~~ in an advisory capacity.
- 8        4.    The committee shall manage a statewide longitudinal data system that:
- 9            a.    Provides for the dissemination of management information to stakeholders and
- 10               partners of state education, training, and employment systems; and
- 11            b.    Uses data from educational and workforce systems as central sources of
- 12               statewide longitudinal data.
- 13        5.    The committee shall set policy and adopt rules relating to access to and the collection,
- 14               storage, and sharing of information and the systems necessary to perform those
- 15               functions, subject to applicable federal and state privacy laws and interagency
- 16               agreements and restrictions relating to confidential information required to conform to
- 17               applicable federal and state privacy laws. The committee shall provide operational
- 18               oversight for information sharing activities and make recommendations for and provide
- 19               oversight of information sharing budgets.
- 20        6.    The committee, in consultation with the information technology department, shall:
- 21            a.    Establish the terms and conditions under which a person may be authorized to
- 22               access data through the statewide longitudinal data system;
- 23            b.    Direct that all statewide longitudinal data system administrators implement
- 24               approved data protection practices to ensure the security of electronic and
- 25               physical data, provided that the practices include requirements for encryption and
- 26               staff training;
- 27            c.    Provide for biennial privacy and security audits of the statewide longitudinal data
- 28               system;
- 29            d.    Establish protocols, including procedures, for the notification of students and
- 30               parents, in the event of a data breach involving the statewide longitudinal data
- 31               system;



e. Require that data retention and disposition by the statewide longitudinal data system be governed by the same policies as those instituted for the information technology department; and

f. Require the provision of annual training regarding data protection to any individuals who have access to the statewide longitudinal data system, including school district employees, employees of the North Dakota university system office and institutions under the control of the state board of higher education, and elected or appointed state or local governmental officials.

7. The committee may authorize studies to benefit and improve workforce training and education.

~~6-8.~~ The committee shall provide a report to the information technology committee, interim committee on education issues, and interim committee on economic development on ~~the status of,~~ regarding the statewide longitudinal data system. The report must include recommendations for further development, cost proposals, proposals for legislation, and data sharing governance.

~~7-9.~~ The committee may solicit and receive moneys from public and private sources and those funds are appropriated on a continuing basis for the support of the statewide longitudinal data system.

**SECTION 2.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Superintendent of public instruction - Identification of data - Rules.**

The superintendent of public instruction shall by rule identify:

1. All data fields that the superintendent collects or maintains about students;
2. The purpose for collecting or maintaining the data; and
3. Persons with whom the data are shared.

**SECTION 3.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Student data - Collection - School district responsibility.**

1. The board of each school district shall publish on the district's website a list of all data fields that the district collects or maintains about an individual student and indicate for each field:



- 1           a.   Whether the field is classified as:
- 2                (1)   Directory information;
- 3                (2)   Personally identifiable information; or
- 4                (3)   Non-personally identifiable information;
- 5           b.   The purpose for which the data is collected or maintained; and
- 6           c.   Any person, other than a school district employee, with whom the data is shared.
- 7        2.   The board of each school district shall establish a policy and identify therein, by name
- 8           or title, which school district employee has access to the data.
- 9        3.   The board of each school district shall establish a policy addressing the manner in
- 10           which a parent may opt-out of any disclosure involving directory information or
- 11           personally identifiable information of that parent's child.
- 12        4.   The board of each school district shall review the requirements of this section at least
- 13           annually and modify the district's website and policies to ensure accuracy.

14        **SECTION 4.** A new section to chapter 15.1-02 of the North Dakota Century Code is created  
15 and enacted as follows:

16        **Application of chapter.**

17        Nothing in this chapter prohibits or limits the release of school district records to or the  
18 administrative use of school district records by:

- 19        1.   A court;
- 20        2.   A governmental entity, if there is a reasonable belief that an individual is or may be in
- 21           imminent danger; or
- 22        3.   A vendor that provides to a school district a specific educational or administrative
- 23           service or product, provided that prior to the release of any records the vendor
- 24           contractually agrees to:
- 25           a.   Limit the use of any student data that is collected and maintained to the
- 26                authorized purpose set forth in the contract;
- 27           b.   Protect the data from unauthorized access or use; and
- 28           c.   Return or destroy any data that was collected and maintained by the vendor upon
- 29                fulfillment of the authorized purpose set forth in the contract.

