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**PUBLIC EDUCATION VISION SCREENING**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Luz Escamilla**

House Sponsor: Brad M. Daw

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**LONG TITLE**

**General Description:**

This bill modifies provisions regarding public education vision screening.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ recodifies existing provisions regarding vision screening in public schools and repeals outdated provisions;
- ▶ gives the Department of Health oversight over public education vision screening;
- ▶ requires local education agencies to conduct certain free vision screening clinics;
- ▶ requires the Department of Health to provide for higher-level individual vision screening within the local education agency framework;
- ▶ modifies provisions regarding volunteers at local education agency free vision screening clinics;
- ▶ makes technical and conforming changes; and
- ▶ gives rulemaking authority.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 **26-1-30**, as last amended by Laws of Utah 2018, Chapters 35 and 200

30 **35A-13-403**, as last amended by Laws of Utah 2018, Chapter 415

31 **53E-9-301**, as last amended by Laws of Utah 2018, Chapters 304, 389 and renumbered  
32 and amended by Laws of Utah 2018, Chapter 1

33 REPEALS AND REENACTS:

34 **53G-9-404**, as renumbered and amended by Laws of Utah 2018, Chapter 3

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

37 Section 1. Section **26-1-30** is amended to read:

38 **26-1-30. Powers and duties of department.**

39 The department shall exercise the following powers and duties, in addition to other  
40 powers and duties established in this chapter:

41 (1) enter into cooperative agreements with the Department of Environmental Quality to  
42 delineate specific responsibilities to assure that assessment and management of risk to human  
43 health from the environment are properly administered;

44 (2) consult with the Department of Environmental Quality and enter into cooperative  
45 agreements, as needed, to ensure efficient use of resources and effective response to potential  
46 health and safety threats from the environment, and to prevent gaps in protection from potential  
47 risks from the environment to specific individuals or population groups;

48 (3) promote and protect the health and wellness of the people within the state;

49 (4) establish, maintain, and enforce rules necessary or desirable to carry out the  
50 provisions and purposes of this title to promote and protect the public health or to prevent  
51 disease and illness;

52 (5) investigate and control the causes of epidemic, infectious, communicable, and other  
53 diseases affecting the public health;

54 (6) provide for the detection, reporting, prevention, and control of communicable,  
55 infectious, acute, chronic, or any other disease or health hazard which the department considers  
56 to be dangerous, important, or likely to affect the public health;

57 (7) collect and report information on causes of injury, sickness, death, and disability  
58 and the risk factors that contribute to the causes of injury, sickness, death, and disability within

59 the state;

60 (8) collect, prepare, publish, and disseminate information to inform the public  
61 concerning the health and wellness of the population, specific hazards, and risks that may affect  
62 the health and wellness of the population and specific activities which may promote and protect  
63 the health and wellness of the population;

64 (9) establish and operate programs necessary or desirable for the promotion or  
65 protection of the public health and the control of disease or which may be necessary to  
66 ameliorate the major causes of injury, sickness, death, and disability in the state, except that the  
67 programs may not be established if adequate programs exist in the private sector;

68 (10) establish, maintain, and enforce isolation and quarantine, and for this purpose  
69 only, exercise physical control over property and individuals as the department finds necessary  
70 for the protection of the public health;

71 (11) close theaters, schools, and other public places and forbid gatherings of people  
72 when necessary to protect the public health;

73 (12) abate nuisances when necessary to eliminate sources of filth and infectious and  
74 communicable diseases affecting the public health;

75 (13) make necessary sanitary and health investigations and inspections in cooperation  
76 with local health departments as to any matters affecting the public health;

77 (14) establish laboratory services necessary to support public health programs and  
78 medical services in the state;

79 (15) establish and enforce standards for laboratory services which are provided by any  
80 laboratory in the state when the purpose of the services is to protect the public health;

81 (16) cooperate with the Labor Commission to conduct studies of occupational health  
82 hazards and occupational diseases arising in and out of employment in industry, and make  
83 recommendations for elimination or reduction of the hazards;

