

Effective 5/9/2017

**Chapter 28
Student Rights and Responsibilities**

**Part 1
General Provisions**

53B-28-101 Title.

This chapter is known as "Student Rights and Responsibilities."

Enacted by Chapter 188, 2017 General Session

53B-28-102 Definitions.

As used in this chapter, "institution" means a public or private postsecondary institution that is located in Utah, including an institution of higher education listed in Section 53B-1-102.

Enacted by Chapter 188, 2017 General Session

**Part 2
Confidential Communications for Institutional Advocacy Services Act**

53B-28-201 Definitions.

As used in this part:

- (1) "Certified advocate" means an individual who:
 - (a) is employed by or volunteers at a qualified institutional victim services provider;
 - (b) has completed at least 40 hours of training in counseling and assisting victims of sexual harassment, sexual assault, rape, dating violence, domestic violence, or stalking; and
 - (c) acts under the supervision of the director or director's designee of a qualified institutional victim services provider.
- (2)
 - (a) "Confidential communication" means information that is communicated by a victim, in the course of the victim seeking an institutional advocacy service, to:
 - (i) a certified advocate;
 - (ii) a qualified institutional victim services provider;
 - (iii) a person reasonably necessary for the transmission of the information;
 - (iv) an individual who is present at the time the information is transmitted for the purpose of furthering the victim's interests; or
 - (v) another individual, in the context of group counseling at a qualified institutional victim services provider.
 - (b) "Confidential communication" includes a record that is created or maintained as a result of the communication described in Subsection (2)(a).
- (3) "Institutional advocacy service" means a safety planning, counseling, psychological, support, advocacy, medical, or legal service that:
 - (a) addresses issues involving:
 - (i) sexual harassment;
 - (ii) sexual assault;

- (iii) rape;
 - (iv) domestic violence;
 - (v) dating violence; or
 - (vi) stalking; and
- (b) is provided by a qualified institutional victim services provider.
- (4)
- (a) "Qualified institutional victim services provider" means an organization that:
 - (i) is affiliated with an institution;
 - (ii) employs or provides volunteer opportunities for certified advocates;
 - (iii) provides an institutional advocacy service to victims or families of victims; and
 - (iv) is designated by the affiliated institution as a qualified institutional victim services provider.
 - (b) "Qualified institutional victim services provider" may include an institution's:
 - (i) sexual assault center;
 - (ii) victim advocacy center;
 - (iii) women's center;
 - (iv) health center; or
 - (v) counseling service center.
- (5) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics.
- (6) "Victim" means an individual who seeks an institutional advocacy service.

Enacted by Chapter 188, 2017 General Session

53B-28-202 Confidentiality of information -- Disclosure of confidential communication.

- (1) Except as provided in Subsection (2), and notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, a person may not disclose a confidential communication.
- (2) A person may disclose a confidential communication if:
 - (a) the victim gives written and informed consent to the disclosure;
 - (b) the person has an obligation to disclose the confidential communication under Section 26B-6-205, 80-2-602, or 78B-3-502;
 - (c) the disclosure is required by federal law; or
 - (d) a court of competent jurisdiction orders the disclosure.

Amended by Chapter 328, 2023 General Session

Part 3
Campus Sexual Violence

53B-28-301 Definitions.

As used in this part:

- (1) "Alleged perpetrator" means an individual whom a victim alleges committed an act of sexual violence against the victim.
- (2) "Code of conduct" means an institution's student code of conduct, student code of ethics, honor code, or other policy under which the institution may sanction a student.

- (3) "Covered allegation" means an allegation made to an institution that an individual committed an act of sexual violence.
- (4) "Law enforcement agency" means an off-campus law enforcement agency of the unit of local government with jurisdiction to respond to a covered allegation.
- (5) "Sexual violence" means:
 - (a) sexual abuse as described in 18 U.S.C. Sec. 2242;
 - (b) aggravated sexual abuse as described in 18 U.S.C. Sec. 2241;
 - (c) assault resulting in substantial bodily injury as described in 18 U.S.C. Sec. 113(a)(7);
 - (d) sexual assault;
 - (e) dating violence;
 - (f) domestic violence; or
 - (g) stalking.
- (6) "Student" means an individual enrolled in an institution.
- (7) "Victim" means a student who alleges that the student was a victim of sexual violence.

Enacted by Chapter 307, 2019 General Session

53B-28-302 Code of conduct violation -- Report of sexual violence.

