

Senator Jacob L. Anderegg proposes the following substitute bill:

STUDENT INFORMATION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: John Knotwell

LONG TITLE

General Description:

This bill modifies provisions related to student data and information given to students.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ repeals an incorrect cross reference;
- ▶ permits a third-party contractor to identify for a student nonprofit institutions of higher education or scholarship providers that are seeking students who meet specific criteria;
- ▶ amends Utah Futures provisions, including:
 - defining terms;
 - allowing a student to access information about an education provider or scholarship provider;
 - allowing an education provider or Utah business to request that Utah Futures send certain information to a student user; and
 - authorizing the Utah Futures Steering Committee to charge a fee; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53A-1-1402**, as enacted by Laws of Utah 2016, Chapter 221

32 **53A-1-1406**, as enacted by Laws of Utah 2016, Chapter 221

33 **53A-1-1410**, as enacted by Laws of Utah 2016, Chapter 221

34 **53B-17-108**, as last amended by Laws of Utah 2015, Chapters 222, 283 and

35 renumbered and amended by Laws of Utah 2015, Chapter 366



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

38 Section 1. Section **53A-1-1402** is amended to read:

39 **53A-1-1402. Definitions.**

40 As used in this part:

41 (1) "Adult student" means a student who:

42 (a) is at least 18 years old;

43 (b) is an emancipated student; or

44 (c) qualifies under the McKinney-Vento Homeless Education Assistance

45 Improvements Act of 2001, 42 U.S.C. Sec. 11431 et seq.

46 (2) "Aggregate data" means data that:

47 (a) are totaled and reported at the group, cohort, school, school district, region, or state

48 level with at least 10 individuals in the level;

49 (b) do not reveal personally identifiable student data; and

50 (c) are collected in accordance with board rule.

51 (3) (a) "Biometric identifier" means a:

52 (i) retina or iris scan;

53 (ii) fingerprint;

54 (iii) human biological sample used for valid scientific testing or screening; or

55 (iv) scan of hand or face geometry.

56 (b) "Biometric identifier" does not include:

- 57 (i) a writing sample;
- 58 (ii) a written signature;
- 59 (iii) a voiceprint;
- 60 (iv) a photograph;
- 61 (v) demographic data; or
- 62 (vi) a physical description, such as height, weight, hair color, or eye color.
- 63 (4) "Biometric information" means information, regardless of how the information is
- 64 collected, converted, stored, or shared:
 - 65 (a) based on an individual's biometric identifier; and
 - 66 (b) used to identify the individual.
- 67 (5) "Board" means the State Board of Education.
- 68 (6) "Cumulative disciplinary record" means disciplinary student data that is part of a
- 69 cumulative record.
- 70 (7) "Cumulative record" means physical or electronic information that the education
- 71 entity intends:
 - 72 (a) to store in a centralized location for 12 months or more; and
 - 73 (b) for the information to follow the student through the public education system.
- 74 (8) "Data authorization" means written authorization to collect or share a student's
- 75 student data, from:
 - 76 (a) the student's parent, if the student is not an adult student; or
 - 77 (b) the student, if the student is an adult student.
- 78 (9) "Data governance plan" means an education entity's comprehensive plan for
- 79 managing education data that:
 - 80 (a) incorporates reasonable data industry best practices to maintain and protect student
 - 81 data and other education-related data;
 - 82 (b) provides for necessary technical assistance, training, support, and auditing;
 - 83 (c) describes the process for sharing student data between an education entity and
 - 84 another person;
 - 85 (d) describes the process for an adult student or parent to request that data be
 - 86 expunged; and
 - 87 (e) is published annually and available on the education entity's website.

88 (10) "Education entity" means:

89 (a) the board;

90 (b) a local school board;

91 (c) a charter school governing board;

92 (d) a school district;

93 (e) a charter school;

94 (f) the Utah Schools for the Deaf and the Blind; or

95 (g) for purposes of implementing the School Readiness Initiative described in Chapter

96 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section

97 [53A-1b-103](#).

98 (11) "Expunge" means to seal or permanently delete data, as described in board rule

99 made under Section [53A-1-1407](#).

100 (12) "External application" means a general audience:

101 (a) application;

102 (b) piece of software;

103 (c) website; or

104 (d) service.

105 (13) "Individualized education program" or "IEP" means a written statement:

106 (a) for a student with a disability; and

107 (b) that is developed, reviewed, and revised in accordance with the Individuals with

108 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

109 (14) "Internal application" means an Internet website, online service, online

110 application, mobile application, or software, if the Internet website, online service, online

111 application, mobile application, or software is subject to a third-party contractor's contract with

112 an education entity.

