

2011 SENATE EDUCATION

SB 2278

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee  
Missouri River Room, State Capitol

SB 2278  
January 26, 2011  
13428

Conference Committee

Committee Clerk Signature 

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

Relating to the required dissemination of student names and addresses

## Minutes:

See "attached testimony."

**Chairman Senator Freborg** opened the hearing for SB 2278; no fiscal note attached.

**Senator Nething, District 12**, introduced the bill; the problem was brought to their attention by Jamestown College staff. In the past the colleges were able to get names, addresses and phone numbers of all 11<sup>th</sup> & 12<sup>th</sup> graders in the state—through the university system. Jamestown College ran into a snag getting this information. This bill would require the school districts to provide a list of the students that are enrolled in grades 11 & 12 to each institution of higher education under control of the state board, and to each of the four year institutions or incorporated and operating before July 1, 1977. The schools need the lists to be able to tell them about their colleges.

**Senator Gary Lee:** We were just having the "may" versus "shall" discussion down in your committee; where it says "shall provide the list" which means a requirement for the school district to provide. Isn't federal law a permissive one if the school requests the information rather than school district shall provide. **Senator Nething:** Can't answer that because he doesn't know the federal law. Should be others here that can answer it.

**Senator Flakoll:** Why the date of 1977? **Senator Nething:** Thinks that is when Ellendale was established.

**Senator Flakoll:** How about any opt in or opt out language; if the student doesn't want their personal information released. **Senator Nething:** Never been discussed as to that being a problem. Currently, in most instances, they are provided now to the board of higher education office. Question is whether or not the board office can release it to the private schools. Already there, without an opt in or opt out option.

**Senator Flakoll:** Does this require, as you read it, include private K-12's to provide information to all campuses? **Senator Nething:** Doesn't know.

**Senator Heckaman:** You mentioned a snag in the current law, can you explain it?  
**Senator Nething:** Someone else that will testify can explain it.

**Rod Backman, Jamestown College,** testified in favor of the bill (Testimony #1). He should be able to answer some of those questions. Code referenced in the bill is incorrect; typo—should be **44-04-18.13**, not 18.3. (Attachment #2) Will need an amendment to correct that. To answer the question regarding the date of 1977 in the statute—what counsel did when they drafted the bill was to grab that date that is elsewhere in the law relating to the three private four year institutions in the state. Rather than stating the names of Jamestown College, University of Mary and Trinity Bible College, simply says institutions established by that date. Most of the high schools do provide the information, and this bill would allow the university system to share them without fear of violating the statute.

**Senator Flakoll:** Would this bill prevent schools like Rasmussen College from getting the information? **Rod Backman:** This statute would not specifically open it to them, the way it is written.

**Senator Flakoll:** Was some discussion prior to the hearing; if we find this is already provided for by federal law and that some schools are ignorant of the law and aren't complying, are you fine that it is covered by federal law? **Rod Backman:** Yes, if that is the case it should be fine. The concern was not getting them under state statute, and it really becomes a question of the board office recognizing the federal law exists if they don't have a problem sharing. Jamestown College has stated they are getting them directly from the schools but it is more cumbersome than getting the names from the higher ed office. Also causes more work for high school administrators to be sending out multiple lists. As he understands, the board office looked at it and said under this statute they have discretion whether or not to release it and so didn't.

**Senator Flakoll:** Does it require the private K-12 schools to also provide the information to all of the campuses? **Rod Backman:** First impression is not; in so many other parts of the Century Code if it refers to school districts believes it would be a public high school.

**Senator Flakoll:** Does this provide the list to the five tribal colleges in North Dakota? **Rod Backman:** If the open records statute is the issue, there is no change to the open records statute so the discretion to release it, he thinks is still there. This specifically says it is going to be released to those private institutions before 1977. Suppose the question becomes are the tribal colleges four year or are they community colleges—he doesn't know. And whether they were in effect before that date.

**Senator Luick:** Could the date be removed from the bill; if there is a new facility or new institution that comes about like Rasmussen College, that would eliminate them from obtaining the information. **Rod Backman:** No, the bill drafted by Legislative Council staff and they were told what the intent of the bill was, and they drafted it. It was geared toward the four year institutions in the state, if the date is taken out then all four year institutions would come under this. Don't have a problem with that.

**Senator Luick:** Then why wouldn't the two year institutions be included in that, instead of just four year? **Rod Backman:** That is a decision to be made by the legislature; if you guys proceed with the bill. Our focus was the four year at the meeting; no two year institutions were there so it didn't come up.

**Senator Luick:** Right now (under current law) do the students or their parents have the right to deny this information from being shared or is it just mandated? **Rod Backman:** Doesn't know what the requirement would be at the high school level. Would assume that if the parents said it can't be released, that would be complied with. Can't really answer that.

**Senator Gary Lee:** One of the information pieces requested in the bill is the telephone numbers; does the "no call list" apply to this also—can people opt out of that portion of the bill? **Rod Backman:** Thinks the telephone numbers could come out of the bill; the reason it was put in there is because they went back to the "list of minors" in Chapter 44 of the Code. That said names, addresses and phone numbers in it; just included that when drafted but shouldn't be an issue to take telephone numbers out.

**Senator Flakoll:** By address do you mean physical address, not e-mail addresses? **Rod Backman:** Right, US postal address. **Senator Flakoll:** And the telephone number would be for the child? Students now usually have a cell phone number; would it then be allowable for the campus to text the student? **Rod Backman:** Suspect that if they have the phone number they could do the text; don't know of a law.

No further testimony in support of SB 2278; opposition:

**Bev Nielson, North Dakota School Board Association,** testified in opposition of the bill. Not in opposition to the names being released, but believe that federal law already covers this. (Attachment #3) Federal law under FERPA (*Family Educational Rights and Privacy Act*) requires, not the board of higher education and not DPI, requires each local education agency (school district) that receives any federal money shall provide upon request by military recruiters or an institution of higher learning access to secondary school student names, addresses, and telephone numbers—federal law. It doesn't say we have to report them to the board of higher education, nor does it say the board office should, could, release names to any other people. If someone gets the regular list of enrollment from DPI, and then disburse that list to military recruiters and higher ed institutions without removing of names of students whose parents have requested that the name be removed—then they are sending out names that should be shared. Names are to come from the *local school district* and go to an *institution of higher education* (public, private, four year, two year, tribal) and parents the option of removing their children from those lists that go to military recruiters and higher ed institutions. This bill would really confuse the issue; if we have school administrators or boards that aren't aware of or don't understand their obligation to do this and are refusing to give it to a college—North Dakota School Boards Association needs to know so they can remedy it. Just clarifying that it is a different list than their regular enrollment list. Thinks state law will confuse the issue when the federal law is clear.

To answer previous questions--student cell numbers shouldn't be on file with schools; they report home numbers.

**Senator Marcellais:** Anything required in student files now on release of information that is signed by parents? **Bev Nielson:** Parents have to let the school know that they DON'T want the information released. Opt out instead of opt in?! That should be on record with the school district that information is not to be released.