84 (17) cooperate with the local health departments, the Department of Corrections, the  
85 Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime  
86 Victim Reparations Board to conduct testing for HIV infection of alleged sexual offenders,  
87 convicted sexual offenders, and any victims of a sexual offense;

88 (18) investigate the causes of maternal and infant mortality;

89 (19) establish, maintain, and enforce a procedure requiring the blood of adult

90 pedestrians and drivers of motor vehicles killed in highway accidents be examined for the  
91 presence and concentration of alcohol;

92 (20) provide the Commissioner of Public Safety with monthly statistics reflecting the  
93 results of the examinations provided for in Subsection (19) and provide safeguards so that  
94 information derived from the examinations is not used for a purpose other than the compilation  
95 of statistics authorized in this Subsection (20);

96 (21) establish qualifications for individuals permitted to draw blood pursuant to  
97 Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), 72-10-502(5)(a)(vi), or  
98 77-23-213(3)(a)(vi), and to issue permits to individuals it finds qualified, which permits may  
99 be terminated or revoked by the department;

100 (22) establish a uniform public health program throughout the state which includes  
101 continuous service, employment of qualified employees, and a basic program of disease  
102 control, vital and health statistics, sanitation, public health nursing, and other preventive health  
103 programs necessary or desirable for the protection of public health;

104 (23) adopt rules and enforce minimum sanitary standards for the operation and  
105 maintenance of:

- 106 (a) orphanages;
- 107 (b) boarding homes;
- 108 (c) summer camps for children;
- 109 (d) lodging houses;
- 110 (e) hotels;
- 111 (f) restaurants and all other places where food is handled for commercial purposes,  
112 sold, or served to the public;
- 113 (g) tourist and trailer camps;
- 114 (h) service stations;
- 115 (i) public conveyances and stations;
- 116 (j) public and private schools;
- 117 (k) factories;
- 118 (l) private sanatoria;
- 119 (m) barber shops;
- 120 (n) beauty shops;

- 121 (o) physician offices;
- 122 (p) dentist offices;
- 123 (q) workshops;
- 124 (r) industrial, labor, or construction camps;
- 125 (s) recreational resorts and camps;
- 126 (t) swimming pools, public baths, and bathing beaches;
- 127 (u) state, county, or municipal institutions, including hospitals and other buildings,
- 128 centers, and places used for public gatherings; and
- 129 (v) any other facilities in public buildings or on public grounds;
- 130 (24) conduct health planning for the state;
- 131 (25) monitor the costs of health care in the state and foster price competition in the
- 132 health care delivery system;
- 133 (26) adopt rules for the licensure of health facilities within the state pursuant to Title
- 134 26, Chapter 21, Health Care Facility Licensing and Inspection Act;
- 135 (27) license the provision of child care;
- 136 (28) accept contributions to and administer the funds contained in the Organ Donation
- 137 Contribution Fund created in Section [26-18b-101](#);
- 138 (29) serve as the collecting agent, on behalf of the state, for the nursing care facility
- 139 assessment fee imposed under Title 26, Chapter 35a, Nursing Care Facility Assessment Act,
- 140 and adopt rules for the enforcement and administration of the nursing facility assessment
- 141 consistent with the provisions of Title 26, Chapter 35a, Nursing Care Facility Assessment Act;
- 142 (30) establish methods or measures for health care providers, public health entities, and
- 143 health care insurers to coordinate among themselves to verify the identity of the individuals
- 144 they serve;
- 145 (31) (a) designate Alzheimer's disease and related dementia as a public health issue
- 146 and, within budgetary limitations, implement a state plan for Alzheimer's disease and related
- 147 dementia by incorporating the plan into the department's strategic planning and budgetary
- 148 process; and
- 149 (b) coordinate with other state agencies and other organizations to implement the state
- 150 plan for Alzheimer's disease and related dementia; [~~and~~]
- 151 (32) ensure that any training or certification required of a public official or public

152 employee, as those terms are defined in Section [63G-22-102](#), complies with Title 63G, Chapter  
153 22, State Training and Certification Requirements, if the training or certification is required:

- 154 (a) under this title;
- 155 (b) by the department; or
- 156 (c) by an agency or division within the department; and
- 157 (33) oversee public education vision screening as described in Section [53G-9-404](#).