30        **SECTION 5.** A new section to chapter 15.1-07 of the North Dakota Century Code is created  
31 and enacted as follows:

1       **Data field - Reportable - List.**

2       Prior to the beginning of each school year, a school district shall publish on its website a list  
3 of all data fields that the district will report in PowerSchool or in any other state automated  
4 reporting system, during the ensuing school year. Each district shall make the list available in  
5 printed form, upon request.



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2326

Page 1, line 1, replace "a new section" with "three new sections"

Page 1, line 2, replace "; and" with ", student information and communication monitoring, and parental consent;"

Page 1, line 4, after "committee" insert "; and to provide a penalty"

Page 3, after line 25, insert:

"**SECTION 3.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Information and communication monitoring.**

1. Without the prior written consent of a student's parent, a school district may not utilize any individualized technology that scans, monitors, or records a student's biometric information, body temperature, vital signs, posture, or facial expressions. This subsection does not apply to:
  - a. A school nurse or other health care professional delivering health care services to a student or to a school district employee assisting a student with health-related issues;
  - b. Classes or related activities in which the scanning, monitoring, or recording of a student's biometric information, body temperature, vital signs, posture, or facial expressions is a required curricular element;  
or
  - c. Directory information, including photographs.
2. A school district may review a student's internet browsing habits, electronic communications, and data storage, if there is a reasonable suspicion that:
  - a. A law is being broken;
  - b. A policy is being violated; or
  - c. An individual is in imminent danger.

**SECTION 4.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Parental consent - Surveys - Assessments.**

1. Without prior written parental consent, a school district may not permit a student to participate in or respond to a survey, including an analysis, evaluation, or questionnaire, which seeks information pertaining to any matter not directly related to the state or school district content standards or the student's grade level curriculum, unless the survey is created and administered by the school district.

2.
  - a. The written consent required under subsection 1 must be specific to each identified survey.
  - b. A parent may direct that no survey may be given to the parent's child.
3. If a student's failure to participate in a survey, as set forth in subsection 1, will or could cause a student to lose benefits, those consequences must be communicated to the student's parent in writing.
4. Any individual from whom consent is required under subsection 1 must, upon request, be provided with a copy of the survey or be permitted to view the survey at the school in which the student is enrolled.
5. If after making reasonable attempts to obtain parental consent, as required by subsection 1, a school district is unable to obtain a response from a student's parent, the student may participate in the specific survey provided:
  - a. The survey results are identifiable to each student; and
  - b. A lack of participation in the survey would substantially impair the student's ability to advance educationally.
6. Nothing in this section precludes a student from participating in a required assessment, test, quiz, or examination, provided the assessment, test, quiz, or examination directly pertains to the state or school district content standards or to the student's grade level curriculum.

**SECTION 5.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Penalty.**

A person willfully violating this Act is subject to a class A misdemeanor. The unauthorized disclosure of student data is deemed to be a violation for purposes of this section."

Renumber accordingly

Sixty-fourth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2326

# 4  
SB 2326  
3/16/15

Introduced by

Senators Poolman, Dever, Schaible

Representatives Nathe, Rohr, Schatz

1 A BILL for an Act to create and enact ~~a new section~~ three new sections to chapter 15.1-07 of the  
2 North Dakota Century Code, relating to reportable data fields; ~~and~~, student information and  
3 communication monitoring, and parental consent; to amend and reenact section 15.1-02-18 of  
4 the North Dakota Century Code, relating to duties of the state longitudinal data system  
5 committee; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Section 15.1-02-18 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **15.1-02-18. Statewide longitudinal data system committee - Membership - Powers and**  
10 **duties - Report to interim committee - Continuing appropriation.**