113 (15) "Local education agency" or "LEA" means:

114 (a) a school district;

115 (b) a charter school;

116 (c) the Utah Schools for the Deaf and the Blind; or

117 (d) for purposes of implementing the School Readiness Initiative described in Chapter

118 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section

119 53A-1b-103.

120 (16) "Metadata dictionary" means a complete list of an education entity's student data
121 elements and other education-related data elements, that:

122 (a) defines and discloses all data collected, used, stored, and shared by the education
123 entity, including:

124 (i) who uses a data element within an education entity and how a data element is used
125 within an education entity;

126 (ii) if a data element is shared externally, who uses the data element externally and how
127 a data element is shared externally;

128 (iii) restrictions on the use of a data element; and

129 (iv) parent and student rights to a data element;

130 (b) designates student data elements as:

131 (i) necessary student data; or

132 (ii) optional student data;

133 (c) designates student data elements as required by state or federal law; and

134 (d) without disclosing student data or security information, is displayed on the
135 education entity's website.

136 (17) "Necessary student data" means data required by state statute or federal law to
137 conduct the regular activities of an education entity, including:

138 (a) name;

139 (b) date of birth;

140 (c) sex;

141 (d) parent contact information;

142 (e) custodial parent information;

143 (f) contact information;

144 (g) a student identification number;

145 (h) local, state, and national assessment results or an exception from taking a local,
146 state, or national assessment;

147 (i) courses taken and completed, credits earned, and other transcript information;

148 (j) course grades and grade point average;

149 (k) grade level and expected graduation date or graduation cohort;

- 150 (l) degree, diploma, credential attainment, and other school exit information;
- 151 (m) attendance and mobility;
- 152 (n) drop-out data;
- 153 (o) immunization record or an exception from an immunization record;
- 154 (p) race;
- 155 (q) ethnicity;
- 156 (r) tribal affiliation;
- 157 (s) remediation efforts;
- 158 (t) an exception from a vision screening required under Section 53A-11-203 or
- 159 information collected from a vision screening required under Section 53A-11-203;
- 160 (u) information related to the Utah Registry of Autism and Developmental Disabilities,
- 161 described in Section 26-7-4;
- 162 (v) student injury information;
- 163 (w) a cumulative disciplinary record created and maintained as described in Section
- 164 53A-1-1407;
- 165 (x) juvenile delinquency records;
- 166 (y) English language learner status; and
- 167 (z) child find and special education evaluation data related to initiation of an IEP.
- 168 (18) (a) "Optional student data" means student data that is not:
- 169 (i) necessary student data; or
- 170 (ii) student data that an education entity may not collect under Section 53A-1-1406.
- 171 (b) "Optional student data" includes:
- 172 (i) information that is:
- 173 (A) related to an IEP or needed to provide special needs services; and
- 174 (B) not necessary student data;
- 175 (ii) biometric information; and
- 176 (iii) information that is not necessary student data and that is required for a student to
- 177 participate in a federal or other program.
- 178 (19) "Parent" means a student's parent or legal guardian.
- 179 (20) (a) "Personally identifiable student data" means student data that identifies or is
- 180 used by the holder to identify a student.

- 181 (b) "Personally identifiable student data" includes:
- 182 (i) a student's first and last name;
- 183 (ii) the first and last name of a student's family member;
- 184 (iii) a student's or a student's family's home or physical address;
- 185 (iv) a student's email address or other online contact information;
- 186 (v) a student's telephone number;
- 187 (vi) a student's social security number;
- 188 (vii) a student's biometric identifier;
- 189 (viii) a student's health or disability data;
- 190 (ix) a student's education entity student identification number;
- 191 (x) a student's social media user name and password or alias;
- 192 (xi) if associated with personally identifiable student data, the student's persistent
193 identifier, including:
- 194 (A) a customer number held in a cookie; or
- 195 (B) a processor serial number;
- 196 (xii) a combination of a student's last name or photograph with other information that
197 together permits a person to contact the student online;
- 198 (xiii) information about a student or a student's family that a person collects online and
199 combines with other personally identifiable student data to identify the student; and
- 200 (xiv) other information that is linked to a specific student that would allow a
201 reasonable person in the school community, who does not have first-hand knowledge of the
202 student, to identify the student with reasonable certainty.
- 203 (21) "School official" means an employee or agent of an education entity, if the
204 education entity has authorized the employee or agent to request or receive student data on
205 behalf of the education entity.
- 206 (22) (a) "Student data" means information about a student at the individual student
207 level.
- 208 (b) "Student data" does not include aggregate or de-identified data.
- 209 (23) "Student data disclosure statement" means a student data disclosure statement
210 described in Section [53A-1-1406](#).
- 211 (24) "Student data manager" means:

212 (a) the state student data officer; or

213 (b) an individual designated as a student data manager by an education entity under
214 Section [53A-1-1404](#).