158 Section 2. Section **35A-13-403** is amended to read:

159 **35A-13-403. Services provided by the division.**

160 The division may:

- 161 (1) provide:
  - 162 (a) a business enterprise program;
  - 163 (b) workshops, employment, and training; and
  - 164 (c) vocational rehabilitation, training and adjustment, sight conservation, prevention of  
165 blindness, low vision lenses, and recreational services;

166 ~~[(2) assist public education officials in the discharge of their duties towards children  
167 who are blind or have visual impairments, and perform services related to vision screening  
168 under Section [53G-9-404](#);~~

169 ~~[(3) maintain a register of individuals who are blind or have visual impairments,  
170 including such facts as the office considers necessary for proper planning, administration, and  
171 operations, but protecting against unwarranted invasions of privacy;]~~

172 ~~[(4)]~~ (2) establish and operate community service centers, rehabilitation facilities, and  
173 workshops; and

174 ~~[(5)]~~ (3) perform other duties assigned by the director or the executive director.

175 Section 3. Section **53E-9-301** is amended to read:

176 **53E-9-301. Definitions.**

177 As used in this part:

- 178 (1) "Adult student" means a student who:
  - 179 (a) is at least 18 years old;
  - 180 (b) is an emancipated student; or
  - 181 (c) qualifies under the McKinney-Vento Homeless Education Assistance

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

- 183 (2) "Aggregate data" means data that:  
184 (a) are totaled and reported at the group, cohort, school, school district, region, or state  
185 level with at least 10 individuals in the level;  
186 (b) do not reveal personally identifiable student data; and  
187 (c) are collected in accordance with board rule.
- 188 (3) (a) "Biometric identifier" means a:  
189 (i) retina or iris scan;  
190 (ii) fingerprint;  
191 (iii) human biological sample used for valid scientific testing or screening; or  
192 (iv) scan of hand or face geometry.
- 193 (b) "Biometric identifier" does not include:  
194 (i) a writing sample;  
195 (ii) a written signature;  
196 (iii) a voiceprint;  
197 (iv) a photograph;  
198 (v) demographic data; or  
199 (vi) a physical description, such as height, weight, hair color, or eye color.
- 200 (4) "Biometric information" means information, regardless of how the information is  
201 collected, converted, stored, or shared:  
202 (a) based on an individual's biometric identifier; and  
203 (b) used to identify the individual.
- 204 (5) "Board" means the State Board of Education.
- 205 (6) "Data breach" means an unauthorized release of or unauthorized access to  
206 personally identifiable student data that is maintained by an education entity.
- 207 (7) "Data governance plan" means an education entity's comprehensive plan for  
208 managing education data that:  
209 (a) incorporates reasonable data industry best practices to maintain and protect student  
210 data and other education-related data;  
211 (b) describes the role, responsibility, and authority of an education entity data  
212 governance staff member;  
213 (c) provides for necessary technical assistance, training, support, and auditing;

214 (d) describes the process for sharing student data between an education entity and  
215 another person;

216 (e) describes the education entity's data expungement process, including how to  
217 respond to requests for expungement;

218 (f) describes the data breach response process; and

219 (g) is published annually and available on the education entity's website.

220 (8) "Education entity" means:

221 (a) the board;

222 (b) a local school board;

223 (c) a charter school governing board;

224 (d) a school district;

225 (e) a charter school;

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

227 (g) for purposes of implementing the School Readiness Initiative described in Title  
228 53F, Chapter 6, Part 3, School Readiness Initiative, the School Readiness Board created in  
229 Section [35A-3-209](#).

230 (9) "Expunge" means to seal or permanently delete data, as described in board rule  
231 made under Section [53E-9-306](#).