- 11 1. The statewide longitudinal data system committee consists of:
- 12 a. The chancellor of the board of higher education or the chancellor's designee;
  - 13 b. The superintendent of public instruction or superintendent of public instruction's
  - 14 designee;
  - 15 c. The chief information officer or the chief information officer's designee;
  - 16 d. The director of the department of career and technical education or the director's
  - 17 designee;
  - 18 e. The director of job service North Dakota or the director's designee;
  - 19 f. The commissioner of commerce or the commissioner's designee;
  - 20 g. The director of the department of human services or the director's designee;
  - 21 h. The director of the North Dakota educational technology council;
  - 22 i. The director of the North Dakota council of educational leaders or the director's
  - 23 designee;

- 1           j.    The director of the North Dakota workforce development council or the director's
- 2           designee; and
- 3           k.    Two members of the legislative assembly appointed by the chairman of the
- 4           legislative management.
- 5        2.    The governor shall ~~appoint~~designate the chairman of the committee.
- 6        3.    The committee may appoint additional ~~committees to~~work groups and task forces to
- 7           serve ~~the committee~~ in an advisory capacity.
- 8        4.    The committee shall manage a statewide longitudinal data system that:
- 9           a.   Provides for the dissemination of management information to stakeholders and
- 10          partners of state education, training, and employment systems; and
- 11          b.   Uses data from educational and workforce systems as central sources of
- 12          statewide longitudinal data.
- 13        5.    The committee shall set policy and adopt rules relating to access to and the collection,
- 14          storage, and sharing of information and the systems necessary to perform those
- 15          functions, subject to applicable federal and state privacy laws and interagency
- 16          agreements and restrictions relating to confidential information required to conform to
- 17          applicable federal and state privacy laws. The committee shall provide operational
- 18          oversight for information sharing activities and make recommendations for and provide
- 19          oversight of information sharing budgets.
- 20        6.    The committee, in consultation with the information technology department, shall:
- 21          a.   Establish the terms and conditions under which a person may be authorized to
- 22               access data through the statewide longitudinal data system;
- 23          b.   Direct that all statewide longitudinal data system administrators implement
- 24               approved data protection practices to ensure the security of electronic and
- 25               physical data, provided that the practices include requirements for encryption and
- 26               staff training;
- 27          c.   Provide for biennial privacy and security audits of the statewide longitudinal data
- 28               system;
- 29          d.   Establish protocols, including procedures, for the notification of students and
- 30               parents, in the event of a data breach involving the statewide longitudinal data
- 31               system;



e. Require that data retention and disposition by the statewide longitudinal data system be governed by the same policies as those instituted for the information technology department; and

f. Require the provision of annual training regarding data protection to any individuals who have access to the statewide longitudinal data system, including school district employees, employees of the North Dakota university system office and institutions under the control of the state board of higher education, and elected or appointed state or local governmental officials.

7. The committee may authorize studies to benefit and improve workforce training and education.

~~6-8.~~ The committee shall provide a report to the information technology committee, interim committee on education issues, and interim committee on economic development ~~on the status of,~~ regarding the statewide longitudinal data system. The report must include recommendations for further development, cost proposals, proposals for legislation, and data sharing governance.

~~7-9.~~ The committee may solicit and receive moneys from public and private sources and those funds are appropriated on a continuing basis for the support of the statewide longitudinal data system.

**SECTION 2.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Data field - Reportable - List.**

Prior to the beginning of each school year, a school district shall publish on its website a list of all data fields that the district will report in PowerSchool or in any other state automated reporting system, during the ensuing school year. Each district shall make the list available in printed form, upon request.