**Senator Luick:** Would it be a burdensome thing for DPI and/or the school board association to maybe jack up the school administration to let them know what the federal laws are and that they need to address these things? **Bev Nielson:** Not knowing how the question was asked of the administrators, not saying they violated the law—if someone wanted a complete list, etc. If they are flat out refusing to give an individual institution the information, that needs to be addressed. They have NO obligation to give the information to the board of higher ed. Have to give it to the colleges and they can give it to the board of higher ed. Board of higher ed needs to know there are separate lists and they can't disseminate the general enrollment list to the military and others.

**Senator Flakoll:** Do you have the citation that you could give us from the federal law?

**Bev Nielson:** Do have a copy of the section.

**Senator Flakoll:** Does the federal law include providing information to tribal colleges? **Bev**

**Nielson:** It says an institution of higher education; we interpret that to mean two year, four year, tribal, public, private-all.

**Senator Flakoll:** That would only be those that are "housed" in North Dakota? So not provide them to, say University of Phoenix, because they aren't within the state, correct?

**Bev Nielson:** Excellent question because federal law just says local agencies should provide them to an institution of higher education—don't think the federal law says registered in their state, so good question!

**Doug Johnson, North Dakota Council of Educational Leaders,** testified in opposition to the bill the way written; same reasons that Bev Nielson outlined. Think it is taken care of already under FERPA Act; try to give some background how schools work with that, what kinds of things they've done to educate administrators to apply the law, and possibility it could be a problem of interpretation of that by some school district administrators. Don't feel it is a common occurrence as the law has been in place for a long time and they are familiar with it. FERPA law allows for student directory information to be established by as school district and can be released upon request to the institutions listed under FERPA law. The school district will set the information which is usually the student name, address and home phone number of parent. They have to put that directory information out annually to every parent in the school district; after that parents have to sign off if they do not want their information released. Once child turns 18 they are in charge of their record and could go in and change the release information to be sent or not. Complicates things somewhat, but doesn't happen often. Can get the committee further information on FERPA if needed.

**Senator Flakoll:** What should Jamestown College do if a school district declines their request for information—who should they get ahold of? **Doug Johnson:** They should call him and he will contact the administrator. They do legal seminars for administration every year and cover this information. Cover legal issues at least every other year with them.

**Senator Gary Lee:** There is a requirement that certain students take the ACT exam; does ACT sell those names to others that may be interested? **Doug Johnson:** Don't believe they do and they cannot do that as it belongs to the school districts. It is protected information; the only way it is released is if the student is applying to go to a certain college and sign off for information to be released to that college. **Senator Gary Lee:** That's an exam a student would take; what authority does the school district have to say over what information is shared from that exam? **Doug Johnson:** The authority is to put that information into the student record, that is where it relies. Their authority to pass that on once it is in the student record would be for any requirements it has for fulfilling that obligation to the student longitudinal data system which goes to the state for reporting purposes. Any release of the information beyond that would have to come from the student or parent signing off. **Senator Gary Lee:** If a student takes the exam, no release is signed for that information to be shared or not? **Doug Johnson:** Not sure that they do.

**Senator Marcellais:** Does the privacy act come into play on this? **Doug Johnson:** On those the privacy act would be in effect because the only thing that can be released is the student directory information as identified by the school district. ACT scores are not included in directory information so would be protected.

**Senator Flakoll:** Could we have Lisa Feldner explain how they do things with the information, and if someone from ACT could answer Senator Lee's questions?

**Lisa Feldner, Chair of Longitudinal Data System Committee, and Chief Information Officer for Information Technology Department** appeared to answer questions.

**Senator Flakoll:** how does the flow of information go; need for clarification—does it go from an individual school district directly to the campuses, does it go to the university system, directly to the college, how does the flow of information go or what controls are there for opting out, etc. in terms of the data and how it is provided?

**Lisa Feldner:** The majority of school districts in North Dakota are on Power School and the rest will be by the end of 2013. As they build the longitudinal data system now there is a nightly process of pulling information from Power School into DPI's system—the STARS system. That is just things that DPI collects: grade, teacher, attendance, etc.—what they normally would collect. None of this information is released by DPI to anyone; it is just for the schools' state reporting. Being done automated so that each fall and spring, the goal is that schools do not have to manually to the state as in the past. When the data is reported, it will be aggregate information—never identifies a student. On a flow to the university system, there is a project to match students that have enrolled, so from DPI they have matched students as requested by the interim education committee; how many students from K-12 have matriculated into the North Dakota University System. Over the summer they did a matching process to load the students into the Connect ND system and see how many have matched. Only North Dakota students; non public schools and universities. Wanted to know how many students are going from K-12 to higher ed and how they are performing. None of that is going to recruiters, colleges, etc. Neither DPI nor the data system release that information.

**Connie Mittleider, DPI,** job is to administer the junior mandated ACT and WorkKeys assessment, and the North Dakota Scholarship Program.

**Senator Gary Lee:** Since we are requiring that ACT, does that give those testing agencies any opportunity to resell that information in terms of personal information? **Connie Mittleider:** No, one of the things that is impressive in working with the ACT is the security established by that company. The state wanted students to use their social security number on the assessment and the company refused. The only way student information (just scores from the testing) is released is if the student does indicate on the registration form who they want the scores released to. No other information is ever released by ACT. The statewide junior test—she gets the database, knows every student, knows their score, know their high school and that is locked up. The state only shares aggregate information.

**Senator Gary Lee:** They can release the scores, so they would just have the aggregate list that gives the scores from North Dakota students who took the exam, with no names. **Connie Mittleider:** Need to clarify that: ACT will release the scores to institutions as requested by the student. When the student takes the ACT, on the document, the student indicates where they want their test scores sent. When the test is scored, the company passes on the scores for that student to the institutions designated by the students.

**Senator Heckaman:** Can that also go to tribal schools in the state? **Connie Mittleider:** Yes, it can go to any institution of higher education in the nation.

No further testimony; hearing closed.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee  
Missouri River Room, State Capitol

Committee Work on SB 2278  
February 14, 2011  
14476

Conference Committee

Committee Clerk Signature



## Minutes:

You may make reference to "attached testimony."

**Chairman Freborg:** Handed out amendment proposal from Rod Backman (#1 attachment). Basically a "hog house" amendment that will make the bill more tolerable. Thought that maybe some words be reversed; third line: each high school "may" upon request provide; and third line up from the bottom: that the university system "shall". There may be other amendments that are acceptable other than this amendment offered.

**Senator Luick:** At one time there was discussion about taking out the date on line 11 completely. Was there any amendment for that? **Senator Flakoll:** This is basically a "hog house" amendment; took the date out so colleges like Rasmussen would be considered.

**Senator Heckaman:** When you look at the third line with "may" in there, doesn't hold a lot of teeth for the university system to get this list, does it? **Senator Freborg:** That's true; they may not.

**Senator Luick:** Is the opt out language included? **Chairman Freborg:** Not yet **Senator Flakoll:** Rod Backman had legal counsel draft this, and he believes that the student and/or parent can still opt out of being on the list. It wouldn't be an enrollment list. Legal language is tough to follow, so maybe Anita Thomas could look at it.

