

Senator Howard A. Stephenson proposes the following substitute bill:

STUDENT DATA PROTECTION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: John Knotwell

LONG TITLE

General Description:

This bill modifies provisions of the Student Data Protection Act.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ repeals an incorrect cross reference;
- ▶ permits a third-party contractor to identify for a student institutions of higher education or scholarship providers that are seeking students who meet specific criteria; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



26 **53A-1-1410**, as enacted by Laws of Utah 2016, Chapter 221



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

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

30 **53A-1-1402. Definitions.**

31 As used in this part:

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

33 (a) is at least 18 years old;

34 (b) is an emancipated student; or

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

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

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

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

39 level with at least 10 individuals in the level;

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

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

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

43 (i) retina or iris scan;

44 (ii) fingerprint;

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

46 (iv) scan of hand or face geometry.

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

48 (i) a writing sample;

49 (ii) a written signature;

50 (iii) a voiceprint;

51 (iv) a photograph;

52 (v) demographic data; or

53 (vi) a physical description, such as height, weight, hair color, or eye color.

54 (4) "Biometric information" means information, regardless of how the information is

55 collected, converted, stored, or shared:

56 (a) based on an individual's biometric identifier; and

- 57 (b) used to identify the individual.
- 58 (5) "Board" means the State Board of Education.
- 59 (6) "Cumulative disciplinary record" means disciplinary student data that is part of a
60 cumulative record.
- 61 (7) "Cumulative record" means physical or electronic information that the education
62 entity intends:
 - 63 (a) to store in a centralized location for 12 months or more; and
 - 64 (b) for the information to follow the student through the public education system.
- 65 (8) "Data authorization" means written authorization to collect or share a student's
66 student data, from:
 - 67 (a) the student's parent, if the student is not an adult student; or
 - 68 (b) the student, if the student is an adult student.
- 69 (9) "Data governance plan" means an education entity's comprehensive plan for
70 managing education data that:
 - 71 (a) incorporates reasonable data industry best practices to maintain and protect student
72 data and other education-related data;
 - 73 (b) provides for necessary technical assistance, training, support, and auditing;
 - 74 (c) describes the process for sharing student data between an education entity and
75 another person;
 - 76 (d) describes the process for an adult student or parent to request that data be
77 expunged; and
 - 78 (e) is published annually and available on the education entity's website.
- 79 (10) "Education entity" means:
 - 80 (a) the board;
 - 81 (b) a local school board;
 - 82 (c) a charter school governing board;
 - 83 (d) a school district;
 - 84 (e) a charter school;
 - 85 (f) the Utah Schools for the Deaf and the Blind; or
 - 86 (g) for purposes of implementing the School Readiness Initiative described in Chapter
87 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section

88 53A-1b-103.

89 (11) "Expunge" means to seal or permanently delete data, as described in board rule
90 made under Section 53A-1-1407.

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

92 (a) application;

93 (b) piece of software;

94 (c) website; or

95 (d) service.

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

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

98 (b) that is developed, reviewed, and revised in accordance with the Individuals with
99 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

100 (14) "Internal application" means an Internet website, online service, online
101 application, mobile application, or software, if the Internet website, online service, online
102 application, mobile application, or software is subject to a third-party contractor's contract with
103 an education entity.

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

105 (a) a school district;

106 (b) a charter school;

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

108 (d) for purposes of implementing the School Readiness Initiative described in Chapter
109 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section

110 53A-1b-103.