**SECTION 3.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Information and communication monitoring.**

1. Without the prior written consent of a student's parent, a school district may not utilize any individualized technology that scans, monitors, or records a student's biometric



1 information, body temperature, vital signs, posture, or facial expressions. This

2 subsection does not apply to:

3 a. A school nurse or other health care professional delivering health care services to

4 a student or to a school district employee assisting a student with health-related

5 issues;

6 b. Classes or related activities in which the scanning, monitoring, or recording of a

7 student's biometric information, body temperature, vital signs, posture, or facial

8 expressions is a required curricular element; or

9 c. Directory information, including photographs.

10 2. A school district may review a student's internet browsing habits, electronic

11 communications, and data storage, if there is a reasonable suspicion that:

12 a. A law is being broken;

13 b. A policy is being violated; or

14 c. An individual is in imminent danger.

15 **SECTION 4.** A new section to chapter 15.1-07 of the North Dakota Century Code is created  
16 and enacted as follows:

17 **Parental consent - Surveys - Assessments.**

18 1. Without prior written parental consent, a school district may not permit a student to

19 participate in or respond to a survey, including an analysis, evaluation, or

20 questionnaire, which seeks information pertaining to any matter not directly related to

21 the state or school district content standards or the student's grade level curriculum,

22 unless the survey is created and administered by the school district.

23 2. a. The written consent required under subsection 1 must be specific to each

24 identified survey.

25 b. A parent may direct that no survey may be given to the parent's child.

26 3. If a student's failure to participate in a survey, as set forth in subsection 1, will or could

27 cause a student to lose benefits, those consequences must be communicated to the

28 student's parent in writing.

29 4. Any individual from whom consent is required under subsection 1 must, upon request,

30 be provided with a copy of the survey or be permitted to view the survey at the school

31 in which the student is enrolled.

- 1        5.    If after making reasonable attempts to obtain parental consent, as required by  
2            subsection 1, a school district is unable to obtain a response from a student's parent,  
3            the student may participate in the specific survey provided:  
4            a.    The survey results are identifiable to each student; and  
5            b.    A lack of participation in the survey would substantially impair the student's ability  
6            to advance educationally.  
7        6.    Nothing in this section precludes a student from participating in a required  
8            assessment, test, quiz, or examination, provided the assessment, test, quiz, or  
9            examination directly pertains to the state or school district content standards or to the  
10           student's grade level curriculum.

11        **SECTION 5.** A new section to chapter 15.1-07 of the North Dakota Century Code is created  
12 and enacted as follows:

13        **Penalty.**

14        A person willfully violating this Act is subject to a class A misdemeanor. The unauthorized  
15 disclosure of student data is deemed to be a violation for purposes of this section.



#5  
SB 2326  
3/16/15

**CHAPTER 12.1-02**  
**LIABILITY AND CULPABILITY**

**12.1-02-01. Basis of liability for offenses.**

1. A person commits an offense only if the person engages in conduct, including an act, an omission, or possession, in violation of a statute which provides that the conduct is an offense.
2. A person who omits to perform an act does not commit an offense unless the person has a legal duty to perform the act, nor shall such an omission be an offense if the act is performed on the person's behalf by a person legally authorized to perform it.

**12.1-02-02. Requirements of culpability.**

1. For the purposes of this title, a person engages in conduct:
  - a. "Intentionally" if, when he engages in the conduct, it is his purpose to do so.
  - b. "Knowingly" if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.
  - c. "Recklessly" if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 12.1-04-02, awareness of the risk is not required where its absence is due to self-induced intoxication.
  - d. "Negligently" if he engages in the conduct in unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
  - e. "Willfully" if he engages in the conduct intentionally, knowingly, or recklessly.
2. If a statute or regulation thereunder defining a crime does not specify any culpability and does not provide explicitly that a person may be guilty without culpability, the culpability that is required is willfully.
3.
  - a. Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to those attendant circumstances specified in the definition of the offense, except that where the required culpability is "intentionally", the culpability required as to an attendant circumstance is "knowingly".
  - b. Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required degree of culpability is required with respect to the result.
  - c. Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for grading.
  - d. Except as otherwise expressly provided, culpability is not required with respect to facts which establish that a defense does not exist, if the defense is defined in chapters 12.1-01 through 12.1-06; otherwise the least kind of culpability required for the offense is required with respect to such facts.
  - e. A factor as to which it is expressly stated that it must "in fact" exist is a factor for which culpability is not required.
4. Any lesser degree of required culpability is satisfied if the proven degree of culpability is higher.
5. Culpability is not required as to the fact that conduct is an offense, except as otherwise expressly provided in a provision outside this title.

