

**Effective 7/1/2022**

## **Part 5**

### **Higher Education Student Data Protection**

#### **53B-28-501 Definitions.**

As used in this part:

- (1) "Advisory group" means the institution of higher education privacy advisory group established by the state privacy officer under Section 53B-28-502.
- (2) "Aggregate data" means data that:
  - (a) are totaled and reported at the group, cohort, class, course, institution, region, or state level, with at least 10 individuals in the level; and
  - (b) do not reveal personally identifiable student data.
- (3) "Data breach" means an unauthorized release of or unauthorized access to personally identifiable student data that an education entity maintains.
- (4) "Data governance plan" means an education entity's comprehensive plan for managing education data that:
  - (a) incorporates reasonable data industry best practices to maintain and protect student data and other education-related data;
  - (b) describes the role, responsibility, and authority of the board or an institution privacy officer;
  - (c) provides for necessary technical assistance, training, support, and auditing;
  - (d) describes the process for sharing student data between the education entity and another person;
  - (e) describes the education entity's data expungement process, including how to respond to requests for expungement;
  - (f) describes the data breach response process; and
  - (g) is published annually and available on the institution's website or the Utah System of Higher Education's website.
- (5) "Education entity" means the Utah Board of Higher Education or an institution.
- (6) "Higher education privacy officer" means a privacy officer that the board designates under Section 53B-28-503.
- (7) "Institution" means an institution of higher education described in Section 53B-1-102.
- (8) "Minor" means a person younger than 18 years old.
- (9)
  - (a) "Personally identifiable student data" means student data that identifies or is used by the holder to identify a student.
  - (b) "Personally identifiable student data" includes:
    - (i) a student's first and last name;
    - (ii) the first and last name of a student's family member;
    - (iii) a student's or a student's family's home or physical address;
    - (iv) a student's email address or other online contact information;
    - (v) a student's telephone number;
    - (vi) a student's social security number;
    - (vii) a student's biometric identifier;
    - (viii) a student's health or disability data;
    - (ix) a student's education entity student identification number;
    - (x) a student's social media user name and password or alias;

- (xi) if associated with personally identifiable student data, the student's persistent identifier, including:
    - (A) a customer number held in a cookie; or
    - (B) a processor serial number;
  - (xii) a combination of a student's last name or photograph with other information that together permits a person to contact the student online;
  - (xiii) information about a student or a student's family that a person collects online and combines with other personally identifiable student data to identify the student; and
  - (xiv) information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.
- (10) "State privacy officer" means the state privacy officer described in Section 67-3-13.
- (11) "Student" means an individual enrolled in an institution.
- (12)
- (a) "Student data" means information about a student at the individual student level.
  - (b) "Student data" does not include aggregate or de-identified data.
- (13) "Third-party contractor" means a person who:
- (a) is not an institution or an employee of an institution; and
  - (b) pursuant to a contract with an education entity, collects or receives student data in order to provide a product or service, as described in the contract, if the product or service is not related to school photography, yearbooks, graduation announcements, or a similar product or service.

Enacted by Chapter 461, 2022 General Session

**53B-28-502 State student data protection governance.**

- (1) The state privacy officer shall establish a higher education privacy advisory group to advise institutions and institution boards of trustees on student data protection.
- (2) The advisory group shall consist of:
  - (a) the state privacy officer;
  - (b) the higher education privacy officer; and
  - (c) the following members, appointed by the commissioner:
    - (i) at least one Utah System of Higher Education employee; and
    - (ii) at least one representative of the Utah Board of Higher Education.
- (3) The advisory group shall:
  - (a) discuss and make recommendations to the board and institutions regarding:
    - (i) existing and proposed:
      - (A) board rules; or
      - (B) board policies of the Utah Board of Higher Education or institutions; and
    - (ii) training on protecting student data privacy; and
  - (b) perform other tasks related to student data protection as designated by the Utah Board of Higher Education.
- (4) The higher education privacy officer shall:
  - (a) provide training and support to institution boards and employees; and
  - (b) produce:
    - (i) resource materials;
    - (ii) model data governance plans;
    - (iii) model forms for institution student data protection governance; and

- (iv) a model data collection notice.
- (5) The board shall:
  - (a)
    - (i) create and maintain a data governance plan; and
    - (ii) annually publish the data governance plan on the Utah System of Higher Education website; and
  - (b) establish standards for:
    - (i) institution policies to protect student data;
    - (ii) institution data governance plans; and
    - (iii) a third-party contractor's use of student data.