An institution may not sanction a student for a code of conduct violation related to the use of drugs or alcohol if:

- (1) the student is:
 - (a) a victim of an act of sexual violence; or
 - (b) a witness to an act of sexual violence;
- (2) the student reports to the institution, in good faith, a covered allegation related to the act of sexual violence described in Subsection (1); and
- (3) the institution learns of the student's code of conduct violation due to the student's report described in Subsection (2).

Enacted by Chapter 307, 2019 General Session

53B-28-303 Institution engagement with a law enforcement agency -- Articulate and significant threat -- Notification to victim.

- (1)
 - (a) An institution shall keep confidential from a law enforcement agency a covered allegation reported to the institution by the victim of the covered allegation.
 - (b) Notwithstanding Subsection (1)(a), an institution may engage with a law enforcement agency in response to a covered allegation described in Subsection (1)(a):
 - (i) if the victim consents to the institution engaging with the law enforcement agency; or
 - (ii) in accordance with Subsection (2).
- (2)
 - (a) Subject to Subsection (3), an institution that receives a report described in Subsection (1)
 - (a) may engage with a law enforcement agency in response to the covered allegation if the institution determines, in accordance with Subsection (2)(b), that the information in the covered allegation creates an articulable and significant threat to individual or campus safety at the institution.
 - (b) To determine whether the information in a covered allegation creates an articulable and significant threat described in Subsection (2)(a), the institution shall consider, if the information is known to the institution, at least the following factors:

- (i) whether the circumstances of the covered allegation suggest an increased risk that the alleged perpetrator will commit an additional act of sexual violence or other violence;
 - (ii) whether the alleged perpetrator has an arrest history that indicates a history of sexual violence or other violence;
 - (iii) whether records from the alleged perpetrator's previous postsecondary institution indicate that the alleged perpetrator has a history of sexual violence or other violence;
 - (iv) whether the alleged perpetrator is alleged to have threatened further sexual violence or other violence against the victim or another individual;
 - (v) whether the act of sexual violence was committed by more than one alleged perpetrator;
 - (vi) whether the circumstances of the covered allegation suggest there is an increased risk of future acts of sexual violence under similar circumstances;
 - (vii) whether the act of sexual violence was perpetrated with a weapon; and
 - (viii) the age of the victim.
- (3) An institution shall:
- (a) before engaging with a law enforcement agency in accordance with Subsection (2), provide notice to the victim of the following:
 - (i) the institution's intent to engage with a law enforcement agency;
 - (ii) the law enforcement agency with which the institution intends to engage; and
 - (iii) the reason the institution made the determination described in Subsection (2); and
 - (b) in engaging with a law enforcement agency under Subsection (2):
 - (i) maintain the confidentiality of the victim; and
 - (ii) disclose the minimum information required to appropriately address the threat described in Subsection (2)(a).
- (4) Nothing in this section supersedes:
- (a) an obligation described in Section 26B-6-205, 80-2-602, or 78B-3-502; or
 - (b) a requirement described in Part 2, Confidential Communications for Institutional Advocacy Services Act.

Amended by Chapter 328, 2023 General Session

53B-28-304 Criminal retaliation against a victim or a witness.

- (1) As used in this section:
- (a) "Bodily injury" means the same as that term is defined in Section 76-1-101.5.
 - (b) "Damage" means physical damage to an individual's property.
- (2) An individual is guilty of a third degree felony if the individual inflicts bodily injury or damage:
- (a) upon a victim of or a witness to an act of sexual violence alleged in a covered allegation; and
 - (b) in retaliation for the victim's or the witness's:
 - (i) report of the covered allegation; or
 - (ii) involvement in an investigation initiated by the institution in response to the covered allegation.
- (3) An individual is guilty of a third degree felony if the individual:
- (a) communicates an intention to inflict bodily injury:
 - (i) upon a victim of or a witness to an act of sexual violence alleged in a covered allegation; and
 - (ii) in retaliation for the victim's or the witness's:
 - (A) report of the covered allegation; or
 - (B) involvement in an investigation initiated by the institution in response to the covered allegation; and
 - (b)

- (i) intends the communication described in Subsection (3)(a) as a threat against the victim or the witness; or
- (ii) knows that the communication described in Subsection (3)(a) will be viewed as a threat against the victim or the witness.

Amended by Chapter 430, 2022 General Session

Part 4 Campus Safety

53B-28-401 Campus safety plans and training -- Institution duties -- Governing board duties.

(1) As used in this section:

(a) "Covered offense" means:

- (i) sexual assault;
- (ii) domestic violence;
- (iii) dating violence; or
- (iv) stalking.

(b) "Institution" means an institution of higher education described in Section 53B-1-102.