**12.1-02-03. Mistake of fact in affirmative defenses.**

Unless otherwise expressly provided, a mistaken belief that the facts which constitute an affirmative defense exist is not a defense.



Sixty-fourth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2326

Introduced by

Senators Poolman, Dever, Schaible

Representatives Nathe, Rohr, Schatz

A BILL for an Act to create and enact three new sections to chapter 15.1-02 and a new section to chapter 15.1-07 of the North Dakota Century Code, relating to the collection and maintenance of student data and reportable data fields; and to amend and reenact section 15.1-02-18 of the North Dakota Century Code, relating to duties of the state longitudinal data system committee.

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

**SECTION 1. AMENDMENT.** Section 15.1-02-18 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-18. Statewide longitudinal data system committee - Membership - Powers and duties - Report to interim committee - Continuing appropriation.**

1. The statewide longitudinal data system committee consists of:
  - a. The chancellor of the board of higher education or the chancellor's designee;
  - b. The superintendent of public instruction or superintendent of public instruction's designee;
  - c. The chief information officer or the chief information officer's designee;
  - d. The director of the department of career and technical education or the director's designee;
  - e. The director of job service North Dakota or the director's designee;
  - f. The commissioner of commerce or the commissioner's designee;
  - g. The director of the department of human services or the director's designee;
  - h. The director of the North Dakota educational technology council;
  - i. The director of the North Dakota council of educational leaders or the director's designee;

- 1 j. The director of the North Dakota workforce development council or the director's  
2 designee; and
- 3 k. Two members of the legislative assembly appointed by the chairman of the  
4 legislative management.
- 5 2. The governor shall ~~appoint~~designate the chairman of the committee.
- 6 3. The committee may appoint additional ~~committees to~~work groups and task forces to  
7 ~~serve the committee~~ in an advisory capacity.
- 8 4. The committee shall manage a statewide longitudinal data system that:
- 9 a. Provides for the dissemination of management information to stakeholders and  
10 partners of state education, training, and employment systems; and
- 11 b. Uses data from educational and workforce systems as central sources of  
12 statewide longitudinal data.
- 13 5. The committee shall set policy and adopt rules relating to access to and the collection,  
14 storage, and sharing of information and the systems necessary to perform those  
15 functions, subject to applicable federal and state privacy laws and interagency  
16 agreements and restrictions relating to confidential information required to conform to  
17 applicable federal and state privacy laws. The committee shall provide operational  
18 oversight for information sharing activities and make recommendations for and provide  
19 oversight of information sharing budgets.
- 20 6. The committee, in consultation with the information technology department, shall:
- 21 a. Establish the terms and conditions under which a person may be authorized to  
22 access data through the statewide longitudinal data system;
- 23 b. Direct that all statewide longitudinal data system administrators implement  
24 approved data protection practices to ensure the security of electronic and  
25 physical data, provided that the practices include requirements for encryption and  
26 staff training;
- 27 c. Provide for biennial privacy and security audits of the statewide longitudinal data  
28 system;
- 29 d. Establish protocols, including procedures, for the notification of students and  
30 parents, in the event of a data breach involving the statewide longitudinal data  
31 system;



- 1           e. Require that data retention and disposition by the statewide longitudinal data  
2           system be governed by the same policies as those instituted for the information  
3           technology department; and
- 4           f. Require the provision of annual training regarding data protection to any  
5           individuals who have access to the statewide longitudinal data system, including  
6           school district employees, employees of the North Dakota university system  
7           office and institutions under the control of the state board of higher education,  
8           and elected or appointed state or local governmental officials.