**Chairman Freborg:** The amendments are supported by the North Dakota School Boards Association. Could change "shall" to "may" on the third line from top. **Senator Gary Lee:** How does this interact with federal law, in that they seem to be able to opt out under federal law or what takes precedence? **Senator Flakoll:** Each of the colleges in the state can ask for the directory information on a district by district basis, and they have to provide it per federal law. This would make it such that the school district would send one list to the North Dakota University System office, and they would disseminate the information to the various campuses. The problem will be that this will probably have a fiscal note which might change how people view it. The process of getting information is what the amendment is about. The North Dakota University System would have to determine how to pull the information into the same format; would guess at one point there will be costs that come from the North Dakota University System office to do this with 285 school districts.

**Senator Heckaman:** Maybe should ask Anita Thomas if the opt out language included in this before making a decision. Against the amendment if that isn't included. **Chairman**



**Freborg:** Just want to clarify that he's not "cheering" for the bill; just offered them; can get the bill in any shape wanted. If don't like it, can vote against it. Get it in shape in case it does pass. If it ends up with a fiscal note in the House, may not pass there.

**Senator Flakoll:** Discussed the code sections referenced in the amendments; one relates to open records within North Dakota. After that point, not sure what they are referencing. Maybe someone in the room could provide more information. Likes the amendment better than the bill. May also ask Anita Thomas to look at it and see if the opt out language is there.

**Bev Nielson, North Dakota School Boards Association:** Would have to look part of it up; assuming this is the section of federal code which says school districts must provide this information to military recruiters and institutions of higher ed. Federal law requires them to share the information, but parents have the option to opt out of sharing. If they opt out, it is out of everything; can't pick and choose who will get their information. **Senator Heckaman:** Is opting out a common practice in the schools across the state? **Bev Nielson:** Not really sure.

**Senator Flakoll:** Motion Do Pass to amendment 11.0736.01002 as originally printed; second by **Senator Luick**.

**Discussion:**

**Senator Heckaman:** Don't really know if it has the opt out language included? **Chairman Freborg:** Not personally sure, but was told it had that language. **Senator Flakoll:** Believes the committee would all want that language in there. Check with Anita Thomas to see if that is the case.

**Senator Heckaman:** "shall" and "may" are left where they were originally in the amendment? **Chairman Freborg:** It does

**Senator Luick:** Do like the amendment better than the original bill also.

Motion carried; 4-3-0 (Vote 1-A)

**Anita Thomas, Legislative Council:** Believes the question is whether the parents still have an opt out so children's' information would not be shared. Without having looked at federal regulations, only from memory, believes under FERPA parents do have the opt out provision. Will double check that or suggest additional language to the amendment that would provide the opt out language for the parents so there would be no doubt. **Chairman Freborg:** Perhaps you could check to see, and then let the committee know. **Anita Thomas:** Looked at the federal law (#2 attachment) pertaining to FERPA; authorizes an educational agency or institution to disclose directory information about the students, however, it does require the institution give parents or eligible students the right to refuse that dissemination.

**Senator Flakoll:** Move a Do Pass as amended to SB 2278; second by **Senator Schaible**.

**Discussion:**

**Senator Luick:** How does it change what is currently being done? **Senator Flakoll:** Sets up the North Dakota University System as a central repository of the information. Shifts the burden of sending information out from the K-12 institutions to higher ed.

Motion failed 3-4-0 (Vote 1-B)

**Senator Schaible:** Move Do Not Pass; second by **Senator Heckaman.** Motion failed 3-4-0. (Vote 1-C)

**Senator Heckaman:** Motion to send SB 2278 with "no recommendation" as amended; second by **Senator Marcellais.** Motion carried 5-2-0 (Vote 1-D)

**Chairman Freborg:** Voted no, because he does not like to send bills out of committee without recommendation.

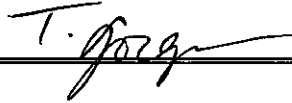
# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee  
Missouri River Room, State Capitol

Committee Work o SB 2278  
February 21, 2011  
14759

Conference Committee

Committee Clerk Signature



**Minutes:**

See attached amendment

**Senator Flakoll** moved to reconsider SB 2278 that was passed out as amended without committee recommendation; second by **Senator Luick**. **Senator Flakoll:** Believe there are amendments titled 2001 if we were to bring the bill back. Motion carried 7-0-0 (Vote 1-D).

**Chairman Freborg:** He was presented with amendments that everyone has a copy of now. **Senator Heckaman:** Can't find information in original bill; looking at the wrong bill. **Chairman Freborg:** There is a previous amendment that was passed. **Senator Flakoll:** Yes, to engrossed bill 2278, which you may not have. **Chairman Freborg:** If you look at the amendment and go up to the third line from the bottom, believe that is the where the change would be from "may" to "shall".

**Senator Flakoll** moved Do Pass amendment 11.0736.02001 to Engrossed SB 2278; second by **Senator Luick**. The amendment changes line 6 to replace "Authorized disclosure" with "disclosure" and line 11 to replace "may" with "shall". Motion carried 6-1-0 (Vote 1-E).

**Senator Flakoll:** Move to send out Re-engrossed SB 2278 as amended with No Committee Recommendation; second by **Senator Luick**. Motion carried 6-1-0 (Vote 1-F). Carried to the floor by **Senator Flakoll**.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2278

Page 1, line 6, replace "Required dissemination" with "Authorized disclosure"

Page 1, replace lines 7 through 11 with "Notwithstanding section 44-04-18.13, and subject to any limitations on the disclosure of directory information under title 20, Code of Federal Regulations, part 99, sections 31, 33, and 37, each high school shall provide to the North Dakota university system a list of all students enrolled in grades ten and eleven as of April fifteenth of each year, together with the students' addresses and telephone numbers. The North Dakota university system may disclose this information to each institution under the control of the state board of higher education and to each nonpublic university and college in this state."

Renumber accordingly

#1 Attachment

Date: 2-14-11  
Roll Call Vote # 1-A

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2278

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0736.01002

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Sen. Flakoll Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg		X	Senator Joan Heckaman		X
Vice Chair Donald Schaible	X		Senator Richard Marcellais		X
Senator Tim Flakoll	X				
Senator Gary A. Lee	X				
Senator Larry Luick	X				

Total (Yes) 4 No 3

Absent 0

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

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

Date: 2-14-11  
 Roll Call Vote # 1B

**2011 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2278**

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Sen. Flakoll Seconded By Sen. Schaible

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg	X		Senator Joan Heckaman		X
Vice Chair Donald Schaible		X	Senator Richard Marcellais		X
Senator Tim Flakoll	X				
Senator Gary A. Lee	X				
Senator Larry Luick		X			

Total (Yes) 3 No 4

Absent 0

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

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

Date: 2-14-11  
Roll Call Vote # 1C

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2278

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Sen Schaible Seconded By Sen Heckaman

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg		X	Senator Joan Heckaman	X	
Vice Chair Donald Schaible	X		Senator Richard Marcellais	X	
Senator Tim Flakoll		X			
Senator Gary A. Lee		X			
Senator Larry Luick		X			

