

STUDENT PRIVACY ACT

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates the Student Privacy Act and addresses the release of public school student information.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires certain people to protect student privacy;
- ▶ allows a student or the student's parent to authorize the collection and release of certain student data;
- ▶ prohibits an education entity from releasing a student's personally identifiable information under certain circumstances;
- ▶ allows an education entity to release a student's personally identifiable information under certain circumstances;
- ▶ prohibits a school district from eliciting certain information from students;
- ▶ provides what kinds of student data may be collected and under what circumstances;
- ▶ requires an education entity to provide a student data disclosure to parents and students at the beginning of each school year or at the time a student enrolls with the education entity;
- ▶ establishes requirements for the State Board of Education related to the collection, usage, and storage of student data;



- 28 ▶ requires the State Board of Education to designate a student privacy coordinator to
- 29 oversee the protection of student data;
- 30 ▶ requires an education entity or third party contractor to collect, use, and store data in
- 31 accordance with certain security measures;
- 32 ▶ establishes penalties; and
- 33 ▶ makes technical changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **53A-13-301**, as last amended by Laws of Utah 2011, Chapter 401

41 **53A-13-302**, as last amended by Laws of Utah 2013, Chapter 335

42 ENACTS:

43 **53A-13-300.5**, Utah Code Annotated 1953

44 **53A-13-303**, Utah Code Annotated 1953

45 **53A-13-304**, Utah Code Annotated 1953

46 **53A-13-305**, Utah Code Annotated 1953



48 *Be it enacted by the Legislature of the state of Utah:*

49 Section 1. Section **53A-13-300.5** is enacted to read:

50 **Part 13. Student Privacy Act**

51 **53A-13-300.5. Definitions.**

52 As used in this part:

53 (1) "Adult student" means a student who is at least 18 years old.

54 (2) "Aggregate data" means data collected or reported at the group, cohort, school,
55 school district, or state level that:

56 (a) does not include personally identifiable information; and

57 (b) at the level collected, includes at least 100 individuals in the level.

58 (3) (a) "Allowable student data" means student data that an education entity may

- 59 collect and include in a student's educational record without student authorization.
- 60 (b) "Allowable student data" includes:
- 61 (i) name;
- 62 (ii) date of birth;
- 63 (iii) gender;
- 64 (iv) parent or guardian information;
- 65 (v) contact information;
- 66 (vi) a public student identification number;
- 67 (vii) state and national assessment results, excluding information on untested public
- 68 school students;
- 69 (viii) courses taken and completed, credits earned, and other transcript information;
- 70 (ix) course grades and grade point average;
- 71 (x) grade level and expected graduation date or graduation cohort;
- 72 (xi) degree, diploma, credential attainment, and other school exit information;
- 73 (xii) attendance and mobility; and
- 74 (xiii) drop-out data.
- 75 (4) "Board" means the State Board of Education.
- 76 (5) "Education entity" means:
- 77 (a) the board;
- 78 (b) a local school board or charter school governing board;
- 79 (c) a school district;
- 80 (d) a public school; or
- 81 (e) the Utah Schools for the Deaf and the Blind.
- 82 (6) "Higher education entity" means:
- 83 (a) an institution of higher education described in Subsection [53B-2-101\(1\)](#); or
- 84 (b) the State Board of Regents established in Section [53B-1-103](#).
- 85 (7) (a) "Optional student data" means student data that an education entity may not
- 86 collect except in accordance with Section [53A-13-303](#).
- 87 (b) "Optional student data" includes:
- 88 (i) discipline reports;
- 89 (ii) remediation efforts;