(c) "Student organization" means a club, group, sports team, fraternity or sorority, or other organization:

- (i) of which the majority of members is composed of students enrolled in an institution; and
- (ii)
 - (A) that is officially recognized by the institution; or
 - (B) seeks to be officially recognized by the institution.

(2) An institution shall develop a campus safety plan that addresses:

- (a) where an individual can locate the institution's policies and publications related to a covered offense;
- (b) institution and community resources for a victim of a covered offense;
- (c) the rights of a victim of a covered offense, including the measures the institution takes to ensure, unless otherwise provided by law, victim confidentiality throughout all steps in the reporting and response to a covered offense;
- (d) how the institution informs the campus community of a crime that presents a threat to the campus community;
- (e) availability, locations, and methods for requesting assistance of security personnel on the institution's campus;
- (f) guidance on how a student may contact law enforcement for incidents that occur off campus;
- (g) institution efforts related to increasing campus safety, including efforts related to the institution's increased response in providing services to victims of a covered offense, that:
 - (i) the institution made in the preceding 18 months; and
 - (ii) the institution expects to make in the upcoming 24 months;
- (h) coordination and communication between institution resources and organizations, including campus law enforcement;
- (i) institution coordination with local law enforcement or community resources, including coordination related to a student's safety at an off-campus location; and
- (j) how the institution requires a student organization to provide the campus safety training as described in Subsection (5).

- (3) An institution shall:
 - (a) prominently post the institution's campus safety plan on the institution's website and each of the institution's campuses; and
 - (b) annually update the institution's campus safety plan.
- (4) An institution shall develop a campus safety training curriculum that addresses:
 - (a) awareness and prevention of covered offenses, including information on institution and community resources for a victim of a covered offense;
 - (b) bystander intervention; and
 - (c) sexual consent.
- (5) An institution shall require a student organization, in order for the student organization to receive or maintain official recognition by the institution, to annually provide campus safety training, using the curriculum described in Subsection (4), to the student organization's members.
- (6) The board shall:
 - (a) on or before July 1, 2019, establish minimum requirements for an institution's campus safety plan described in Subsection (2);
 - (b) identify resources an institution may use to develop a campus safety training curriculum as described in Subsection (4); and
 - (c) report annually to the Education Interim Committee and the Law Enforcement and Criminal Justice Interim Committee, at or before the committees' November meetings, on:
 - (i) the implementation of the requirements described in this section; and
 - (ii) crime statistics aggregated by housing facility as described in Subsection 53B-28-403(2).

Amended by Chapter 332, 2021 General Session

53B-28-402 Campus safety study -- Report to Legislature.

- (1) As used in this section:
 - (a) "Campus law enforcement" means a unit of an institution that provides public safety services.
 - (b)
 - (i) "Institution" means an institution of higher education described in Section 53B-2-101.
 - (ii) "Institution" includes an institution's campus law enforcement.
 - (c) "Local law enforcement" means a state or local law enforcement agency other than campus law enforcement.
 - (d) "Public safety services" means police services, security services, dispatch services, emergency services, or other similar services.
 - (e) "Sexual violence" means the same as that term is defined in Section 53B-28-301.
 - (f) "Special district" means the same as that term is defined in Section 17B-1-102.
 - (g) "Special service district" means the same as that term is defined in Section 17D-1-102.
 - (h) "Student" means the same as that term is defined in Section 53B-28-301.
 - (i) "Student organization" means the same as that term is defined in Section 53B-28-401.
- (2) The board shall:
 - (a) study issues related to providing public safety services on institution campuses, including:
 - (i) policies and practices for hiring, supervision, and firing of campus law enforcement officers;
 - (ii) training of campus law enforcement in responding to incidents of sexual violence or other crimes reported by or involving a student, including training related to lethality or similar assessments;