232 (10) "General audience application" means an Internet website, online service, online  
233 application, mobile application, or software program that:

234 (a) is not specifically intended for use by an audience member that attends kindergarten  
235 or a grade from 1 to 12, although an audience member may attend kindergarten or a grade from  
236 1 to 12; and

237 (b) is not subject to a contract between an education entity and a third-party contractor.

238 (11) "Higher education outreach student data" means the following student data for a  
239 student:

240 (a) name;

241 (b) parent name;

242 (c) grade;

243 (d) school and school district; and

244 (e) contact information, including:



- 245 (i) primary phone number;
- 246 (ii) email address; and
- 247 (iii) physical address.
- 248 (12) "Individualized education program" or "IEP" means a written statement:
- 249 (a) for a student with a disability; and
- 250 (b) that is developed, reviewed, and revised in accordance with the Individuals with
- 251 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.
- 252 (13) "Local education agency" or "LEA" means:
- 253 (a) a school district;
- 254 (b) a charter school;
- 255 (c) the Utah Schools for the Deaf and the Blind; or
- 256 (d) for purposes of implementing the School Readiness Initiative described in Title
- 257 53F, Chapter 6, Part 3, School Readiness Initiative, the School Readiness Board created in
- 258 Section [35A-3-209](#).
- 259 (14) "Metadata dictionary" means a record that:
- 260 (a) defines and discloses all personally identifiable student data collected and shared by
- 261 the education entity;
- 262 (b) comprehensively lists all recipients with whom the education entity has shared
- 263 personally identifiable student data, including:
- 264 (i) the purpose for sharing the data with the recipient;
- 265 (ii) the justification for sharing the data, including whether sharing the data was
- 266 required by federal law, state law, or a local directive; and
- 267 (iii) how sharing the data is permitted under federal or state law; and
- 268 (c) without disclosing personally identifiable student data, is displayed on the
- 269 education entity's website.
- 270 (15) "Necessary student data" means data required by state statute or federal law to
- 271 conduct the regular activities of an education entity, including:
- 272 (a) name;
- 273 (b) date of birth;
- 274 (c) sex;
- 275 (d) parent contact information;

- 276 (e) custodial parent information;
- 277 (f) contact information;
- 278 (g) a student identification number;
- 279 (h) local, state, and national assessment results or an exception from taking a local,
- 280 state, or national assessment;
- 281 (i) courses taken and completed, credits earned, and other transcript information;
- 282 (j) course grades and grade point average;
- 283 (k) grade level and expected graduation date or graduation cohort;
- 284 (l) degree, diploma, credential attainment, and other school exit information;
- 285 (m) attendance and mobility;
- 286 (n) drop-out data;
- 287 (o) immunization record or an exception from an immunization record;
- 288 (p) race;
- 289 (q) ethnicity;
- 290 (r) tribal affiliation;
- 291 (s) remediation efforts;
- 292 (t) an exception from a vision screening required under Section 53G-9-404 or
- 293 information collected from a vision screening [~~required under~~] described in Section
- 294 53G-9-404;
- 295 (u) information related to the Utah Registry of Autism and Developmental Disabilities,
- 296 described in Section 26-7-4;
- 297 (v) student injury information;
- 298 (w) a disciplinary record created and maintained as described in Section 53E-9-306;
- 299 (x) juvenile delinquency records;
- 300 (y) English language learner status; and
- 301 (z) child find and special education evaluation data related to initiation of an IEP.
- 302 (16) (a) "Optional student data" means student data that is not:
  - 303 (i) necessary student data; or
  - 304 (ii) student data that an education entity may not collect under Section 53E-9-305.
- 305 (b) "Optional student data" includes:
  - 306 (i) information that is:

307 (A) related to an IEP or needed to provide special needs services; and  
308 (B) not necessary student data;  
309 (ii) biometric information; and  
310 (iii) information that is not necessary student data and that is required for a student to  
311 participate in a federal or other program.

312 (17) "Parent" means:  
313 (a) a student's parent;  
314 (b) a student's legal guardian; or  
315 (c) an individual who has written authorization from a student's parent or legal  
316 guardian to act as a parent or legal guardian on behalf of the student.