Total (Yes) 3 No 4

Absent \_\_\_\_\_

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

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

Date: 2-14-11  
 Roll Call Vote # 10

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2278

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider  No recommendation

Motion Made By Sen Heckaman Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg		X	Senator Joan Heckaman	X	
Vice Chair Donald Schaible	X		Senator Richard Marcellais	X	
Senator Tim Flakoll	X				
Senator Gary A. Lee		X			
Senator Larry Luick	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Sen. Flakoll

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



Date: 2-21-11  
 Roll Call Vote # 1-0

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2278

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Sen. Flakoll Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg	X		Senator Joan Heckaman	X	
Vice Chair Donald Schaible	X		Senator Richard Marcellais	X	
Senator Tim Flakoll	X				
Senator Gary A. Lee	X				
Senator Larry Luick	X				

Total (Yes) 7 No 0

Absent 0

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

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

*reconsidering bill*

11.0736.02001  
Title.

Prepared by the Legislative Council staff for  
Senator Nething  
February 17, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2278

Page 1, line 6, replace "Authorized disclosure" with "Disclosure"

Page 1, line 11, replace "may" with "shall"

Renumber accordingly

# 3 attachment

Date: 2-21-11  
Roll Call Vote # L-E

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2278

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0736.02001

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Sen. Flakoll Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg	X		Senator Joan Heckaman	X	
Vice Chair Donald Schaible		X	Senator Richard Marcellais	X	
Senator Tim Flakoll	X				
Senator Gary A. Lee	X				
Senator Larry Luick	X				

Total (Yes) 6 No 1

Absent 0

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

If the vote is on an amendment, briefly indicate intent:  
line 6 - change "Authorized disclosure" to "disclosure"  
line 11 - replace may w/ shall

Date: 2-21-11  
 Roll Call Vote # IF

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2278

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: Do Pass  Do Not Pass  Amended  Adopt Amendment   
 Rerefer to Appropriations  Reconsider No recommendation

Motion Made By Sen. Flakoll Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg	X		Senator Joan Heckaman	X	
Vice Chair Donald Schaible	X		Senator Richard Marcellais	X	
Senator Tim Flakoll	X				
Senator Gary A. Lee		X			
Senator Larry Luick	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Sen. Flakoll

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

**REPORT OF STANDING COMMITTEE**

**SB 2278: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2278 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "required dissemination" with "disclosure"

Page 1, line 6, replace "**Required dissemination**" with "**Authorized disclosure**"

Page 1, replace lines 7 through 11 with "Notwithstanding section 44-04-18.13, and subject to any limitations on the disclosure of directory information under title 20, Code of Federal Regulations, part 99, sections 31, 33, and 37, each high school shall provide to the North Dakota university system a list of all students enrolled in grades ten and eleven as of April fifteenth of each year, together with the students' addresses and telephone numbers. The North Dakota university system may disclose this information to each institution under the control of the state board of higher education and to each nonpublic university and college in this state."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2278: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2278 was placed on the Sixth order on the calendar.**

Page 1, line 2, replace "required dissemination" with "disclosure"

Page 1, line 6, replace "**Required dissemination**" with "**Authorized disclosure**"

Page 1, replace lines 7 through 11 with "Notwithstanding section 44-04-18.13, and subject to any limitations on the disclosure of directory information under title 20, Code of Federal Regulations, part 99, sections 31, 33, and 37, each high school shall provide to the North Dakota university system a list of all students enrolled in grades ten and eleven as of April fifteenth of each year, together with the students' addresses and telephone numbers. The North Dakota university system shall disclose this information to each institution under the control of the state board of higher education and to each nonpublic university and college in this state."

Renumber accordingly

2011 HOUSE EDUCATION

SB 2278

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee  
Pioneer Room, State Capitol

SB 2278  
03/08/11  
15080

Conference Committee

Committee Clerk Signature



## MINUTES:

**Chairman RaeAnn Kelsch:** We will open the hearing on SB 2278.

**Sen. Dave Nething:** Sponsor. (Testimony attachment 1).

**Chairman RaeAnn Kelsch:** The way that this bill is currently, does it match up with federal law regarding FERPA?

**Sen. Dave Nething:** That was our intention. It is my understanding that it does.

**Rep. Bob Hunskor:** I believe you indicated Jamestown College. Was this a problem for all universities and colleges or just private?

**Sen. Dave Nething:** I can't speak for all but I do know it came from Jamestown.

**Chairman RaeAnn Kelsch:** The way it is current written is that it would include our private campuses so it would include the University of Mary, Jamestown, Ellendale, and it would also include Rasmussen.

**Sen. Dave Nething:** And it includes the tribal colleges. That is how I came up with the number.

**Rep. Phillip Mueller:** I have two versions of the bill and I noticed that the original bill talked about grades 11 and 12. The current talks about 10 and 11. Do we not care about 12?

**Sen. Dave Nething:** Logically it seems to me that you want to reach these students in the 10<sup>th</sup> and 11<sup>th</sup> grades. When they are in the 12<sup>th</sup> grade they have probably already started to make their decisions.

**Rep. Brenda Heller:** How would a parent know they can opt out of their child's name and information being sent to all the colleges and universities?

**Sen. Dave Nething:** I don't know how they do that anymore. I assume there must be some mechanism. The federal law is a driving point on that because they require that they have to be able to opt out.



**Chairman RaeAnn Kelsch:** And that is currently the practice.

**Sen. Dave Nething:** I think so. I don't know.

**Chairman RaeAnn Kelsch:** I think it's handled uniformly. I know there are forms that you sign. It is same with ACT. When you take that test you tell them which campuses you want your scores sent to and that is signed so that information can be disseminated to them.

**Rod Backman – Jamestown College:** (Testimony attachment 2).

**Chairman RaeAnn Kelsch:** Questions?

**Rep. Karen Rohr:** What would ensure the parent and the student that this data base is not being sold and being given to another entity besides the universities or school systems?

**Rod Backman – Jamestown College:** My understanding is that in the federal law it is restricted to where that information can go.

**Chairman RaeAnn Kelsch:** And this is currently being done by the public schools to higher education. It is currently being done to the university system itself for the state funded schools. But is its not including the privates.

**Rod Backman – Jamestown College:** It is not including the privates. What the board is saying is that they don't have 100% compliance. We worked through several amendments on the senate side to get this worked out between the people that have to deal with it. I am neutral on this. I obviously want to see the bill go through. The board office would like to see this amendment put on. They think it would make it easier for them to get the format in a consistent format so they can more easily handle the data administratively.

**Rep. Bob Hunsakor:** Does that mean with the amendments that after a period of time do lines 12 and 13 drop out or are they still a part of it?

**Rod Backman – Jamestown College:** I believe they would still be a part of it.

**Chairman RaeAnn Kelsch:** So really what the amendment is doing is it is going to dictate from the board office back to the school districts what type of format and how they want the information reported back to the universities.

**Rod Backman – Jamestown College:** How you read it is the university system shall provide a manner for the format. It doesn't say how the high school shall respond in that format.