- (iii) how campus law enforcement and local law enforcement respond to reports of incidents of sexual violence or other crimes reported by or involving a student, including supportive measures for victims and disciplinary actions for perpetrators;
 - (iv) training provided to faculty, staff, students, and student organizations on campus safety and prevention of sexual violence;
 - (v) roles, responsibilities, jurisdiction, and authority of local law enforcement and campus law enforcement, including authority based on:
 - (A) the type of public safety services provided; or
 - (B) geographic boundaries;
 - (vi) how an institution and local law enforcement coordinate to respond to on-campus and off-campus incidents requiring public safety services, including:
 - (A) legal requirements or restrictions affecting coordination;
 - (B) agreements, practices, or procedures governing coordination between an institution and local law enforcement, including mutual support, sharing information, or dispatch management; and
 - (C) any issues that may affect the timeliness of a response to an on-campus or off-campus incident reported by or involving a student;
 - (vii) infrastructure, staffing, and equipment considerations that impact the effectiveness of campus law enforcement or local law enforcement responses to an on-campus or off-campus incident reported by or involving a student;
 - (viii) the benefits and disadvantages of an institution employing campus law enforcement compared to local law enforcement providing public safety services on an institution campus;
 - (ix) an institution's compliance with federal and state crime statistic reporting requirements;
 - (x) how an institution informs faculty, staff, and students about a crime or emergency on campus;
 - (xi) national best practices for providing public safety services on institution campuses, including differences in best practices based on the size, infrastructure, location, and other relevant characteristics of a college or university; and
 - (xii) any other issue the board determines is relevant to the study;
- (b) make recommendations for providing public safety services on institution campuses statewide;
- (c) produce a final report of the study described in this section, including the recommendations described in Subsection (2)(b); and
- (d) in accordance with Section 68-3-14, present the final report described in Subsection (2)(c) to the Education Interim Committee and the Law Enforcement and Criminal Justice Interim Committee at or before the committees' November 2021 meetings.
- (3) In carrying out the board's duties under this section, the board may coordinate with individuals and organizations with knowledge, expertise, or experience related to the board's duties under this section, including:
- (a) the Department of Health;
 - (b) the Utah Office for Victims of Crime;
 - (c) the Utah Council on Victims of Crime;
 - (d) institutions;
 - (e) local law enforcement;
 - (f) special districts or special service districts that provide 911 and emergency dispatch service; and
 - (g) community and other non-governmental organizations.

Amended by Chapter 16, 2023 General Session

53B-28-403 Student housing crime reporting.

(1) As used in this section:

- (a) "Campus law enforcement" means an institution's police department.
- (b) "Crime statistics" means the number of each of the crimes in 34 C.F.R. Sec. 668.46(c)(1) that are reported to a local police agency or campus law enforcement, listed by type of crime.
- (c) "Institution" means an institution of higher education described in Section 53B-2-101.
- (d)
 - (i) "Institution noncampus housing facility" means a building or property that:
 - (A) is used for housing students;
 - (B) is not part of the institution's campus; and
 - (C) the institution owns, manages, controls, or leases;
 - (ii) "Institution noncampus housing facility" includes real property that is adjacent to, and is used in direct support of, the building or property described in Subsection (1)(d)(i).
- (e) "Local law enforcement agency" means a state or local law enforcement agency other than campus law enforcement.
- (f)
 - (i) "On-campus housing facility" means a building or property that is:
 - (A) used for housing students; and
 - (B) part of the institution's campus.
 - (ii) "On-campus housing facility" includes real property that is:
 - (A) adjacent to the on-campus housing facility; and
 - (B) used in direct support of the on-campus housing facility.
- (g) "Student housing" means:
 - (i) an institution noncampus housing facility;
 - (ii) an on-campus housing facility; or
 - (iii) a student organization noncampus housing facility.
- (h) "Student organization" means the same as that term is defined in Section 53B-28-401.
- (i) "Student organization noncampus housing facility" means a building or property that:
 - (i) is used for housing students;
 - (ii) is not part of the institution's campus; and
 - (iii)
 - (A) a student organization owns, manages, controls, or leases; or
 - (B) is real property that is adjacent to the student organization noncampus housing facility and is used in direct support of the noncampus housing facility.

(2) An institution shall:

- (a) create a report of crime statistics aggregated by:
 - (i) on-campus housing facility, identified and listed individually using the institution's system for inventorying institution facilities;
 - (ii) institution noncampus housing facility, identified and listed individually using the institution's system for inventorying institution facilities; and
 - (iii) student organization noncampus housing facilities, identified and listed individually using the institution's system for identifying student organization noncampus housing facilities; and
- (b) include the report described in Subsection (2)(a) in the report described in Subsection 53B-28-401(6).

- (3) Upon request from an institution, a local law enforcement agency shall provide to the institution crime statistics for each student housing facility over which the local law enforcement agency has jurisdiction.
- (4) Except as provided in Section 53B-28-303, when campus law enforcement receives a complaint or report of a crime that campus law enforcement reasonably determines occurred outside of campus law enforcement's jurisdiction, campus law enforcement shall share any record of the complaint or report with the local law enforcement agency with jurisdiction.

Enacted by Chapter 332, 2021 General Session

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 of higher education:
 - (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.

Enacted by Chapter 461, 2022 General Session

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

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.

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