317 (18) (a) "Personally identifiable student data" means student data that identifies or is  
318 used by the holder to identify a student.

319 (b) "Personally identifiable student data" includes:  
320 (i) a student's first and last name;  
321 (ii) the first and last name of a student's family member;  
322 (iii) a student's or a student's family's home or physical address;  
323 (iv) a student's email address or other online contact information;  
324 (v) a student's telephone number;  
325 (vi) a student's social security number;  
326 (vii) a student's biometric identifier;  
327 (viii) a student's health or disability data;  
328 (ix) a student's education entity student identification number;  
329 (x) a student's social media user name and password or alias;  
330 (xi) if associated with personally identifiable student data, the student's persistent  
331 identifier, including:

332 (A) a customer number held in a cookie; or  
333 (B) a processor serial number;  
334 (xii) a combination of a student's last name or photograph with other information that  
335 together permits a person to contact the student online;  
336 (xiii) information about a student or a student's family that a person collects online and  
337 combines with other personally identifiable student data to identify the student; and

338 (xiv) information that, alone or in combination, is linked or linkable to a specific  
339 student that would allow a reasonable person in the school community, who does not have  
340 personal knowledge of the relevant circumstances, to identify the student with reasonable  
341 certainty.

342 (19) "School official" means an employee or agent of an education entity, if the  
343 education entity has authorized the employee or agent to request or receive student data on  
344 behalf of the education entity.

345 (20) (a) "Student data" means information about a student at the individual student  
346 level.

347 (b) "Student data" does not include aggregate or de-identified data.

348 (21) "Student data manager" means:

349 (a) the state student data officer; or

350 (b) an individual designated as a student data manager by an education entity under  
351 Section [53E-9-303](#), who fulfills the duties described in Section [53E-9-308](#).

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

355 (b) "Targeted advertising" does not include advertising to a student:

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

357 (ii) in response to that student's request for information or feedback, without retention  
358 of that student's online activities or requests over time for the purpose of targeting subsequent  
359 ads.

360 (23) "Third-party contractor" means a person who:

361 (a) is not an education entity; and

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

366 (24) "Written consent" means written authorization to collect or share a student's  
367 student data, from:

368 (a) the student's parent, if the student is not an adult student; or

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

370 Section 4. Section **53G-9-404** is repealed and reenacted to read:

371 **53G-9-404. Public education vision screening.**

372 (1) As used in this section:

373 (a) "Health care professional" means an individual licensed under:

374 (i) Title 58, Chapter 16a, Utah Optometry Practice Act;

375 (ii) Title 58, Chapter 31b, Nurse Practice Act, if the individual is licensed for the  
376 practice of advance practice registered nursing, as defined in Section [58-31b-102](#);

377 (iii) Title 58, Chapter 42a, Occupational Therapy Practice Act;

378 (iv) Title 58, Chapter 67, Utah Medical Practice Act;

379 (v) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

380 (vi) Title 58, Chapter 70a, Physician Assistant Act.

381 (b) "Qualifying child" means a child who:

382 (i) attends an LEA;

383 (ii) is at least three years old; and

384 (iii) is not yet 16 years old.

385 (c) "Tier one vision screening" means a lower-level evaluation of an individual's  
386 vision, as determined by Department of Health rule.

387 (d) "Tier two vision screening" means an individual, higher-level evaluation of an  
388 individual's vision, as determined by Department of Health rule.

389 (2) The Department of Health shall oversee public education vision screening, as  
390 described in this section.

391 (3) A child who is less than nine years old and has not yet attended public school in the  
392 state shall, before attending a public school in the state, provide:

393 (a) a completed vision screening form, described in Subsection (5)(a)(i), that is signed  
394 by a health care professional; or

395 (b) a written statement signed by a parent that the child will not be screened before  
396 attending public school in the state.

