

SB0049S01 compared with SB0049

~~text~~ shows text that was in SB0049 but was deleted in SB0049S01.

text shows text that was not in SB0049 but was inserted into SB0049S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator John L. Valentine proposes the following substitute bill:

PARENTAL PERMISSION TO RELEASE STUDENT INFORMATION

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses the release of public school student information.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ 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 if the student or the student's parent gives written permission to release the information;

SB0049S01 compared with SB0049

- ▶ prohibits an education entity from administering a psychological or psychiatric examination, test, or treatment, or a survey, analysis, or evaluation for certain purposes; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-11-605, as last amended by Laws of Utah 2013, Chapter 335

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

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

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

Section 1. Section 53A-11-605 is amended to read:

53A-11-605. Definitions -- School personnel -- Medical recommendations --

Exceptions -- Penalties.

- (1) As used in this section:
 - (a) "Health care professional" means a physician, physician assistant, nurse, dentist, or mental health therapist.
 - (b) "School personnel" means a school district or charter school employee, including a licensed, part-time, contract, or nonlicensed employee.
- (2) School personnel may:
 - (a) provide information and observations to a student's parent or guardian about that student, including observations and concerns in the following areas:
 - (i) progress;
 - (ii) health and wellness;
 - (iii) social interactions;
 - (iv) behavior; or
 - (v) topics consistent with Subsection 53A-13-302~~(6)~~(5);

SB0049S01 compared with SB0049

(b) communicate information and observations between school personnel regarding a child;

(c) refer students to other appropriate school personnel and agents, consistent with local school board or charter school policy, including referrals and communication with a school counselor or other mental health professionals working within the school system;

(d) consult or use appropriate health care professionals in the event of an emergency while the student is at school, consistent with the student emergency information provided at student enrollment;

(e) exercise their authority relating to the placement within the school or readmission of a child who may be or has been suspended or expelled for a violation of Section 53A-11-904; and

(f) complete a behavioral health evaluation form if requested by a student's parent or guardian to provide information to a licensed physician.

(3) School personnel shall:

(a) report suspected child abuse consistent with Section 62A-4a-403;

(b) comply with applicable state and local health department laws, rules, and policies; and

(c) conduct evaluations and assessments consistent with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent amendments.

(4) Except as provided in Subsection (2), Subsection (6), and Section 53A-11a-203, school personnel may not:

(a) recommend to a parent or guardian that a child take or continue to take a psychotropic medication;

(b) require that a student take or continue to take a psychotropic medication as a condition for attending school;

(c) recommend that a parent or guardian seek or use a type of psychiatric or psychological treatment for a child;

(d) conduct a psychiatric or behavioral health evaluation or mental health screening, test, evaluation, or assessment of a child, except where this Subsection (4)(d) conflicts with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent amendments; or

SB0049S01 compared with SB0049

(e) make a child abuse or neglect report to authorities, including the Division of Child and Family Services, solely or primarily on the basis that a parent or guardian refuses to consent to:

(i) a psychiatric, psychological, or behavioral treatment for a child, including the administration of a psychotropic medication to a child; or

(ii) a psychiatric or behavioral health evaluation of a child.

(5) Notwithstanding Subsection (4)(e), school personnel may make a report that would otherwise be prohibited under Subsection (4)(e) if failure to take the action described under Subsection (4)(e) would present a serious, imminent risk to the child's safety or the safety of others.

(6) Notwithstanding Subsection (4), a school counselor or other mental health professional acting in accordance with Title 58, Chapter 60, Mental Health Professional Practice Act, or licensed through the State Board of Education, working within the school system may:

(a) recommend, but not require, a psychiatric or behavioral health evaluation of a child;

(b) recommend, but not require, psychiatric, psychological, or behavioral treatment for a child;

(c) conduct a psychiatric or behavioral health evaluation or mental health screening, test, evaluation, or assessment of a child in accordance with Section 53A-13-302; and

(d) provide to a parent or guardian, upon the specific request of the parent or guardian, a list of three or more health care professionals or providers, including licensed physicians, psychologists, or other health specialists.

(7) Local school boards or charter schools shall adopt a policy:

(a) providing for training of appropriate school personnel on the provisions of this section; and

(b) indicating that an intentional violation of this section is cause for disciplinary action consistent with local school board or charter school policy and under Section 53A-8a-502.

(8) Nothing in this section shall be interpreted as discouraging general communication not prohibited by this section between school personnel and a student's parent or guardian.

Section ~~53A-13-301~~^{53A-13-302}. Section **53A-13-301** is amended to read:

53A-13-301. Application of state and federal law to the administration and

SB0049S01 compared with SB0049

operation of public schools -- Student information confidentiality standards -- Local school board and charter school governing board policies -- Education entities prohibited from sharing student information without parental consent.

(1) As used in this part:

(a) "Authorized representative" has the same meaning as defined in 34 C.F.R. 99.3.

(b) "Education entity" means:

(i) the State Board of Education;

(ii) a local school board or charter school governing board;

(iii) a school district;

(iv) a public school;

(v) the Utah Schools for the Deaf and the Blind; or

(vi) an ~~employee, volunteer, }~~ authorized representative ~~{, }~~ or ~~{other agent}~~ **a third party contractor** of an entity listed in Subsections (1)(b)(i) through (v).

(c) "Higher education entity" means:

(i) an institution of higher education described in Subsection 53B-2-101(1); or

(ii) the State Board of Regents established in Section 53B-1-103.