**53B-28-503 Institution student data protection governance.**

- (1)
  - (a) An institution shall adopt policies to protect student data in accordance with this part and board rule, including the standards the board establishes under Subsection 53B-28-502(5).
  - (b) The policies described in Subsection (1)(a) shall take into account the specific needs and priorities of the institution.
- (2) The board shall designate a higher education privacy officer.
- (3) The higher education privacy officer shall:
  - (a) verify compliance with student privacy laws, rules, and policies throughout the Utah System of Higher Education;
  - (b) support institutions in developing data governance plans and student data privacy training; and
  - (c) act as the primary point of contact for the state privacy officer.
- (4) An institution shall:
  - (a) designate an individual to act as the primary contact for the higher education privacy officer;
  - (b) create and maintain an institution:
    - (i) data governance plan that complies with the standards the board establishes under Subsection 53B-28-502(5); and
    - (ii) record of student data privacy training; and
  - (c) annually publish the institution's data governance plan on the institution's website.

Enacted by Chapter 461, 2022 General Session

**53B-28-504 Notification of significant data breach.**

- (1) If a significant data breach occurs at an institution, the institution shall notify each student whose personally-identifiable student data was disclosed.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules to define a significant data breach described in Subsection (1).

Enacted by Chapter 461, 2022 General Session

**53B-28-505 Third-party contractors.**

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

- (2) When contracting with a third-party contractor on or after January 1, 2024, an education entity, or a government agency contracting on behalf of an education entity, shall:
  - (a) ensure that the contract terms comply with the standards the board establishes under Subsection 53B-28-502(5); and
  - (b) require the following provisions in the contract:
    - (i) requirements and restrictions related to the collection, use, storage, or sharing of student data by the third-party contractor that are necessary for the education entity to ensure compliance with the provisions of this part and board rule;
    - (ii) a description of a person, or type of person, including an affiliate of the third-party contractor, with whom the third-party contractor may share student data;
    - (iii) provisions that, at the request of the education entity, govern the deletion of the student data received by the third-party contractor;
    - (iv) except as provided in Subsection (4) and if required by the education entity, provisions that prohibit the secondary use of personally identifiable student data by the third-party contractor; and
    - (v) an agreement by the third-party contractor that, at the request of the education entity that is a party to the contract, the education entity or the education entity's designee may audit the third-party contractor to verify compliance with the contract.
- (3) As authorized by law or court order, a third-party contractor shall share student data as requested by law enforcement.
- (4) A third-party contractor may:
  - (a) use student data for adaptive learning or customized student learning purposes;
  - (b) market an educational application or product to a student if the third-party contractor does not use student data, shared by or collected on behalf of an education entity, to market the educational application or product;
  - (c) use a recommendation engine to recommend to a student:
    - (i) content that relates to learning or employment, within the third-party contractor's application, if the recommendation is not motivated by payment or other consideration from another party; or
    - (ii) services that relate to learning or employment, within the third-party contractor's application, if the recommendation is not motivated by payment or other consideration from another party;
  - (d) respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party;
  - (e) use student data to allow or improve operability and functionality of the third-party contractor's application; or
  - (f) identify for a student nonprofit institutions of higher education or scholarship providers that are seeking students who meet specific criteria:
    - (i) regardless of whether the identified nonprofit institutions of higher education or scholarship providers provide payment or other consideration to the third-party contractor; and
    - (ii) only if the third-party contractor obtains authorization in writing from:
      - (A) the student's parent, if the student is a minor; or
      - (B) the student.
- (5) At the completion of a contract with an education entity, if the contract has not been renewed, a third-party contractor shall return or delete upon the education entity's request all personally identifiable student data under the control of the education entity unless a student or a minor student's parent consents to the maintenance of the personally identifiable student data.
- (6)