9           7. The committee may authorize studies to benefit and improve workforce training and  
10          education.

11        ~~6-8.~~ The committee shall provide a report to the information technology committee, interim  
12          committee on education issues, and interim committee on economic development ~~on~~  
13          ~~the status of,~~ regarding the statewide longitudinal data system. The report must  
14          include recommendations for further development, cost proposals, proposals for  
15          legislation, and data sharing governance.

16        ~~7-9.~~ The committee may solicit and receive moneys from public and private sources and  
17          those funds are appropriated on a continuing basis for the support of the statewide  
18          longitudinal data system.

19        **SECTION 2.** A new section to chapter 15.1-02 of the North Dakota Century Code is created  
20          and enacted as follows:

21        **Superintendent of public instruction - Identification of data - Rules.**

22        The superintendent of public instruction shall by rule identify:

- 23        1. All data fields that the superintendent collects or maintains about students;  
24        2. The purpose for collecting or maintaining the data; and  
25        3. Persons with whom the data are shared.

26        **SECTION 3.** A new section to chapter 15.1-02 of the North Dakota Century Code is created  
27          and enacted as follows:

28        **Student data - Collection - School district responsibility.**

- 29        1. The board of each school district shall publish on the district's website a list of all data  
30        fields that the district collects or maintains about an individual student and indicate for  
31        each field:



a. Whether the field is classified as:

(1) Directory information;

(2) Personally identifiable information; or

(3) Non-personally identifiable information;

b. The purpose for which the data is collected or maintained; and

c. Any person, other than a school district employee, with whom the data is shared.

2. The board of each school district shall establish a policy and identify therein, by name or title, which school district employee has access to the data.

3. The board of each school district shall establish a policy addressing the manner in which a parent may opt-out of any disclosure involving directory information or personally identifiable information of that parent's child, except as required in order to administer the state finance formula.

4. The board of each school district shall review the requirements of this section at least annually and modify the district's website and policies to ensure accuracy.

**SECTION 4.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Application of chapter.**

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

1. A court;

2. A governmental entity, if there is a reasonable belief that an individual is or may be in imminent danger; or

3. A vendor that provides to a school district a specific educational or administrative service or product, provided that prior to the release of any records the vendor contractually agrees to:

a. Limit the use of any student data that is collected and maintained to the authorized purpose set forth in the contract;

b. Protect the data from unauthorized access or use; and

c. Return or destroy any data that was collected and maintained by the vendor upon fulfillment of the authorized purpose set forth in the contract.

1       **SECTION 5.** A new section to chapter 15.1-07 of the North Dakota Century Code is created  
2 and enacted as follows:

3       **Data field - Reportable - List.**

4       Prior to the beginning of each school year, a school district shall publish on its website a list  
5 of all data fields that the district will report in PowerSchool or in any other state automated  
6 reporting system, during the ensuing school year. Each district shall make the list available in  
7 printed form, upon request.

April 6, 2015

#|

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2326

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-07 and seven new sections to chapter 54-59 of the North Dakota Century Code, relating to reportable data fields and the statewide longitudinal data system; to repeal sections 15.1-02-18, 15.1-02-18.1, and 15.1-02-18.2 of the North Dakota Century Code, relating to the statewide longitudinal data system; and to provide for a continuing appropriation.

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

**SECTION 1.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Data field - Reportable - List.**

Prior to the beginning of each school year a school district shall publish on its website a list of all data fields that the district will report in PowerSchool, or in any other state automated reporting system, during the ensuing school year. Each district shall make the list available in printed form upon request.

**SECTION 2.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Membership.**

1. The statewide longitudinal data system committee consists of:
  - a. The commissioner of the board of higher education or the commissioner's designee;
  - b. The superintendent of public instruction or the superintendent's designee;
  - c. The chief information officer or the officer's designee;
  - d. The director of the department of career and technical education or the director's designee;
  - e. The director of job service North Dakota or the director's designee;
  - f. The commissioner of commerce or the commissioner's designee;
  - g. The director of the department of human services or the director's designee;
  - h. The director of the North Dakota educational technology council;
  - i. The executive director of the North Dakota council of educational leaders or the executive director's designee;



- j. The director of the North Dakota workforce development council or the director's designee; and
  - k. Two members of the legislative assembly appointed by the chairman of the legislative management.
2. The governor shall designate the chairman of the committee.