215 ~~Ĥ→ [(25) (a) "Targeted advertising" means [advertising to a student on an internal or~~
216 ~~external application, if the advertisement is based on information or student data the third-party~~
217 ~~contractor collected or received under the third-party contractor's contract with an education~~
218 ~~entity] presenting advertisements to a student on an internal or external application where the~~
219 ~~advertisement is selected based on information obtained or inferred from student data, the~~
220 ~~student's online behavior, or usage of applications.~~

221 ~~—— (b) "Targeted advertising" does not include advertisements presented to a student on an~~
222 ~~internal or external application:~~

223 ~~—— (i) where the advertisement is selected based upon the student's current visit to or~~
224 ~~single search query on a site, software, service, or application; or~~

225 ~~—— (ii) for a nonprofit institution of higher education or scholarship provider.]~~

226 **(25) (a) "Targeted advertising" means presenting advertisements to a student where**
226a **the advertisement is selected based on information obtained or inferred over time from that**
226b **student's online behavior, usage of applications, or student data.**

226c **(b) "Targeted advertising" does not include advertising to a student:**

226d **(i) at an online location based upon that student's current visit to that location; or**

226e **(ii) in response to that student's request for information or feedback, without retention**
226f **of that student's online activities or requests over time for the purpose of targeting subsequent**
226g **ads.** ←Ĥ

226h (26) "Third-party contractor" means a person who:

227 (a) is not an education entity; and

228 (b) pursuant to a contract with an education entity, collects or receives student data in
229 order to provide a product or service, as described in the contract, if the product or service is
230 not related to school photography, yearbooks, graduation announcements, or a similar product
231 or service.

232 Section 2. Section **53A-1-1406** is amended to read:

233 **53A-1-1406. Collecting student data -- Prohibition -- Student data disclosure**
234 **statement -- Authorization.**

235 (1) An education entity shall comply with this section beginning with the 2017-18
236 school year.

237 (2) An education entity may not collect a student's:

238 (a) social security number; or

239 (b) except as required in Section [78A-6-112](#), criminal record.

240 (3) An education entity that collects student data into a cumulative record shall, in
241 accordance with this section, prepare and distribute to parents and students a student data
242 disclosure statement that:

- 243 (a) is a prominent, stand-alone document;
- 244 (b) is annually updated and published on the education entity's website;
- 245 (c) states the necessary and optional student data the education entity collects;
- 246 (d) states that the education entity will not collect the student data described in
- 247 Subsection (2);
- 248 (e) states the student data described in Section 53A-1-1409 that the education entity
- 249 may not share without a data authorization;
- 250 ~~[(f) states that students and parents are responsible for the collection, use, or sharing of~~
- 251 ~~student data as described in Section 53A-1-1405;]~~
- 252 ~~[(g)]~~ (f) describes how the education entity may collect, use, and share student data;
- 253 ~~[(h)]~~ (g) includes the following statement:
- 254 "The collection, use, and sharing of student data has both benefits and risks. Parents
- 255 and students should learn about these benefits and risks and make choices regarding student
- 256 data accordingly.";
- 257 ~~[(i)]~~ (h) describes in general terms how the education entity stores and protects student
- 258 data; and
- 259 ~~[(j)]~~ (i) states a student's rights under this part.
- 260 (4) An education entity may collect the necessary student data of a student into a
- 261 cumulative record if the education entity provides a student data disclosure statement to:
- 262 (a) the student, if the student is an adult student; or
- 263 (b) the student's parent, if the student is not an adult student.
- 264 (5) An education entity may collect optional student data into a cumulative record if
- 265 the education entity:
- 266 (a) provides, to an individual described in Subsection (4), a student data disclosure
- 267 statement that includes a description of:
- 268 (i) the optional student data to be collected; and
- 269 (ii) how the education entity will use the optional student data; and
- 270 (b) obtains a data authorization to collect the optional student data from an individual
- 271 described in Subsection (4).
- 272 (6) An education entity may collect a student's biometric identifier or biometric
- 273 information into a cumulative record if the education entity:

274 (a) provides, to an individual described in Subsection (4), a biometric information
275 disclosure statement that is separate from a student data disclosure statement, which states:

276 (i) the biometric identifier or biometric information to be collected;
277 (ii) the purpose of collecting the biometric identifier or biometric information; and
278 (iii) how the education entity will use and store the biometric identifier or biometric
279 information; and

280 (b) obtains a data authorization to collect the biometric identifier or biometric
281 information from an individual described in Subsection (4).