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

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

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

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

- 119 (iii) restrictions on the use of a data element; and
- 120 (iv) parent and student rights to a data element;
- 121 (b) designates student data elements as:
 - 122 (i) necessary student data; or
 - 123 (ii) optional student data;
 - 124 (c) designates student data elements as required by state or federal law; and
 - 125 (d) without disclosing student data or security information, is displayed on the
 - 126 education entity's website.
- 127 (17) "Necessary student data" means data required by state statute or federal law to
- 128 conduct the regular activities of an education entity, including:
 - 129 (a) name;
 - 130 (b) date of birth;
 - 131 (c) sex;
 - 132 (d) parent contact information;
 - 133 (e) custodial parent information;
 - 134 (f) contact information;
 - 135 (g) a student identification number;
 - 136 (h) local, state, and national assessment results or an exception from taking a local,
 - 137 state, or national assessment;
 - 138 (i) courses taken and completed, credits earned, and other transcript information;
 - 139 (j) course grades and grade point average;
 - 140 (k) grade level and expected graduation date or graduation cohort;
 - 141 (l) degree, diploma, credential attainment, and other school exit information;
 - 142 (m) attendance and mobility;
 - 143 (n) drop-out data;
 - 144 (o) immunization record or an exception from an immunization record;
 - 145 (p) race;
 - 146 (q) ethnicity;
 - 147 (r) tribal affiliation;
 - 148 (s) remediation efforts;
 - 149 (t) an exception from a vision screening required under Section [53A-11-203](#) or

- 150 information collected from a vision screening required under Section 53A-11-203;
- 151 (u) information related to the Utah Registry of Autism and Developmental Disabilities,
- 152 described in Section 26-7-4;
- 153 (v) student injury information;
- 154 (w) a cumulative disciplinary record created and maintained as described in Section
- 155 53A-1-1407;
- 156 (x) juvenile delinquency records;
- 157 (y) English language learner status; and
- 158 (z) child find and special education evaluation data related to initiation of an IEP.
- 159 (18) (a) "Optional student data" means student data that is not:
- 160 (i) necessary student data; or
- 161 (ii) student data that an education entity may not collect under Section 53A-1-1406.
- 162 (b) "Optional student data" includes:
- 163 (i) information that is:
- 164 (A) related to an IEP or needed to provide special needs services; and
- 165 (B) not necessary student data;
- 166 (ii) biometric information; and
- 167 (iii) information that is not necessary student data and that is required for a student to
- 168 participate in a federal or other program.
- 169 (19) "Parent" means a student's parent or legal guardian.
- 170 (20) (a) "Personally identifiable student data" means student data that identifies or is
- 171 used by the holder to identify a student.
- 172 (b) "Personally identifiable student data" includes:
- 173 (i) a student's first and last name;
- 174 (ii) the first and last name of a student's family member;
- 175 (iii) a student's or a student's family's home or physical address;
- 176 (iv) a student's email address or other online contact information;
- 177 (v) a student's telephone number;
- 178 (vi) a student's social security number;
- 179 (vii) a student's biometric identifier;
- 180 (viii) a student's health or disability data;

- 181 (ix) a student's education entity student identification number;
- 182 (x) a student's social media user name and password or alias;
- 183 (xi) if associated with personally identifiable student data, the student's persistent
184 identifier, including:
- 185 (A) a customer number held in a cookie; or
- 186 (B) a processor serial number;
- 187 (xii) a combination of a student's last name or photograph with other information that
188 together permits a person to contact the student online;
- 189 (xiii) information about a student or a student's family that a person collects online and
190 combines with other personally identifiable student data to identify the student; and
- 191 (xiv) other information that is linked to a specific student that would allow a
192 reasonable person in the school community, who does not have first-hand knowledge of the
193 student, to identify the student with reasonable certainty.
- 194 (21) "School official" means an employee or agent of an education entity, if the
195 education entity has authorized the employee or agent to request or receive student data on
196 behalf of the education entity.
- 197 (22) (a) "Student data" means information about a student at the individual student
198 level.
- 199 (b) "Student data" does not include aggregate or de-identified data.
- 200 (23) "Student data disclosure statement" means a student data disclosure statement
201 described in Section [53A-1-1406](#).
- 202 (24) "Student data manager" means:
- 203 (a) the state student data officer; or
- 204 (b) an individual designated as a student data manager by an education entity under
205 Section [53A-1-1404](#).
- 206 (25) (a) "Targeted advertising" means ~~[advertising to a student on an internal or~~
207 ~~external application, if the advertisement is based on information or student data the third-party~~
208 ~~contractor collected or received under the third-party contractor's contract with an education~~
209 ~~entity]~~ presenting advertisements to a student on an internal or external application where the
210 advertisement is selected based on information obtained or inferred from student data, the
211 student's online behavior, or usage of applications.