- 90 (iii) special education data;
- 91 (iv) demographic data; and
- 92 (v) program participation information.
- 93 (8) "Out-of-state educational agency" means an education agency or institution located
- 94 outside the state.
- 95 (9) "Parent" means a student's parent or legal guardian.
- 96 (10) (a) "Personally identifiable information" means information that identifies an
- 97 individual.
- 98 (b) "Personally identifiable information" includes:
- 99 (i) a student's first or last name;
- 100 (ii) a name of a student's family member;
- 101 (iii) a student's or student's family's home or physical address;
- 102 (iv) a student's email address or online contact information;
- 103 (v) a student's telephone number;
- 104 (vi) a student's Social Security number;
- 105 (vii) a student's biometric identifier;
- 106 (viii) a student's health or disability data;
- 107 (ix) a student's student identification number;
- 108 (x) a student's social media login or alias;
- 109 (xi) a student's persistent identifier, if the identifier is associated with personally
- 110 identifiable information, including:
- 111 (A) a customer number held in a cookie; or
- 112 (B) a processor serial number;
- 113 (xii) a combination of a student's last name or photograph of the student with other
- 114 information that together permits a person to contact the student online;
- 115 (xiii) information about a student or a student's family that a person collects online and
- 116 combines with other personally identifiable information; and
- 117 (xiv) other information that, alone or in combination, is linked or linkable to a specific
- 118 student that would allow a reasonable person in the school community, who does not have
- 119 personal knowledge of the relevant circumstances, to identify the student with reasonable
- 120 certainty.

121 (11) (a) "Prohibited student data" means student data that may not be collected by an
 122 education entity.

123 (b) "Prohibited student data" includes a student's:

124 (i) juvenile delinquency records;

125 (ii) criminal records;

126 (iii) medical and health records;

127 (iv) Social Security number; and

128 (v) biometric information.

129 (12) (a) "Student data" means student data collected or reported at the individual
 130 student level and may be included in a student's educational record.

131 (b) "Student data" includes:

132 (i) allowable student data;

133 (ii) optional student data; and

134 (iii) prohibited student data.

135 (13) "Student authorization" means the authorization of:

136 (a) the student's parent, if the student is less than 18 years old; or

137 (b) the student, if the student is an adult student.

138 (14) "Student data system" means the State Board of Education's system for collecting,
 139 storing, and using student data.

140 (15) "Student privacy coordinator" means the State Office of Education student privacy
 141 coordinator designated by the board under Section [53A-13-305](#).

142 (16) "Third party contractor" means a person, other than an education entity, that
 143 receives student data from an education entity pursuant to a contract or written agreement.

144 Section 2. Section **53A-13-301** is amended to read:

145 **53A-13-301. Application of state law to the administration and operation of**
 146 **public schools -- Student information confidentiality standards -- Local school board and**
 147 **charter school governing board policies.**

148 (1) An [~~employee, student aide, volunteer, or other agent of the state's public education~~
 149 ~~system~~] education entity and an employee, student aide, volunteer, third party contractor, or
 150 other agent of an education entity shall protect the privacy of [students, their parents, and their
 151 families] a student, the student's parents, and the student's family, and support parental

152 involvement in the education of their children through compliance with the protections
153 provided for family and student privacy under [~~Section 53A-13-302 and the Federal Family~~
154 ~~Educational Rights and Privacy Act and related provisions under 20 U.S.C. 1232g and 1232h,~~
155 this part in the administration and operation of all public school programs, regardless of the
156 source of funding.

157 (2) (a) A student owns the student's personally identifiable information.

158 (b) A parent of a student or an adult student has the discretion to authorize:

159 (i) collection of the student's optional student data; and

160 (ii) sharing or accessing of the student's optional student data.

161 (c) When a student leaves the state's public education system, the student's parent or
162 the student, if the student is an adult student, may require an education entity to expunge all of
163 the student's student data.

164 (3) Except as provided in Subsection (4), an education entity may not release a
165 student's personally identifiable information without student authorization.

166 (4) Subject to the requirements of this section, an education entity may release a
167 student's personally identifiable information without student authorization to:

168 (a) another education entity;

169 (b) a higher education entity, upon request of the student's parent, or the student, if the
170 student is an adult student;

171 (c) a third party contractor, consultant, or other party to whom the education entity has
172 outsourced services or functions for the following purposes:

173 (i) to conduct a study or perform research; or

174 (ii) to perform a service or function for which the education entity would otherwise use
175 employees; or

176 (d) an out-of-state educational agency if:

177 (i) the student seeks or intends to enroll, or if the student is already enrolled, at the
178 out-of-state educational agency; and

179 (ii) the release of personally identifiable information is for purposes related to the
180 student's enrollment or transfer.

