

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-NINTH SESSION**

**S.F. No. 2846**

(SENATE AUTHORS: NIENOW and Dibble)

DATE	D-PG	OFFICIAL STATUS
03/17/2016	5104	Introduction and first reading Referred to Education

1.1 A bill for an act  
 1.2 relating to data privacy; protecting student privacy in personal electronic devices  
 1.3 on campus; providing civil penalties; proposing coding for new law in Minnesota  
 1.4 Statutes, chapter 121A.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. [121A.85] PROTECTION OF STUDENT PRIVACY WITH RESPECT  
 1.7 TO PERSONAL ELECTRONIC DEVICES ON CAMPUS.

1.8 Subdivision 1. Definitions. (a) For the purposes of this section, the following terms  
 1.9 have the meanings given them.

1.10 (b) "1-to-1 device" means a technological device provided to a student pursuant to  
 1.11 any program authorized by an educational institution where the technological device is  
 1.12 provided to a student by or through an educational institution for overnight or at-home use.

1.13 (c) "Educational institution" means:

1.14 (1) a private or public school, institution, or school district, or any subdivision  
 1.15 thereof, that offers participants, students, or trainees an organized course of study or  
 1.16 training that is academic, trade-oriented, or preparatory for gainful employment, as well as  
 1.17 school employees acting under the authority or on behalf of an educational institution; or

1.18 (2) a state or local educational agency authorized to direct or control an entity in  
 1.19 clause (1).

1.20 (d) "Educational record" means an educational record as defined by United States  
 1.21 Code, title 20, section 1232g(a)(4).

1.22 (e) "Education research" means the systematic gathering of empirical information to  
 1.23 advance knowledge, answer questions, identify trends, or improve outcomes within the  
 1.24 field of education.

2.1 (f) "Law enforcement official" means an officer or employee of an agency or  
2.2 authority of the state of Minnesota, or a political subdivision or agent thereof, who is  
2.3 empowered by law to investigate or conduct an official inquiry into a potential violation of  
2.4 law, make arrests, or prosecute or otherwise conduct a criminal, civil, or administrative  
2.5 proceeding arising from an alleged violation of law.

2.6 (g) "Personal technological device" means a technological device owned, leased, or  
2.7 otherwise lawfully possessed by a student that is not a 1-to-1 device.

2.8 (h) "School employee" means an individual who is employed by an educational  
2.9 institution, who is compensated through an annual salary or hourly wage paid by an  
2.10 educational institution, and whose services are primarily rendered at a physical location  
2.11 that is owned or leased by that educational institution. For purposes of this section,  
2.12 individuals with law enforcement or school security responsibilities, including school  
2.13 resource officers, school district police officers, contract or private security companies,  
2.14 security guards, or other law enforcement personnel, are not school employees.

2.15 (i) "Student" means any student, participant, or trainee, whether full time or part  
2.16 time, in an organized course of study at an educational institution.

2.17 (j) "Technological device" means any computer, cellular phone, smartphone, digital  
2.18 camera, video camera, audio recording device, or other electronic device that can be used  
2.19 for creating, storing, or transmitting information in the form of electronic data.

2.20 **Subd. 2. Student's personal electronic devices on campus.** (a) No school  
2.21 employee may access, or compel a student to produce, display, share, or provide access  
2.22 to data or other content input into, stored upon, or accessible from a student's personal  
2.23 technological device, even when the personal technological device is being carried or used  
2.24 in violation of an educational institution policy.

2.25 (b) Notwithstanding paragraph (a), a school employee may search a student's  
2.26 personal technological device if:

2.27 (1) the school employee has a reasonable suspicion that a student has violated or  
2.28 is violating an educational institution policy and the student's personal technological  
2.29 device contains evidence of the suspected violation. In such cases, the school employee  
2.30 may search the student's personal technological device if:

2.31 (i) the student's personal technological device is located on the property of the  
2.32 educational institution;

2.33 (ii) prior to searching a student's personal technological device, the school employee:

2.34 (A) documents the reasonable individualized suspicion giving rise to the need for  
2.35 the search; and

3.1 (B) notifies the student and the student's parent or legal guardian of the suspected  
3.2 violation and what data will be accessed in searching for evidence of the violation;

3.3 (iii) the search is strictly limited to finding evidence of the suspected policy  
3.4 violation; and

3.5 (iv) the school employee immediately ceases searching the student's personal  
3.6 technological device upon finding sufficient evidence of the suspected violation; or

3.7 (2) the school employee believes doing so is necessary in response to an imminent  
3.8 threat to life or safety. Within 72 hours of accessing a personal technological device in  
3.9 response to an imminent threat to life or safety, the school employee or law enforcement  
3.10 official who accessed the device shall provide the student whose device was accessed, the  
3.11 student's parent or legal guardian, and the educational institution a written description of  
3.12 the precise threat that prompted the access and what data was accessed.

3.13 (c) For purposes of a search under paragraph (b), clause (1), an educational  
3.14 institution, subject to any other relevant legal restrictions, may seize a student's personal  
3.15 technological device to prevent data deletion pending notification. In the case of a seizure  
3.16 under this paragraph, the prenotification seizure period must be no greater than 48 hours,  
3.17 and the personal technological device must be stored securely on educational institution  
3.18 property and not accessed during the prenotification seizure period.

3.19 (d) The school employee shall not copy, share, or transfer any data or information  
3.20 that is unrelated to the specific suspected violation that prompted a search of the student's  
3.21 personal technological device under paragraph (b), clause (1).

3.22 (e) Notwithstanding paragraph (b), clause (1), if a student is suspected of illegal  
3.23 conduct, no search of the student's personal technological device may occur unless a  
3.24 judicial warrant authorizing a law enforcement official to search the student's personal  
3.25 electronic device has been secured, even if the student is also suspected of a related or  
3.26 unrelated violation of an educational institution policy.

3.27 Subd. 3. **Limitations on use.** Evidence or information obtained or collected  
3.28 in violation of this section shall not be admissible in any civil or criminal trial or legal  
3.29 proceeding, disciplinary action, or administrative hearing.

3.30 Subd. 4. **Penalties.** (a) A person or entity who violates this section shall be subject  
3.31 to legal action for damages or equitable relief, to be brought by any other person claiming  
3.32 that a violation of this section has injured the person or the person's reputation. A person so  
3.33 injured shall be entitled to actual damages, including mental pain and suffering endured as a  
3.34 result of a violation of this section, and reasonable attorney fees and other costs of litigation.

3.35 (b) A school employee who violates this section or any implementing rule or  
3.36 regulation may be subject to disciplinary proceedings and punishment. For school

4.1 employees who are represented under the terms of a collective bargaining agreement, this  
4.2 section prevails except where it conflicts with the collective bargaining agreement, any  
4.3 memorandum of agreement or understanding signed pursuant to the collective bargaining  
4.4 agreement, or any recognized and established practice relative to the members of the  
4.5 bargaining unit.

4.6 Subd. 5. **Severability.** The provisions in this section are severable. If any part  
4.7 or provision of this section or the application of this section to any person, entity, or  
4.8 circumstance is held invalid, the remainder of this section, including the application of the  
4.9 part or provision to other persons, entities, or circumstances, shall not be affected by the  
4.10 holding and shall continue to have force and effect.

4.11 **EFFECTIVE DATE.** This section is effective January 1, 2017.