212 (b) "Targeted advertising" does not include advertisements presented to a student on an
213 internal or external application where the advertisement is selected based upon the student's
214 current visit to or single search query on a site, software, service, or application.

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

216 (a) is not an education entity; and

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

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

222 **53A-1-1406. Collecting student data -- Prohibition -- Student data disclosure**
223 **statement -- Authorization.**

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

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

227 (a) social security number; or

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

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

232 (a) is a prominent, stand-alone document;

233 (b) is annually updated and published on the education entity's website;

234 (c) states the necessary and optional student data the education entity collects;

235 (d) states that the education entity will not collect the student data described in

236 Subsection (2);

237 (e) states the student data described in Section [53A-1-1409](#) that the education entity
238 may not share without a data authorization;

239 ~~[(f) states that students and parents are responsible for the collection, use, or sharing of~~
240 ~~student data as described in Section [53A-1-1405](#);~~

241 ~~[(g)]~~ (f) describes how the education entity may collect, use, and share student data;

242 ~~[(h)]~~ (g) includes the following statement:

243 "The collection, use, and sharing of student data has both benefits and risks. Parents
244 and students should learn about these benefits and risks and make choices regarding student
245 data accordingly.";

246 [(f)] (h) describes in general terms how the education entity stores and protects student
247 data; and

248 [(f)] (i) states a student's rights under this part.

249 (4) An education entity may collect the necessary student data of a student into a
250 cumulative record if the education entity provides a student data disclosure statement to:

251 (a) the student, if the student is an adult student; or

252 (b) the student's parent, if the student is not an adult student.

253 (5) An education entity may collect optional student data into a cumulative record if
254 the education entity:

255 (a) provides, to an individual described in Subsection (4), a student data disclosure
256 statement that includes a description of:

257 (i) the optional student data to be collected; and

258 (ii) how the education entity will use the optional student data; and

259 (b) obtains a data authorization to collect the optional student data from an individual
260 described in Subsection (4).

261 (6) An education entity may collect a student's biometric identifier or biometric
262 information into a cumulative record if the education entity:

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

265 (i) the biometric identifier or biometric information to be collected;

266 (ii) the purpose of collecting the biometric identifier or biometric information; and

267 (iii) how the education entity will use and store the biometric identifier or biometric
268 information; and

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

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

272 **53A-1-1410. Third-party contractors -- Use and protection of student data --**

273 **Contract requirements -- Completion of contract -- Required and allowed uses of student**

274 **data -- Restrictions on the use of student data -- Exceptions.**

275 (1) A third-party contractor shall use personally identifiable student data received
276 under a contract with an education entity strictly for the purpose of providing the contracted
277 product or service.

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

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

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

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

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

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

293 (3) As authorized by law or court order, a third-party contractor shall share student data
294 as requested by law enforcement.

295 (4) A third-party contractor may:

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

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

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

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

304 (ii) services that relate to learning or employment, within the third-party contractor's

305 internal application, if the recommendation is not motivated by payment or other consideration
306 from another party;

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

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

311 (f) identify for a student institutions of higher education or scholarship providers that
312 are seeking students who meet specific criteria, regardless of whether the identified institutions
313 of higher education or scholarship providers provide payment or other consideration to the
314 third-party contractor.

315 (5) At the completion of a contract with an education entity, if the contract has not
316 been renewed, a third-party contractor shall:

317 (a) return all personally identifiable student data to the education entity; or

318 (b) as reasonable, delete all personally identifiable student data related to the
319 third-party contractor's work.

320 (6) (a) A third-party contractor may not:

321 (i) except as provided in Subsection (6)(b), sell student data;

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

324 (iii) use student data for targeted advertising.

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

328 (7) A provider of an electronic store, gateway, marketplace, or other means of
329 purchasing an external application is not required to ensure that the external application
330 obtained through the provider complies with this section.

331 (8) The provisions of this section do not:

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

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

335 (c) impose a duty on a provider of an interactive computer service, as defined in 47

336 U.S.C. Sec. 230, to review or enforce compliance with this section.