181 (5) An education entity may release aggregate student data to a person.

182 [~~2~~] (6) A local school board or charter school governing board shall enact policies

183 governing the protection of family and student privacy as required by this section.

184 ~~[(3)]~~ (7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
 185 Act, the State Board of Education shall makes rules to establish standards for public education
 186 employees, student aides, and volunteers in public schools regarding the confidentiality of
 187 student information and student records.

188 (b) The rules described in Subsection ~~[(3)]~~ (7)(a) shall provide that a local school board
 189 or charter school governing board may adopt policies related to public school student
 190 confidentiality to address the specific needs or priorities of the school district or charter school.

191 ~~[(4)]~~ (8) The State Board of Education shall:

192 (a) develop resource materials for purposes of training employees, student aides, and
 193 volunteers of a school district or charter school regarding the confidentiality of student
 194 information and student records; and

195 (b) provide the materials described in Subsection ~~[(4)]~~ (8)(a) to each school district and
 196 charter school.

197 Section 3. Section 53A-13-302 is amended to read:

198 **53A-13-302. Activities prohibited -- Qualifications -- Training on**
 199 **implementation.**

200 (1) Policies adopted by a school district under ~~[Section 53A-13-301]~~ this part shall
 201 include prohibitions on the administration to a student of any psychological or psychiatric
 202 examination, test, or treatment, or any survey, analysis, or evaluation ~~[without the prior written~~
 203 ~~consent of the student's parent or legal guardian,]~~ in which the purpose or evident intended
 204 effect is to cause the student to reveal information, whether the information is personally
 205 identifiable or not, concerning the student's or any family member's:

206 (a) political affiliations or, except as provided under Section 53A-13-101.1 or rules of
 207 the State Board of Education, political philosophies;

208 (b) mental or psychological problems;

209 (c) sexual behavior, orientation, or attitudes;

210 (d) illegal, anti-social, self-incriminating, or demeaning behavior;

211 (e) critical appraisals of individuals with whom the student or family member has close
 212 family relationships;

213 (f) religious affiliations or beliefs;

214 (g) legally recognized privileged and analogous relationships, such as those with
215 lawyers, medical personnel, or ministers; and

216 (h) income, except as required by law.

217 ~~[(2) Prior written consent under Subsection (1) is required in all grades, kindergarten
218 through grade 12.]~~

219 ~~[(3) Except as provided in Section 53A-11a-203, the prohibitions under Subsection (1)
220 shall also apply within the curriculum and other school activities unless prior written consent of
221 the student's parent or legal guardian has been obtained.]~~

222 ~~[(4) Written parental consent is valid only if a parent or legal guardian has been first
223 given written notice, including notice that a copy of the educational or student survey questions
224 to be asked of the student in obtaining the desired information is made available at the school,
225 and a reasonable opportunity to obtain written information concerning:]~~

226 ~~[(a) records or information, including information about relationships, that may be
227 examined or requested;]~~

228 ~~[(b) the means by which the records or information shall be examined or reviewed;]~~

229 ~~[(c) the means by which the information is to be obtained;]~~

230 ~~[(d) the purposes for which the records or information are needed;]~~

231 ~~[(e) the entities or persons, regardless of affiliation, who will have access to the
232 personally identifiable information; and]~~

233 ~~[(f) a method by which a parent of a student can grant permission to access or examine
234 the personally identifiable information.]~~

235 ~~[(5) (a) Except in response to a situation which a school employee reasonably believes
236 to be an emergency, or as authorized under Title 62A, Chapter 4a, Part 4, Child Abuse or
237 Neglect Reporting Requirements, or by order of a court, disclosure to a parent or legal guardian
238 must be given at least two weeks before information protected under this section is sought.]~~