**SECTION 3.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Duties.**

- 1. The committee shall manage a statewide longitudinal data system that:
  - a. Provides for the dissemination of management information to stakeholders and partners of state education, training, and employment systems; and
  - b. Uses data from educational and workforce systems as central sources of statewide longitudinal data.
- 2. The committee shall establish policies and adopt rules addressing access to and the collection, storage, and sharing of information and the systems necessary to perform those functions, subject to applicable federal and state privacy laws and interagency agreements and restrictions relating to confidential information required to conform to applicable federal and state privacy laws.
- 3. The committee shall provide operational oversight for information sharing activities and make recommendations for and provide oversight of information sharing budgets.
- 4. The committee in consultation with the information technology department shall:
  - a. Establish the terms and conditions under which a person may be authorized to access data through the statewide longitudinal data system;
  - b. Direct that all statewide longitudinal data system administrators implement approved data protection practices to ensure the security of electronic and physical data, provided that the practices include requirements for encryption and staff training;
  - c. Provide for biennial privacy and security audits of the statewide longitudinal data system;
  - d. Establish protocols, including procedures, for the notification of students and parents in the event of a data breach involving the statewide longitudinal data system;
  - e. Require that data retention and disposition by the statewide longitudinal data system be governed by the same policies as those instituted for the information technology department; and

- f. Require the provision of annual training regarding data protection to any individuals who have access to the statewide longitudinal data system, including school district employees, employees of the North Dakota university system office and institutions under the control of the state board of higher education, and elected or appointed state or local governmental officials.

**SECTION 4.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Powers.**

1. The committee may authorize studies to benefit and improve workforce training and education.
2. The committee may appoint additional work groups and task forces to serve in an advisory capacity.

**SECTION 5.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Report to legislative management.**

During each interim the statewide longitudinal data system committee shall provide a report regarding the statewide longitudinal data system to one or more committees designated by the legislative management and shall provide recommendations for further development, cost proposals, proposals for legislation, and recommendations for data sharing governance.

**SECTION 6.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Continuing appropriation.**

The statewide longitudinal data system committee may solicit and receive gifts, grants, and donations from public and private sources. Any moneys received in accordance with this section are appropriated on a continuing basis for the support of the statewide longitudinal data system.

**SECTION 7.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Information technology department.**

1. The information technology department, at the direction of the statewide longitudinal data system committee, shall maintain a statewide longitudinal data system among education, workforce, and training entities.
2. The information technology department and the statewide longitudinal data system committee may, subject to federal and state privacy laws, enter interagency agreements, including agreements designating authorized representatives of the educational agencies participating in the system.



pursuant to the Family Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99].

3. The information technology department shall staff and provide other necessary support to the statewide longitudinal data system committee.

**SECTION 8.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**State agencies - Mandatory provision of information - Confidentiality.**

1. The information technology department may request from any state agency:
  - a. All information required by 20 U.S.C. 9871(e)(2)(D); and
  - b. Any other educational information the statewide longitudinal data system committee determines is required for a longitudinal data system to comply with state or federal law.
2. Subject to applicable restrictions on the use and disclosure of confidential information required to comply with federal and state privacy laws, any state agency receiving a request for information under subsection 1 shall provide the information at the time and in the manner required by the information technology department.

**SECTION 9. REPEAL.** Sections 15.1-02-18, 15.1-02-18.1, and 15.1-02-18.2 of the North Dakota Century Code are repealed."