**Chairman RaeAnn Kelsch:** Further support?

**Bev Nielson – NDSBA:** When the bill was heard on the senate side we testified that we didn't think the bill was necessary. The schools are required by federal law to send it to institutions of higher education upon request. It doesn't say that we are required to send it

to the Board of Higher Education. Having said that, once we went through about a dozen different amendments and versions, it came out as it did in the engrossed bill where it says that we shall send it to them and they shall send it to all the other schools. At that point it does become a simplification of the process in our eyes that we send it one time to the Board of Higher Education and they distribute it. We didn't object to the bill after that. However, the amendment that has been proposed to you says the Board of Higher Education shall send out a format but it doesn't say that we shall use the format. That is confusing to me. When the schools receive the format from higher education they are going to assume that it is the format that they have to present the information in and then the business manager or somebody has to put all the information into this different format. We are not interested in doing that. I don't think we should intentionally put something in code that is going to be confusing from the get-go. I think if schools send their directory information to the Board of Higher Education in whatever form they have it in, then higher education can send it out to the colleges in the form they received it.

**Rep. Karen Rohr:** I'm a little confused by the definition of format. Are you referring to the framework in which the data is going to be given? How is it going to be transmitted? What are you referring to as the problem?

**Bev Nielson – NDSBA:** It could be both. We may have small schools that still do this on a word processing format and put their student directory information out like that. We have others who have it in a sophisticated type of spreadsheet format and if you are asked to redo it into another format it is just time consuming. I think if they are required to send the information to the board then I think it should be acceptable in whatever format the district has.

**Chairman RaeAnn Kelsch:** By the end of 2013 all the school districts will be on Power School. Well not all schools but the majority will be.

**Bev Nielson – NDSBA:** The way we report to Power School is Power School gets all the information. That information is protected. This directory information which is name, address and phone number, parents can opt out of it. I don't think we are set up in Power School to have any opt out cell for the information.

**Chairman RaeAnn Kelsch:** The question is if you have the Power School reporting, can't you pull that out? Can't you pull out just the information that is going to the universities? It is my understanding that they can just pull that out and then that is the format that could be used by the school districts to send this to the university system.

**Bev Nielson – NDSBA:** They do the directory through Power School and pull it out and put it into a different type of document. That would be true. What type of document or format I don't know.

**Chairman RaeAnn Kelsch:** What difference does it make what format it is in? Isn't the university system just going to be the repository? Isn't it that the information just goes to them and then they turn around and disseminate it? Does it matter what format it is in? It is up to the universities in North Dakota to interpret the information they receive. It shouldn't

matter what format it is in because they are prohibited from providing any other information that what it is.

**Bev Nielson – NDSBA:** The way the bill is currently written without the amendments that would be true. I think they can speak for themselves that it is easier for them if it all comes in the format that they want it in.

**Chairman RaeAnn Kelsch:** Further support?

**Debra Anderson – NDUS:** The process that is currently in place is that each of the 11 campuses takes a spreadsheet that we provide them with and they work with the individual high schools in their geographic area to gather this data. What they do is they send them a spreadsheet so it is provided to them. They then provide their information back in the spreadsheet.

**Chairman RaeAnn Kelsch:** Who does that?

**Debra Anderson – NDUS:** The 11 campuses and then they bring the data back into their offices and then put all those into one database. Those 11 databases come into our office, we merge them, turn them around, and then give it back to the campuses. What we are asking for in this amendment is that we send out the information and get it back in the same manner. It would be much easier for us. It has the potential to be a substantial additional work load on the part of the campuses.

**Chairman RaeAnn Kelsch:** What you are talking about here is you want to send the spreadsheet to the campuses?

**Debra Anderson – NDUS:** We provide the information to the 11 campuses and they are the contact for their local schools so then they forward it to the schools and work with them. It does become a bit of a follow up process. It is an advantage to them in that they have another contact with their local area schools. We can't have a non-standard database. We have to have something that can be downloaded by the postal service to develop mailing labels. It needs to be standardized.

**Rep. David Rust:** Would you tell me what the specific cells are on there?

**Debra Anderson – NDUS:** First name, middle initial, last name, mailing address, city, state, zip code, telephone number, date of birth, high school, high school graduation year and student email address are part of it.

**Rep. David Rust:** That would be more info than the law would require.

**Debra Anderson – NDUS:** That is more than the law would require and sometimes schools won't put that out there. We do put it out there because often when the students communicate with us they do so by email so we added email address. It is not always comprehensive. What is comprehensive is the information we can use for mailing purposes.

**Rep. David Rust:** As a former school administrator I would have given you first name, middle initial, last name, mailing address, city, state, zip code, telephone number and nothing else.

**Chairman RaeAnn Kelsch:** It looks like under FERPA what you can disclose is the student's name, the address, telephone number, the date and place of birth, honors and awards, dates of attendance, and then it goes in that you have to be told about the directory information and parents have to have the opportunity to opt out. That is the only information required under federal law that can be disclosed.

**Debra Anderson – NDUS:** And you have covered just about everything on here.

**Rep. David Rust:** This law says that a list of students in grades 10 and 11 is address and telephone number and that is what I would provide. I would provide nothing else.

**Debra Anderson – NDUS:** I wasn't involved in the drafting but perhaps the intent was to be a generic coverage of that type of information. If I may respond to an earlier question, there was a question in regard to what years in school that we are asking for this information. Because we prepare this over the summer we ask for the names of the students that will be juniors and seniors in the coming year so we are asking the schools for sophomores and juniors at that time because of at the time of the mailing they will be juniors and seniors.

**Rep. Phillip Mueller:** Are you familiar with Power School and what that is about?

**Debra Anderson – NDUS:** I am and I can't speak to the details. It was pursued in our office and the answer was that we can't get that information through Power School.

**Rep. Phillip Mueller:** Can you explain why that is true?

**Debra Anderson – NDUS:** I thought part of the issue was that it doesn't necessarily include tribal schools so we wouldn't have a comprehensive database.

**Rep. Phillip Mueller:** It seems to me that whatever you do should be closely aligned with what the school is easily able to give you. The amendment thing troubles me a little bit since what we are doing is saying to say Tioga School that we want this information and here is how we want it. I think as we move forward that should be in your mind on what makes sense here and how can we most easily do this.

**Debra Anderson – NDUS:** I definitely appreciate your perspective. Our concern is the human resources on our end. It might help you guys that we currently have 88% of the high school students in our database and this is the process that we have been using for a number of years. It would be the other 12 % that would not be using this.

**Chairman RaeAnn Kelsch:** Further questions? Seeing none thank you.

**Lisa Feldner – ITD:** Power School can pull this stuff out. There is not a checkbox within Power School for a parent to opt out. What you do as a school registrar, if you have

parents that have opted out on the directory information for their child, is you put them in a separate group. Whenever you run a report then that group of students is not run with the report. I was thinking about this if you were to do this at a state level then you could perhaps do it through the longitudinal data system but we don't have the opt out set in that yet.