397 (4) The Department of Health shall prepare and provide:

398 (a) training for a school nurse who supervises an LEA tier one vision screening clinic;

399 and

400 (b) an online training module for a potential volunteer for an LEA tier one vision  
401 screening clinic.

402 (5) (a) The Department of Health shall provide a template for:

403 (i) a form for use by a health care professional under Subsection (3)(a) to certify that a  
404 child has received an adequate vision screening; and

405 (ii) a referral form used for the referral and follow up of a qualifying child after a tier  
406 one or tier two vision screening.

407 (b) A template described in Subsection (5)(a) shall include the following statement: "A  
408 screening is not a substitute for a complete eye exam and vision evaluation by an eye doctor."

409 (6) The Department of Health shall make rules to:

410 (a) generally provide for and require the administration of tier one vision screening in  
411 accordance with this section, including an opt-out process;

412 (b) describe standards and procedures for tier one vision screening, including referral  
413 and follow up protocols and reporting a student's significant vision impairment results to the  
414 Utah Schools for the Deaf and the Blind;

415 (c) outline the qualifications of and parameters for the use of an outside entity to  
416 supervise an LEA tier one vision screening clinic when an LEA does not have a school nurse to  
417 supervise an LEA tier one vision screening clinic;

418 (d) determine when a potential volunteer at an LEA tier one vision screening clinic has  
419 a conflict of interest, including if the potential volunteer could profit financially from  
420 volunteering;

421 (e) determine the regularity of tier one vision screening in order to ensure that a  
422 qualifying child receives tier one vision screening at particular intervals; and

423 (f) provide for tier two vision screening for a qualifying child, including:

424 (i) in coordination with the state board, determining mandatory and optional tier two  
425 vision screening for a qualifying child;

426 (ii) identification of and training for an individual who provides tier two vision  
427 screening;

428 (iii) (A) the creation of a symptoms questionnaire that includes questions for a  
429 nonprofessionally trained individual to identify an eye focusing or tracking problem as well as  
430 convergence insufficiency of a qualifying child; and

431 (B) protocol on how to administer the symptoms questionnaire in coordination with  
432 tier two vision screening;

433 (iv) general standards, procedures, referral, and follow up protocol; and

434 (v) aggregate reporting requirements.

435 (7) (a) In accordance with Department of Health oversight and rule and Subsection  
436 (7)(b), an LEA shall conduct free tier one vision screening clinics for all qualifying children  
437 who attend the LEA or a school within the LEA.

438 (b) If the parent of a qualifying child requests that the qualifying child not participate in  
439 a tier one or tier two vision screening, an LEA may not require the qualifying child to receive  
440 the tier one or tier two vision screening.

441 (8) (a) Except as provided in Subsection (8)(b), a school nurse shall supervise an LEA  
442 tier one vision screening clinic as well as provide referral and followup services.

443 (b) If an LEA does not have a school nurse to supervise an LEA tier one vision  
444 screening clinic, an LEA may, in accordance with Department of Health rule, use an outside  
445 entity to supervise an LEA tier one vision screening clinic.

446 (9) (a) An LEA shall ensure that a volunteer who assists with an LEA tier one vision  
447 screening clinic:

448 (i) (A) is trained by a school nurse; or

449 (B) demonstrates successful completion of the training module described in Subsection  
450 (4)(b);

451 (ii) complies with the requirements of Subsection (9)(c); and

452 (iii) is supervised by a school nurse or, in accordance with Subsection (8)(b), an  
453 outside entity.

454 (b) In accordance with Department of Health rule, an LEA may exclude a person from  
455 volunteering at an LEA tier one vision screening clinic if the person has a conflict of interest,  
456 including if the person could profit financially from volunteering.

457 (c) A volunteer who assists with an LEA tier one vision screening clinic may not  
458 market, advertise, or promote a business in connection with assisting at the LEA tier one vision  
459 screening clinic.

460 (d) A volunteer who assists with an LEA tier one vision screening clinic is not liable  
461 for damages that result from an act or omission related to the LEA tier one vision screening

462 clinic, if the act or omission is not willful or grossly negligent.