282 Section 3. Section **53A-1-1410** is amended to read:

283 **53A-1-1410. Third-party contractors -- Use and protection of student data --**
284 **Contract requirements -- Completion of contract -- Required and allowed uses of student**
285 **data -- Restrictions on the use of student data -- Exceptions.**

286 (1) A third-party contractor shall use personally identifiable student data received
287 under a contract with an education entity strictly for the purpose of providing the contracted
288 product or service ~~to~~ **within the negotiated contract terms** .

289 (2) When contracting with a third-party contractor, an education entity shall require the
290 following provisions in the contract:

291 (a) requirements and restrictions related to the collection, use, storage, or sharing of
292 student data by the third-party contractor that are necessary for the education entity to ensure
293 compliance with the provisions of this part and board rule;

294 (b) a description of a person, or type of person, including an affiliate of the third-party
295 contractor, with whom the third-party contractor may share student data;

296 (c) provisions that, at the request of the education entity, govern the deletion of the
297 student data received by the third-party contractor;

298 (d) except as provided in Subsection (4) and if required by the education entity,
299 provisions that prohibit the secondary use of personally identifiable student data by the
300 third-party contractor; and

301 (e) an agreement by the third-party contractor that, at the request of the education entity
302 that is a party to the contract, the education entity or the education entity's designee may audit
303 the third-party contractor to verify compliance with the contract.

304 (3) As authorized by law or court order, a third-party contractor shall share student data

305 as requested by law enforcement.

306 (4) A third-party contractor may:

307 (a) use student data for adaptive learning or customized student learning purposes;

308 (b) market an educational application or product to a parent or legal guardian of a
309 student if the third-party contractor did not use student data, shared by or collected on behalf of
310 an education entity, to market the educational application or product;

311 (c) use a recommendation engine to recommend to a student:

312 (i) content that relates to learning or employment, within the third-party contractor's
313 internal application, if the recommendation is not motivated by payment or other consideration
314 from another party; or

315 (ii) services that relate to learning or employment, within the third-party contractor's
316 internal application, if the recommendation is not motivated by payment or other consideration
317 from another party;

318 (d) respond to a student request for information or feedback, if the content of the
319 response is not motivated by payment or other consideration from another party; [or]

320 (e) use student data to allow or improve operability and functionality of the third-party
321 contractor's internal application[-]; or

322 (f) identify for a student nonprofit institutions of higher education or scholarship
323 providers that are seeking students who meet specific criteria:

324 (i) regardless of whether the identified nonprofit institutions of higher education or
325 scholarship providers provide payment or other consideration to the third-party contractor; and

326 (ii) ~~H~~→ **except as provided in Subsection (5),** ←~~H~~ only if the third-party contractor
326a obtains written consent:

327 (A) of a student's parent or legal guardian through the student's school or LEA; or

328 (B) for a student who is age 18 or older or an emancipated minor, from the student.

328a ~~H~~→ **(5) A third-party contractor is not required to obtain written consent under Subsection**

328b **(4)(f)(ii) if the third-party contractor:**

328c **(a) is a national assessment provider; and**

328d **(b)(i) secures the express written consent of the student or the student's parent; and**

328e **(ii) the express written consent is given in response to clear and conspicuous notice that**

328f **the national assessment provider requests consent solely to provide access to information on**

328g **employment, educational scholarships, financial aid, or postsecondary educational**

328h **opportunities.**

329 [~~5~~] **(6)** ←~~H~~ At the completion of a contract with an education entity, if the contract has not

330 been renewed, a third-party contractor shall:

331 (a) return ~~it~~ **→ [all personally identifiable student data to the education entity; or**

332 ~~— (b) as reasonable, delete all personally identifiable student data related to the~~

333 ~~third-party contractor's work.]~~ **or delete upon the education entity's request all personally**

333a **identifiable student data under the control of the education entity unless a student or the**

333b **student's parent consents to the maintenance of the personally identifiable student data.**

334 ~~[(6)]~~ **(7) ←** (a) A third-party contractor may not:

335 (i) except as provided in ~~it~~ **→ [Subsection (6)(b)]** **Subsections (5) and (7)(b)** ~~←~~ , sell

335a student data;

336 (ii) collect, use, or share student data, if the collection, use, or sharing of the student
337 data is inconsistent with the third-party contractor's contract with the education entity; or

338 (iii) use student data for targeted advertising.