**Chairman RaeAnn Kelsch:** But eventually that is something that could be done.

**Lisa Feldner – ITD:** Right. The other thing we have been doing as a result of the commission meetings is the commission requested that we find out how many North Dakota students are going on to the North Dakota universities. Actually the university system already has those students in their system. They obviously don't know that the kids are already in there. We uploaded 10, 11, and 12 graders in order to match reference to see what the enrollment was but it is not all of that information. It is just name, school, and probably a birthday so you can match them. There a lot of ways where we could take the burden off schools.

**Chairman RaeAnn Kelsch:** But not at this point?

**Lisa Feldner – ITD:** No probably in a year and I don't know how that impacts your bill.

**Chairman RaeAnn Kelsch:** I don't think it impacts it at this point. I think coming in the next session it is something that could potentially be done especially as we work through the interim on the longitudinal data system. The only concern would be the reporting mechanisms from the nonpublic schools and tribal schools. I think there are some of those schools that are interested in trying to come online with the state system and if we do that it would help to alleviate all of the issues.

**Rep. Joe Heilman:** I'm trying to figure out the hesitancy with the format for reporting the student lists. With the Power School schools I would imagine that you could say I want name, address, and whatever else you want and have that exported in a spreadsheet. That would exclude those that have opted out. It is very simple to me to transfer to a spread sheet that the university system gives. I think the problem might be with the schools that aren't on Power School. I would find it hard to believe that they don't have that data somewhere in a spreadsheet.

**Debra Anderson – NDUS:** If they are very small they could be just using a spreadsheet. Some of the others that aren't on Power School have other systems and probably small systems that they can export. I haven't seen the amendment so I don't know what it says.

**Chairman RaeAnn Kelsch:** Further testimony in support of SB 2278?

**Warren Larsen – NDCEL:** We support this bill as it was originally written. I think over time some of what the university system wants will be available. Our directory information doesn't have anything other than what Rep. David Rust just talked about. To go back into Power School we would be pulling things out and it would become laborious for us as well.

**Rep. Corey Mock:** Are schools required to disclose this information to all universities across the country?

**Warren Larsen – NDCEL:** We are required to disclose this information to those that request it.

**Rep. Corey Mock:** This bill won't change that. If Concordia College in wanted access to this system would they be able to get that?

**Warren Larsen – NDCEL:** You mean would they be able to access that from us?

**Rep. Corey Mock:** Yes

**Warren Larsen – NDCEL:** I believe so.

**Chairman RaeAnn Kelsch:** They would request the information from your school district and then you would send it to Concordia Campus.

**Warren Larsen – NDCEL:** Correct.

**Chairman RaeAnn Kelsch:** They could also request it from the university system itself. What I understand is currently being done with the private campuses is that they are requesting it directly from the schools because they don't have access to it through the university system. Is that correct?

**Rod Backman – Jamestown College:** Correct. In one of the earlier versions we had language toward the end that said schools physically located in North Dakota so the intent was that it be available for any college in North Dakota. It wouldn't available for colleges out of the state to access it. Attorneys and Legislative Council took that out and said without a definition in the statue that it really didn't mean anything. My understanding is that this doesn't mean that out of state colleges can access this.

**Chairman RaeAnn Kelsch:** They can't access it through the university system but they can contact those school districts and that school district can provided them that directory because it is under federal law. Further support? Opposition? Further comments?

**Bev Nielson – NDSBA:** There is a FERPA issue and I need to clarify it for myself and maybe for you. As the testifier from higher education read to you what was on the spreadsheet that they would like to give out, that is when I got to the edge of my seat. Date of birth and things like that, while they may be allowed to be released under FERPA, are not required to be given to institutions of higher education. If they aren't alerting parents that their directory information that goes to colleges and so forth includes date of birth and other things, that needs to be on the permission slip because there may be some parents that don't have a problem with that but if you talk about date of birth we are starting to get into some identifiable information and things that parents might have a problem with. To me that is just another reason for schools to use forms that they know comply with what they are required to do as opposed to be getting a form that has some information that may be

disclosed but wasn't on a permission slip from the parent. We are not interested in going down that road.

**Chairman RaeAnn Kelsch:** And the bill says it is just that information. Opposition to SB 2278? We will close the hearing on SB 2278.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee  
Pioneer Room, State Capitol

SB 2278  
03/08/11  
15082

Conference Committee

Committee Clerk Signature



## MINUTES:

**Chairman RaeAnn Kelsch:** We will open the hearing on SB 2278. I am inclined to pass the bill for a number of reasons without the amendment from the University system for a couple of reasons. The first and foremost is that I think when these amendments were being drafted they were at the table and they knew what they did and what they said. Secondly this is already being done by the other campuses and I think if they sent out and said here is a sheet we are using for reporting purposes for other campuses, some will choose to use that and some will chose not to. If we really want our North Dakota students to know the options available to them in North Dakota why wouldn't we disseminate this information to all of the campuses and have them have access to it. In conversations with Lisa Feldner she felt as though if we put this into effect this session probably through working through the longitudinal data system during the interim and then knowing what information we would have, it would probably even be something that their department could provide. We would already have the "opt out" that is done in Power School and that they could put all the information together and disseminate it at that level. It would be one single format and it could be done that way. It seems to me that would make sense. This bill has gone through a lot and is important to our private campuses.

**Rep. David Rust:** I move a do pass.

**Rep. Mark Sanford:** Second.

**Chairman RaeAnn Kelsch:** Further discussion? We will take the roll on a do pass on SB 2278.

**14 YEAS 0 NAYS 1 ABSENT**  
**CARRIER: Rep. David Rust**

**DO PASS**



Date: 03-08-11  
 Roll Call Vote #: \_\_\_\_\_

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2278

House EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt  
 Amendment

Rerefer to Appropriations  Reconsider

Motion Made By REP. RUST Seconded By REP. SANFORD

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	X		Rep. Hanson	X	
Vice Chairman Meier			Rep. Hunskor	X	
Rep. Heilman	X		Rep. Mock	X	
Rep. Heller	X		Rep. Mueller	X	
Rep. Johnson	X				
Rep. Karls	X				
Rep. Rohr	X				
Rep. Rust	X				
Rep. Sanford	X				
Rep. Schatz	X				
Rep. Wall	X				

Total (Yes) 14 No 0

Absent 1 - VICE CHAIR MEIER

Floor Assignment REP. RUST

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

**REPORT OF STANDING COMMITTEE**

**SB 2278, as engrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2278 was placed on the Fourteenth order on the calendar.**

2011 TESTIMONY

SB 2278

Senate Education Committee

January 26, 2011

SB 2278

Testimony by Rod Backman

Jamestown College

Chairman Freborg & members of the committee my name is Rod Backman. I am here today representing Jamestown College to speak in favor of SB 2278.

First, I will point out a typo in the bill referencing NDCC 44-04-18.3 that should read 44-04-18.13. If you like, I would be happy to prepare an amendment correcting the Century Code cite.