239 ~~[(b) Following disclosure, a parent or guardian may waive the two week minimum
240 notification period.]~~

241 ~~[(c) Unless otherwise agreed to by a student's parent or legal guardian and the person
242 requesting written consent, the authorization is valid only for the activity for which it was
243 granted.]~~

244 ~~[(d) A written withdrawal of authorization submitted to the school principal by the~~

245 ~~authorizing parent or guardian terminates the authorization.]~~

246 ~~[(e) A general consent used to approve admission to school or involvement in special~~
247 ~~education, remedial education, or a school activity does not constitute written consent under~~
248 ~~this section.]~~

249 ~~[(6)]~~ (2) (a) This section does not limit the ability of a student under Section
250 53A-13-101.3 to spontaneously express sentiments or opinions ~~[otherwise protected against~~
251 ~~disclosure under this section].~~

252 (b) (i) If a school employee or agent believes that a situation exists which presents a
253 serious threat to the well-being of a student, that employee or agent shall notify the student's
254 parent or guardian without delay.

255 (ii) If, however, the matter has been reported to the Division of Child and Family
256 Services within the Department of Human Services, it is the responsibility of the division to
257 notify the student's parent or guardian of any possible investigation, prior to the student's return
258 home from school.

259 (iii) The division may be exempted from the notification requirements described in
260 ~~[this]~~ Subsection ~~[(6)]~~ (2)(b)(ii) only if it determines that the student would be endangered by
261 notification of his parent or guardian, or if that notification is otherwise prohibited by state or
262 federal law.

263 ~~[(7)]~~ (3) Local school boards shall provide inservice for teachers and administrators
264 within their respective school districts on the implementation of this section.

265 ~~[(8)]~~ (4) The board shall provide procedures for disciplinary action for violations of
266 this section.

267 Section 4. Section 53A-13-303 is enacted to read:

268 **53A-13-303. Requirements for collection of student data -- Student data**
269 **disclosure.**

270 (1) An education entity may collect allowable student data if the education entity
271 provides a student data disclosure that complies with Subsection (4) to:

272 (a) the student, if the student is an adult student; and

273 (b) the student's parent.

274 (2) An education entity may collect optional student data if the education entity:

275 (a) provides a student data disclosure that complies with Subsection (4) to:

- 276 (i) the student, if the student is an adult student; and
 277 (ii) the student's parent; and
 278 (b) obtains student authorization to collect the optional student data.
 279 (3) An education entity may not collect prohibited student data.
 280 (4) An education entity that collects student data shall prepare a written student data
 281 disclosure for distribution to parents and adult students:
 282 (a) (i) at the beginning of each school year; or
 283 (ii) at the time the student enrolls with the education entity; and
 284 (b) that includes a description of:
 285 (i) the allowable student data that the education entity collects;
 286 (ii) the optional student data that the education entity collects;
 287 (iii) the prohibited student data that the education entity may not collect;
 288 (iv) how the allowable and optional student data will be collected and used, shared, or
 289 accessed;
 290 (v) the consequences of authorizing the collection of allowable or optional student
 291 data;
 292 (vi) how the student data is stored and any security measures used to protect the student
 293 data; and
 294 (vii) the parent's and adult student's rights related to the student's student data,
 295 including the information described in Subsection [53A-13-301\(2\)](#).
 296 (5) The board shall develop a model student data disclosure in accordance with
 297 Subsection (4).
 298 Section 5. Section **53A-13-304** is enacted to read:
 299 **53A-13-304. Security requirements related to the collection, usage, and storage of**
 300 **student data -- Board duties** ~~↗~~ ~~[]~~ **-- Third party contractor requirements.** ~~↖~~
 301 The board shall:
 302 (1) maintain, secure, and safeguard all student data with an equivalent PCI DSS, third
 303 party verified compliant certification;
 304 (2) create, publish, annually update, and make publicly available, a data inventory and
 305 dictionary or index of data elements with definitions of student data fields currently in the
 306 student data system, including:

- 307 (a) student data required to be reported by state or federal law;
308 (b) student data that has been proposed for inclusion in the student data system with a
309 statement regarding the purpose or reason for collecting the student data; and
310 (c) student data collected or maintained with no current purpose or reason;
311 (3) develop, publish, and make publicly available policies and procedures to comply
312 with this part and other relevant privacy laws, including ensuring that a contract entered into
313 between an education entity and a third party contractor, which allows the third party contractor
314 to have access to student data, includes:
315 (a) provisions requiring specific restrictions on the use of student data;
316 (b) specific dates governing the destruction of student data given to a third party
317 contractor;
318 (c) provisions that prohibit a third party contractor from using the student data for a
319 secondary use, including sales, marketing, or advertising; and
320 (d) provisions limiting a third party contractor's use of student data strictly for the
321 purpose of providing services to the education entity;
322 (4) develop a detailed security plan for education entities that includes:
323 (a) guidelines for authorizing sharing and access to student data, including guidelines
324 for authentication of authorized access;
325 (b) guidelines for administrative safeguards providing for the security of electronic and
326 physical student data, including provisions related to data encryption;
327 (c) guidelines for education entity employees to better ensure the safety and security of
328 student data;
329 (d) privacy compliance standards;
330 (e) privacy and annual security audits;
331 (f) breach planning, notification, and procedures; and
332 (g) data retention and disposition policies;
333 (5) develop a model governance policy for education entities regarding the collection,
334 access, security, and use of student data; and
335 (6) ensure that the following entities adopt the model governance policy described in
336 Subsection (5):
337 (a) local school boards;

338 (b) charter schools; and

339 (c) the Utah Schools for the Deaf and the Blind.

339a Ĥ→ (7) (a) A third party contractor shall maintain, secure, and safeguard all student
 339b data with an equivalent PCI DSS, third party verified compliant certification.

339c (b) A third party contractor shall:

339d (i) use student data received under a contract with an education entity strictly for the
 339e purpose of providing the contracted services to the education entity; and

339f (ii) may not use student data received under a contract with an education entity for a
 339g use not described in the contract. ←Ĥ

340 Section 6. Section 53A-13-305 is enacted to read:

341 53A-13-305. Student privacy coordinator -- Reports of violations of student
 342 privacy laws -- Penalties.

343 (1) (a) The board shall designate a State Office of Education student privacy
 344 coordinator.

345 (b) The student privacy coordinator shall:

346 (i) oversee the administration of student privacy laws, including the requirements of
 347 this part;

348 (ii) review complaints of:

349 (A) an unauthorized release of student data;

350 (B) an unauthorized collection of student data; or

351 (C) an unauthorized use of student data;

352 (iii) report any violations of this part to:

353 (A) the board;

354 (B) the applicable education entity; and

355 (C) the Education Interim Committee; and

356 (iv) work with the board to develop a model student data disclosure described in
 357 Subsection 53A-13-303(4).

358 (2) (a) A third party contractor that knowingly or recklessly permits unauthorized
 359 release or use of student data:

360 (i) may not enter into a future contract with the board or another education entity; and

361 (ii) may be required by the board to pay a civil penalty of \$25,000.

362 (b) The board may assess the civil penalty described in Subsection (2)(a)(ii) in
 363 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

364 (c) The board may bring an action in the district court of the county in which the office
 365 of the board is located, if necessary, to enforce payment of the civil penalty described in
 366 Subsection (2)(a)(ii).

367 (3) (a) A parent or adult student may bring an action in a court of competent
 368 jurisdiction for damages caused by violation of this part by an education entity or a third party

369 contractor.

370 (b) If the court finds that an education entity or third party contractor has violated this
371 part, the court shall award to the parent or adult student:

372 (i) damages;

373 (ii) costs; and

374 (iii) reasonable attorney fees.

Legislative Review Note
as of 2-26-14 11:13 AM

Office of Legislative Research and General Counsel