339 (b) A person may obtain student data through the purchase of, merger with, or
340 otherwise acquiring a third-party contractor if the third-party contractor remains in compliance
341 with this section.

342 ~~Ĥ~~→ [(7)] (8) ←~~Ĥ~~ A provider of an electronic store, gateway, marketplace, or other means of
343 purchasing an external application is not required to ensure that the external application
344 obtained through the provider complies with this section.

345 ~~Ĥ~~→ [(8)] (9) ←~~Ĥ~~ The provisions of this section do not:

346 (a) apply to the use of an external application, including the access of an external
347 application with login credentials created by a third-party contractor's internal application;

348 (b) apply to the providing of Internet service; or

349 (c) impose a duty on a provider of an interactive computer service, as defined in 47
350 U.S.C. Sec. 230, to review or enforce compliance with this section.

351 Section 4. Section **53B-17-108** is amended to read:

352 **53B-17-108. Utah Futures.**

353 (1) As used in this section:

354 (a) "Education provider" means:

355 (i) a Utah institution of higher education as defined in Section **53B-2-101**; or

356 (ii) a nonprofit Utah provider of postsecondary education.

357 (b) "Student user" means:

358 (i) a Utah student in kindergarten through grade 12;

359 (ii) a Utah post secondary education student;

360 (iii) a parent or guardian of a Utah public education student; or

361 (iv) a Utah potential post secondary education student.

362 (c) "Utah Futures" means a career planning program developed and administered by
363 the Utah Futures Steering Committee.

364 (d) "Utah Futures Steering Committee" means a committee of members designated by
365 the governor to administer and manage Utah Futures.

366 (2) The Utah Futures Steering Committee shall ensure, as funding allows and is

367 feasible, that Utah Futures will:

368 (a) allow a student user to:

369 [~~(i) access the student user's full academic record;~~]

370 [~~(ii) electronically allow the student user to give access to the student user's academic
371 record and related information to an education provider as allowed by law;~~]

372 (i) access, subject to Subsection (3), information about an education provider or a
373 scholarship provider;

374 [~~(iii)~~] (ii) access information about different career opportunities and understand the
375 related educational requirements to enter that career;

376 [~~(iv)~~] (iii) access information about education providers;

377 [~~(v)~~] (iv) access up to date information about entrance requirements to education
378 providers;

379 [~~(vi)~~] (v) apply for entrance to multiple schools without having to fully replicate the
380 application process;

381 [~~(vii)~~] (vi) apply for loans, scholarships, or grants from multiple education providers in
382 one location without having to fully replicate the application process for multiple education
383 providers; and

384 [~~(viii)~~] (vii) research open jobs from different companies within the user's career
385 interest and apply for those jobs without having to leave the website to do so;

386 (b) allow all users to:

387 (i) access information about different career opportunities and understand the related
388 educational requirements to enter that career;

389 (ii) access information about education providers;

390 (iii) access up-to-date information about entrance requirements to education providers;

391 (iv) apply for entrance to multiple schools without having to fully replicate the
392 application process;

393 (v) apply for loans, scholarships, or grants from multiple education providers in one
394 location without having to fully replicate the application process for multiple education
395 providers; and

396 (vi) research open jobs from different companies within the user's career interest and
397 apply for those jobs without having to leave the website to do so;

398 (c) allow an education provider to:
399 (i) ~~[research and find student users]~~ request that Utah Futures send information to
400 student users who are interested in various educational ~~[outcomes]~~ opportunities;
401 (ii) promote the education provider's programs and schools to student users; and
402 (iii) connect with student users within the Utah Futures website;
403 (d) allow a Utah business to:
404 (i) ~~[research and find student users]~~ request that Utah Futures send information to
405 student users who are pursuing educational ~~[outcomes]~~ opportunities that are consistent with
406 jobs the Utah business is trying to fill now or in the future; and
407 (ii) market jobs and communicate with student users through the Utah Futures website
408 as allowed by law;
409 (e) provide analysis and reporting on student user interests and education paths within
410 the education system; and
411 (f) allow all users of the Utah Futures' system to communicate and interact through
412 social networking tools within the Utah Futures website as allowed by law.
413 (3) A student may access information described in Subsection (2)(a)(i) only if Utah
414 Futures obtains written consent:
415 (a) of a student's parent or legal guardian through the student's school or LEA; or
416 (b) for a student who is age 18 or older or an emancipated minor, from the student.
417 (4) The Utah Futures Steering Committee:
418 (a) may charge a fee to a Utah business for services provided by Utah Futures under
419 this section; and
420 (b) shall establish a fee described in Subsection (4)(a) in accordance with Section
421 [63J-1-504](#).