I will give you a little background on the reason this bill is being introduced. As I understand it, for several years the ND University System (NDUS) board office would gather the names and addresses of high school juniors and seniors in North Dakota and use them to promote the state's colleges and universities to those students. The board office would also share those names and addresses with Jamestown College for the same purpose. Within the last few years, in light of NDCC 44-04-18.13 (relating to open records) some high school administrators refused to provide the data to NDUS. I have been told some administrators were concerned about credit card companies or others accessing the data. In an effort to address the concerns of the administrators, the board office agreed not to share the data with anyone other than the colleges and universities within the state system; thus preventing Jamestown College from accessing the data.

# 1 SB 2278

Even under this approach, some administrators continued to withhold the data from the board office.

NDCC 44-04-18.13 is attached for your information. It provides "list of minors" are "exempt". In addition I have attached 44-04-17.1 which is the definitions section of the open records statute. The definitions state; "exempt record means all or part of a record.....is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity".

SB 2278 addresses the concerns relating to the open records statutes by providing that the names and addresses be provided to the board office and the private four year education institutions in the state, namely Jamestown College, University of Mary and Trinity Bible College in Ellendale.

From a practical standpoint, should the high schools (most of which are already doing this) present the data to the board office, this statute would grant NDUS the ability to share the data with the private colleges and universities in North Dakota.

There are two key benefits from this bill. It insures all North Dakota high school students will see what North Dakota has to offer in higher education institutions, and it may help to keep more North Dakota student in our state.

Mr. Chairman, I would be happy to address any questions you or the committee members may have.

Thank You,

Rod Backman

#1 SB 2278

1. Unless disclosure under a court order is otherwise prohibited or limited by law, closed records must be disclosed pursuant to a subpoena issued by a court, administrative law judge, or administrative hearing officer, or other court order.
2. Unless disclosure under a court order is otherwise prohibited or limited by law, confidential records must be disclosed pursuant to a court order. Upon request of the public entity ordered to make the disclosure, the court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.
3. Any person who discloses confidential records of a public entity under this section is immune from prosecution for violating section 12.1-13-01.

**44-04-18.12. Cooperative investigations and litigation.** A record acquired by the office of attorney general from a governmental agency or a nonpublic entity is exempt if the attorney general determines:


1. The record is necessary to monitor or enforce compliance with a law or order or to further a civil investigation or litigation by the state;
2. The record is treated as confidential or privileged by the provider of the records; and
3. The provider of the records has not agreed to waive the privilege relating to or confidentiality of the record.

**44-04-18.13. Lists of minors.** Any record of a public entity that is a compilation of minor's names, addresses, telephone numbers, or any combination thereof, is exempt.

**44-04-18.14. Information provided to the followup information on North Dakota education and training system.**

1. Except as provided in this section, the followup information on North Dakota education and training system may not release information provided to it for research or statistical purposes by a participating agency in any manner that identifies an individual.
2. The followup information on North Dakota education and training system may use personally identifiable information to produce aggregate statistics that may be provided to a participating agency.
3. Unless prohibited by state or federal law, the followup information on North Dakota education and training system may provide personally identifiable information to a participating agency, but may not provide that information to any other person.
4. Unless prohibited by state or federal law, a participating agency may use personally identifiable information to fulfill its obligations for state and federal statistical reporting. Personally identifiable information provided by a participating agency to the followup information on North Dakota education and training system which the followup information on North Dakota education and training system releases to another participating agency may not be used or released for any other purpose by that other participating agency without the consent of the identified individual or as otherwise authorized by law.

**44-04-18.15. Fundraising and donor records of board of higher education, university system, and affiliated nonprofit organizations exempt.** Any donor or prospective donor name, address, telephone number, electronic mail address, estate planning information, tax record or financial information, or other personal information or correspondence received or retained by a board of higher education or university system officer or employee or by an affiliated nonprofit organization that provides support to and is organized and operated for the benefit of an institution under the authority of the board of higher education is exempt. For the

1. "Closed meeting" means all or part of an exempt meeting that a public entity in its discretion has not opened to the public, although any person necessary to carry out or further the purposes of a closed meeting may be admitted.
2. "Closed record" means all or part of an exempt record that a public entity in its discretion has not opened to the public.
3. "Confidential meeting" or "confidential record" means all or part of a record or meeting that is either expressly declared confidential or is prohibited from being open to the public.
4. "Executive session" means all or part of a meeting that is closed or confidential.
5.  "Exempt meeting" or "exempt record" means all or part of a record or meeting that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity.
6. "Governing body" means the multimember body responsible for making a collective decision on behalf of a public entity. "Governing body" also includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.
7. "Law" includes federal statutes, applicable federal regulations, and state statutes.
8. a. "Meeting" means a formal or informal gathering or a work session, whether in person or through electronic means such as telephone or videoconference, of:
  - (1) A quorum of the members of the governing body of a public entity regarding public business; or
  - (2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of such smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.
- b. "Meeting" does not include:
  - (1) A chance or social gathering at which public business is not considered;
  - (2) Emergency operations during a disaster or emergency declared under section 37-17.1-10 or an equivalent ordinance if a quorum of the members of the governing body are present but are not discussing public business as the full governing body or as a task force or working group; and
  - (3) The attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong.
- c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.
9. "Organization or agency supported in whole or in part by public funds" means an organization or agency in any form which has received public funds exceeding the fair market value of any goods or services given in exchange for the public funds, whether through grants, membership dues, fees, or any other payment. An exchange must be conclusively presumed to be for fair market value, and does not

achievement standards approved or certified by the Federal Government, in order to receive assistance under this Act.

(2) **RULE OF CONSTRUCTION-** Nothing in this subsection shall be construed to affect requirements under title I or part A of title VI.

(d) **RULE OF CONSTRUCTION ON BUILDING STANDARDS-** Nothing in this Act shall be construed to mandate national school building standards for a State, local educational agency, or school.

**SEC. 9528. ARMED FORCES RECRUITER ACCESS TO STUDENTS AND STUDENT RECRUITING INFORMATION.**

(a) **POLICY-**

(1) **ACCESS TO STUDENT RECRUITING INFORMATION-** Notwithstanding section 444(a)(5)(B) of the General Education Provisions Act and except as provided in paragraph (2), each local educational agency receiving assistance under this Act shall provide, on a request made by military recruiters or an institution of higher education, access to secondary school students names, addresses, and telephone listings.

(2) **CONSENT-** A secondary school student or the parent of the student may request that the student's name, address, and telephone listing described in paragraph (1) not be released without prior written parental consent, and the local educational agency or private school shall notify parents of the option to make a request and shall comply with any request.

(3) **SAME ACCESS TO STUDENTS-** Each local educational agency receiving assistance under this Act shall provide military recruiters the same access to secondary school students as is provided generally to post secondary educational institutions or to prospective employers of those students.

(b) **NOTIFICATION-** The Secretary, in consultation with the Secretary of Defense, shall, not later than 120 days after the date of enactment of the No Child Left Behind Act of 2001, notify principals, school administrators, and other educators about the requirements of this section.

(c) **EXCEPTION-** The requirements of this section do not apply to a private secondary school that maintains a religious objection to service in the Armed Forces if the objection is verifiable through the corporate or other organizational documents or materials of that school.