Renumber accordingly

April 8, 2015

#1  
4/10/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2326

That the House recede from its amendments as printed on pages 866 and 867 of the Senate Journal and pages 1021 and 1022 of the House Journal and that Engrossed Senate Bill No. 2326 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-07 and seven new sections to chapter 54-59 of the North Dakota Century Code, relating to reportable data fields and the statewide longitudinal data system; to repeal sections 15.1-02-18, 15.1-02-18.1, and 15.1-02-18.2 of the North Dakota Century Code, relating to the statewide longitudinal data system; and to provide for a continuing appropriation.

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

**SECTION 1.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Protection of student data - School district policy.**

1. The board of each school district shall adopt a policy regarding the protection of student data.
2. The policy must require that permission be obtained from the board before any student data is shared with an individual who is not a school district employee or shared with any other entity. This provision does not apply to the sharing of data with a student's parent or to the sharing of data, if required by law.
3. The policy must require the school district superintendent to compile:
  - a. A list of all individuals with whom and entities with which student data is shared; and
  - b. A list, by title, of all school district personnel who have access to student data.
4. A school district shall make copies of the policy available upon request.

**SECTION 2.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Membership.**

1. The statewide longitudinal data system committee consists of:
  - a. The commissioner of the board of higher education or the commissioner's designee;

- b. The superintendent of public instruction or the superintendent's designee;
  - c. The chief information officer or the officer's designee;
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  - e. The director of job service North Dakota or the director's designee;
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  - h. The director of the North Dakota educational technology council;
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  - j. The director of the North Dakota workforce development council or the director's designee; and
  - k. Two members of the legislative assembly appointed by the chairman of the legislative management.
2. The governor shall designate the chairman of the committee.

**SECTION 3.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Duties.**

1. The committee shall manage a statewide longitudinal data system that:
  - a. Provides for the dissemination of management information to stakeholders and partners of state education, training, and employment systems; and
  - b. Uses data from educational and workforce systems as central sources of statewide longitudinal data.
2. The committee shall establish policies and adopt rules addressing access to and the collection, storage, and sharing of information and the systems necessary to perform those functions, subject to applicable federal and state privacy laws and interagency agreements and restrictions relating to confidential information required to conform to applicable federal and state privacy laws.
3. The committee shall provide operational oversight for information sharing activities and make recommendations for and provide oversight of information sharing budgets.
4. The committee in consultation with the information technology department shall:

- a. Establish the terms and conditions under which a person may be authorized to access data through the statewide longitudinal data system;
- b. Direct that all statewide longitudinal data system administrators implement approved data protection practices to ensure the security of electronic and physical data, provided that the practices include requirements for encryption and staff training;
- c. Provide for biennial privacy and security audits of the statewide longitudinal data system;
- d. Establish protocols, including procedures, for the notification of students and parents in the event of a data breach involving the statewide longitudinal data system;
- e. Require that data retention and disposition by the statewide longitudinal data system be governed by the same policies as those instituted for the information technology department; and
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**SECTION 7.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Information technology department.**

1. The information technology department, at the direction of the statewide longitudinal data system committee, shall maintain a statewide longitudinal data system among education, workforce, and training entities.
2. The information technology department and the statewide longitudinal data system committee may, subject to federal and state privacy laws, enter interagency agreements, including agreements designating authorized representatives of the educational agencies participating in the system, pursuant to the Family Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99].
3. The information technology department shall staff and provide other necessary support to the statewide longitudinal data system committee.

**SECTION 8.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**State agencies - Mandatory provision of information - Confidentiality.**

1. The information technology department may request from any state agency:
  - a. All information required by 20 U.S.C. 9871(e)(2)(D); and
  - b. Any other educational information the statewide longitudinal data system committee determines is required for a longitudinal data system to comply with state or federal law.
2. Subject to applicable restrictions on the use and disclosure of confidential information required to comply with federal and state privacy laws, any state agency receiving a request for information under subsection 1 shall provide the information at the time and in the manner required by the information technology department.

**SECTION 9. REPEAL.** Sections 15.1-02-18, 15.1-02-18.1, and 15.1-02-18.2 of the North Dakota Century Code are repealed."

Renumber accordingly