(d) "Out of state educational agency":

(i) means an education agency or institution:

(A) located outside of the state; and

(B) subject to the federal Family Educational Rights and Privacy Act under 20 U.S.C. 1232g and 1232h and related federal regulations; and

(ii) includes an authorized representative **or a third party contractor** of an education agency or institution described in Subsection (1)(d)(i).

(e) "Person" has the same meaning as defined in Section 68-3-12.5.

(f) "Personally identifiable information" has the same meaning as defined by the Family Educational Rights and Privacy Act in 34 C.F.R. Section 99.3.

(g) "Third party contractor" means a person that receives student information from an education entity pursuant to a contract or written agreement for the purposes of providing services to the education entity.

~~[(+)]~~ (2) An ~~[employee, student aide, volunteer, or other agent of the state's public education system]~~ education entity, **employee, student aide, volunteer, or other agent of the**

SB0049S01 compared with SB0049

education entity shall protect the privacy of [~~students~~] a student, [~~their~~] a student's parents, and [~~their families~~] a student's family, and support parental involvement in the education of their children through compliance with the protections provided for family and student privacy under Section 53A-13-302 and the federal Family Educational Rights and Privacy Act and related provisions under 20 U.S.C. ~~[[1232 (g) and (h)]]~~ 1232g and 1232h, in the administration and operation of all public school programs, regardless of the source of funding.

(3) (a) Subject to the requirements of the federal Family Educational Rights and Privacy Act in 20 U.S.C. 1232g and 1232h and related federal regulations, an education entity may release a student's personally identifiable information to:

(i) another education entity;

(ii) a third party contractor, consultant, ~~volunteer~~, or other party to whom the education entity has outsourced services or functions for the following purposes:

(A) to conduct a study or perform research; or

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

(iii) a higher education entity;

(iv) the federal government, or the federal government's authorized representative, if required under state or federal law;

(v) a person, if required under state or federal law; or

(vi) an out of state educational agency if:

(A) the student seeks or intends to enroll, or where the student is already enrolled, at the out of state educational agency; and

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

(b) Except as provided in Subsections (3)(a) and (c), and in addition to the protections provided for family and student privacy described in Subsection (2), an education entity may not release a student's personally identifiable information to:

(i) an out of state educational agency; or

(ii) a person other than a person listed in Subsection (3)(a).

(c) Except as provided in Subsection (3)(a), an education entity may release a student's personally identifiable information to a person or out of state educational agency if the student

SB0049S01 compared with SB0049

or the student's parent gives written permission to the education entity to release the student's personally identifiable information to the person or out of state educational agency.

~~[(2)]~~ (4) A local school board or charter school governing board shall enact policies governing the protection of family and student privacy as required by this section.

~~[(3)]~~ (5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall makes rules to establish standards:

(i) for public education employees, student aides, and volunteers in public schools regarding the confidentiality of student information and student records~~[-]~~; and

(ii) regarding the provisions related to the release of a student's personally identifiable information described in Subsection (3).

(b) The rules described in Subsection ~~[(3)]~~ (5)(a) shall provide that a local school board or charter school governing board may adopt policies related to public school student confidentiality to address the specific needs or priorities of the school district or charter school.

~~[(4)]~~ (6) The State Board of Education shall:

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

(b) provide the materials described in Subsection ~~[(4)]~~ (6)(a) to each school district and charter school.

†

Legislative Review Note

~~— as of 11-25-13 4:18 PM~~

~~— Office of Legislative Research and General Counsel~~ Section 3. Section 53A-13-302 is amended to read:

53A-13-302. Activities prohibited without prior written consent -- Validity of consent -- Qualifications -- Training on implementation.

(1) Policies adopted by [a school district] an education entity under [Section

SB0049S01 compared with SB0049

53A-13-301] this part shall include prohibitions on the administration to a student of [any] a psychological or psychiatric examination, test, or treatment, or [any] a survey, analysis, or evaluation [without the prior written consent of the student's parent or legal guardian,] in which the purpose or evident intended effect is to cause the student to reveal information, whether the information is personally identifiable or not, concerning the student's or any family member's:

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

(b) mental or psychological problems;

(c) sexual behavior, orientation, or attitudes;

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

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

(f) religious affiliations or beliefs;

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

(h) income, except as required by law.

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

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

[(4)] (3) Written parental consent required in Subsection (2), is valid only if a parent or legal guardian has been first given written notice, including notice that a copy of the educational or student survey questions to be asked of the student in obtaining the desired information is made available at the school, and a reasonable opportunity to obtain written information concerning:

(a) records or information, including information about relationships, that may be examined or requested;

(b) the means by which the records or information shall be examined or reviewed;

(c) the means by which the information is to be obtained;

(d) the purposes for which the records or information are needed;

SB0049S01 compared with SB0049

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

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

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

(b) Following disclosure, a parent or guardian may waive the two week minimum notification period.

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

(d) A written withdrawal of authorization submitted to the school principal by the authorizing parent or guardian terminates the authorization.

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

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

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

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

(iii) The division may be exempted from the notification requirements described in this Subsection [(6)] (5)(b)(ii) only if it determines that the student would be endangered by

SB0049S01 compared with SB0049

notification of his parent or guardian, or if that notification is otherwise prohibited by state or federal law.

~~[(7)]~~ (6) Local school boards shall provide inservice for teachers and administrators within their respective school districts on the implementation of this section.

~~[(8)]~~ (7) The board shall provide procedures for disciplinary action for violations of this section.