(d) **SPECIAL RULE-** A local educational agency prohibited by Connecticut State law (either explicitly by statute or through statutory interpretation by the State Supreme Court or State Attorney General) from providing military recruiters with information or access as required by this section shall have until May 31, 2002, to comply with that requirement.

**SEC. 9529. PROHIBITION ON FEDERALLY SPONSORED TESTING.**

(a) **GENERAL PROHIBITION-** Notwithstanding any other provision of Federal law and except as provided in subsection (b), no funds provided under this Act to the Secretary or to the recipient of any award may be used to develop, pilot test, field test, implement, administer, or distribute any federally sponsored national test in reading, mathematics, or any other subject, unless specifically and explicitly authorized by law.

(b) **EXCEPTIONS-** Subsection (a) shall not apply to international comparative assessments developed under the authority of section 404(a)(6) of the National Education Statistics Act of 1994 and administered to only a representative sample of pupils in the United States and in foreign nations.

**SEC. 9530. LIMITATIONS ON NATIONAL TESTING OR CERTIFICATION FOR TEACHERS.**

(a) **MANDATORY NATIONAL TESTING OR CERTIFICATION OF TEACHERS-** Notwithstanding any other provision of this Act or any other provision of law, no funds available to the Department or otherwise available under this Act may be used for any purpose relating to a mandatory nationwide test or certification of teachers or education paraprofessionals, including any planning, development, implementation, or administration of such test or certification.

(b) **PROHIBITION ON WITHHOLDING FUNDS-** The Secretary is prohibited from withholding funds from any State educational agency or local educational agency if the State educational agency or local educational agency fails to adopt a specific method of teacher or paraprofessional certification.

**SEC. 9531. PROHIBITION ON NATIONWIDE DATABASE.**

Nothing in this Act (other than section 1308(b)) shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this Act.

**SEC. 9532. UNSAFE SCHOOL CHOICE OPTION.**

(a) **UNSAFE SCHOOL CHOICE POLICY-** Each State receiving funds under this Act shall establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary school, as determined by the State in consultation with a representative sample of local educational agencies, or who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.

(b) **CERTIFICATION-** As a condition of receiving funds under this Act, a State shall certify in writing to the Secretary that the State is in compliance with this section.

**SEC. 9533. PROHIBITION ON DISCRIMINATION.**



ation records on behalf of the educational agency or institution in accordance with the requirements of § 99.33(b); and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if:

(1) The parent or eligible student has given written consent for the disclosure under § 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

[73 FR 74854, Dec. 9, 2008]

**§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?**

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Nothing in this Act or this part shall prevent an educational agency or institution from—

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

(c) In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substi-

tute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

(Authority: 20 U.S.C. 1232g(b)(1)(I) and (h))  
[53 FR 19368, May 27, 1988; 61 FR 59297, Nov. 21, 1996; 73 FR 74854, Dec. 9, 2008]

**§ 99.37 What conditions apply to disclosing directory information?**

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of:

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without complying with the notice and opt out conditions in paragraph (a) of this section. However, the agency or institution must continue to honor any valid request to opt out of the disclosure of directory information made while a student was in attendance unless the student rescinds the opt out request.

(c) A parent or eligible student may not use the right under paragraph (a)(2) of this section to opt out of directory information disclosures to prevent an educational agency or institution from disclosing or requiring a student to disclose the student's name, identifier, or institutional e-mail address in a class in which the student is enrolled.

(d) An educational agency or institution may not disclose or confirm directory information without meeting the written consent requirements in § 99.30 if a student's social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student's records.

(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))  
[73 FR 74854, Dec. 9, 2008]

**§ 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974 concerning the juvenile justice system?**

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the sys-

tem's ability to e the student whos al agency or inst under § 99.31(a).

(b) The officia ords are disclose cational agency ( not be disclosed under State law, the parent of the (Authority: 20 U [61 FR 59297, Nov.

**§ 99.39 Wha se se ce le**

As used in this Alleged perpetr student who is would, if proven fenses or attempt that are defined i

- Arson
- Assault offense
- Burglary
- Criminal homic
- Criminal homic slaughter
- Destruction/dan
- Kidnapping/abc
- Robbery
- Forcible sex of

Alleged perpet means a student acts that, if prove incest. These of this part.

Final results i made by an honc mission, or other ary matters with final results mus student, the violatio posed by the insti

Sanction impos plinary action tak imposition, and its

Violation comm code sections the findings supporti the violation was c

# 2 Attachment SB 2278

# TESTIMONY ATTACHMENT I

SB 2278  
House Education Committee  
Tuesday March 8, 2011  
Representative RaeAnn Kelsch, Chair  
From: Senator Dave Nething

SB 2278

Benefits of this bill:

- 166 high school would only need to send out the data once
- 20 colleges would only need to request the data once
- State law would be compatible with Federal law rather than contradictory
- Parents & students are protected if they wish to opt out
- Insures all North Dakota high school students will see what North Dakota has to offer in higher education institutions, and it may help keep more North Dakota students in our state.
- After several amendments to the bill, it is acceptable to both the ND School Board Association and the ND University System board office.

# TESTIMONY ATTACHMENT 2

House Education Committee

March 8, 2011

SB 2278

Testimony by Rod Backman

Jamestown College

Chairman Kelsch & members of the committee my name is Rod Backman. I am here today representing Jamestown College, to speak in favor of SB 2278.

I will give you a little background on the reason this bill is being introduced. As I understand it, for several years the ND University System (NDUS) board office would gather the names and addresses of high school juniors and seniors in North Dakota and use them to promote the state's colleges and universities to those students. The board office would also share those names and addresses with non-public colleges for the same purpose. Within the last few years, in light of NDCC 44-04-18.13 (relating to open records) some high school administrators refused to provide the data to NDUS. I have been told some administrators were concerned about credit card companies or others accessing the data. In an effort to address the concerns of the administrators, the board office agreed not to share the data with anyone other than the colleges and universities within the state system; thus preventing non-public colleges from accessing the data.

Even under this approach, some administrators continued to withhold the data from the board office.

NDCC 44-04-18.13 provides “list of minors” is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity”, i.e. school district. Under Federal law the high schools are required to disclose this data to colleges once the parents and students have had the opportunity to opt out of the student directory list. Currently Federal and state law conflict, one saying the data is required and one saying it is not.

SB 2278 addresses the concerns relating to the open records statutes by providing that the names and addresses be provided to the board office and the higher education institutions in the state.

From a practical standpoint, should the high schools (most of which are already doing this) present the data to the board office, this statute would grant NDUS the ability to share the data with all the colleges and universities in North Dakota.

There are two key benefits from this bill. It insures all North Dakota high school students will see what North Dakota has to offer in higher education institutions, and it may help to keep more North Dakota student in our state. Second it simplifies the process, as each high school only needs to send the data out once and each higher education institution only needs to request it once.

Chairman Kelsch, I would be happy to address any questions you or the committee members may have.

Thank You,

Rod Backman

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2278

Page 1, line 11, after the period insert: "The North Dakota University System shall provide a manner and format for reporting the student lists."

Renumber accordingly