- (a) A third-party contractor may not:
  - (i) except as provided in Subsection (6)(b), sell student data;
  - (ii) collect, use, or share student data, if the collection, use, or sharing of the student data is inconsistent with the third-party contractor's contract with the education entity; or
  - (iii) use student data for targeted advertising.
- (b) A person may obtain student data through the purchase of, merger with, or otherwise acquiring a third-party contractor if the third-party contractor remains in compliance with this section.
- (7) The provisions of this section do not:
  - (a) apply to the use of a general audience application, including the access of a general audience application with login credentials created by a third-party contractor's application;
  - (b) apply if the student data is shared in accordance with the education entity's directory information policy, as described in 34 C.F.R. Sec. 99.37;
  - (c) apply to the providing of Internet service; or
  - (d) impose a duty on a provider of an interactive computer service, as defined in 47 U.S.C. Sec. 230, to review or enforce compliance with this section.
- (8) A provision of this section that relates to a student's student data does not apply to a third-party contractor if the education entity or third-party contractor obtains authorization from the following individual, in writing, to waive that provision:
  - (a) the student's parent, if the student is a minor; or
  - (b) the student.

Amended by Chapter 381, 2023 General Session

***Effective until 7/1/2024***

**53B-28-506 Penalties.**

- (1) A third-party contractor that knowingly or recklessly permits unauthorized collecting, sharing, or use of student data under this part:
  - (a) except as provided in Subsection (1)(d), may not enter into a future contract with an institution; and
  - (b) may be required by the board to pay a civil penalty of up to \$25,000.
  - (c) may be required to pay:
    - (i) an institution's cost of notifying parents and students of the unauthorized sharing or use of student data; and
    - (ii) any expense incurred by the institution as result of the unauthorized sharing or use of student data.
  - (d) An education entity may enter into a contract with a third-party contractor that knowingly or recklessly permitted unauthorized collecting, sharing, or use of student data if:
    - (i) the education entity determines that the third-party contractor has corrected the errors that caused the unauthorized collecting, sharing, or use of student data; and
    - (ii) the third-party contractor demonstrates:
      - (A) if the third-party contractor is under contract with the education entity, current compliance with this part; or
      - (B) an ability to comply with the requirements of this part.
  - (e) The board may bring an action in the district court of the county in which the office of the education entity is located, if necessary, to enforce payment of the civil penalty described in Subsection (1)(b).

- (f) An individual who knowingly or intentionally permits unauthorized collecting, sharing, or use of student data may be found guilty of a class A misdemeanor.
- (2)
  - (a) A student or a minor student's parent may bring an action against a third-party contractor in a court of competent jurisdiction for damages caused by a knowing or reckless violation of Section 53B-28-505 by a third-party contractor.
  - (b) If the court finds that a third-party contractor has violated Section 53B-28-505, the court may award to the parent or student:
    - (i) damages; and
    - (ii) costs.

Amended by Chapter 381, 2023 General Session

***Effective 7/1/2024***

**53B-28-506 Penalties.**

- (1) A third-party contractor that knowingly or recklessly permits unauthorized collecting, sharing, or use of student data under this part:
  - (a) except as provided in Subsection (2), may not enter into a future contract with an institution;
  - (b) may be required by the board to pay a civil penalty of up to \$25,000; and
  - (c) may be required to pay:
    - (i) an institution's cost of notifying parents and students of the unauthorized sharing or use of student data; and
    - (ii) any expense incurred by the institution as result of the unauthorized sharing or use of student data.
- (2) An education entity may enter into a contract with a third-party contractor that knowingly or recklessly permitted unauthorized collecting, sharing, or use of student data if:
  - (a) the education entity determines that the third-party contractor has corrected the errors that caused the unauthorized collecting, sharing, or use of student data; and
  - (b) the third-party contractor demonstrates:
    - (i) if the third-party contractor is under contract with the education entity, current compliance with this part; or
    - (ii) an ability to comply with the requirements of this part.
- (3)
  - (a) If necessary, the board may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enforce payment of the civil penalty described in Subsection (1)(b).
  - (b) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, the board shall bring an action described in Subsection (3)(a) in the county in which the office of the education entity is located if the action is brought in the district court.
- (4) An individual who knowingly or intentionally permits unauthorized collecting, sharing, or use of student data may be found guilty of a class A misdemeanor.
- (5)
  - (a) A student or a minor student's parent may bring an action against a third-party contractor in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for damages caused by a knowing or reckless violation of Section 53B-28-505 by a third-party contractor.
  - (b) If the court finds that a third-party contractor has violated Section 53B-28-505, the court may award to the parent or student:
    - (i) damages; and

(ii) costs.