

**STUDENT PRIVACY ACT**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jacob L. Anderegg**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill creates the Student Privacy Act and addresses the release of public school student information.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires certain people to protect student privacy;
- ▶ allows a student or the student's parent to authorize the collection and release of certain student data;
- ▶ prohibits an education entity from releasing a student's personally identifiable information under certain circumstances;
- ▶ allows an education entity to release a student's personally identifiable information under certain circumstances;
- ▶ prohibits a school district from eliciting certain information from students;
- ▶ provides what kinds of student data may be collected and under what circumstances;
- ▶ requires an education entity to provide a student data disclosure to parents and students at the beginning of each school year or at the time a student enrolls with the education entity;
- ▶ establishes requirements for the State Board of Education related to the collection, usage, and storage of student data;





- 59 collect and include in a student's educational record without student authorization.
- 60 (b) "Allowable student data" includes:
- 61 (i) name;
- 62 (ii) date of birth;
- 63 (iii) gender;
- 64 (iv) parent or guardian information;
- 65 (v) contact information;
- 66 (vi) a public student identification number;
- 67 (vii) state and national assessment results, excluding information on untested public
- 68 school students;
- 69 (viii) courses taken and completed, credits earned, and other transcript information;
- 70 (ix) course grades and grade point average;
- 71 (x) grade level and expected graduation date or graduation cohort;
- 72 (xi) degree, diploma, credential attainment, and other school exit information;
- 73 (xii) attendance and mobility; and
- 74 (xiii) drop-out data.
- 75 (4) "Board" means the State Board of Education.
- 76 (5) "Education entity" means:
- 77 (a) the board;
- 78 (b) a local school board or charter school governing board;
- 79 (c) a school district;
- 80 (d) a public school; or
- 81 (e) the Utah Schools for the Deaf and the Blind.
- 82 (6) "Higher education entity" means:
- 83 (a) an institution of higher education described in Subsection [53B-2-101\(1\)](#); or
- 84 (b) the State Board of Regents established in Section [53B-1-103](#).
- 85 (7) (a) "Optional student data" means student data that an education entity may not
- 86 collect except in accordance with Section [53A-13-303](#).
- 87 (b) "Optional student data" includes:
- 88 (i) discipline reports;
- 89 (ii) remediation efforts;

- 90           (iii) special education data;
- 91           (iv) demographic data; and
- 92           (v) program participation information.
- 93           (8) "Out-of-state educational agency" means an education agency or institution located
- 94 outside the state.
- 95           (9) "Parent" means a student's parent or legal guardian.
- 96           (10) (a) "Personally identifiable information" means information that identifies an
- 97 individual.
- 98           (b) "Personally identifiable information" includes:
- 99           (i) a student's first or last name;
- 100           (ii) a name of a student's family member;
- 101           (iii) a student's or student's family's home or physical address;
- 102           (iv) a student's email address or online contact information;
- 103           (v) a student's telephone number;
- 104           (vi) a student's Social Security number;
- 105           (vii) a student's biometric identifier;
- 106           (viii) a student's health or disability data;
- 107           (ix) a student's student identification number;
- 108           (x) a student's social media login or alias;
- 109           (xi) a student's persistent identifier, if the identifier is associated with personally
- 110 identifiable information, including:
- 111           (A) a customer number held in a cookie; or
- 112           (B) a processor serial number;
- 113           (xii) a combination of a student's last name or photograph of the student with other
- 114 information that together permits a person to contact the student online;
- 115           (xiii) information about a student or a student's family that a person collects online and
- 116 combines with other personally identifiable information; and
- 117           (xiv) other information that, alone or in combination, is linked or linkable to a specific
- 118 student that would allow a reasonable person in the school community, who does not have
- 119 personal knowledge of the relevant circumstances, to identify the student with reasonable
- 120 certainty.

121 (11) (a) "Prohibited student data" means student data that may not be collected by an  
122 education entity.

123 (b) "Prohibited student data" includes a student's:

124 (i) juvenile delinquency records;

125 (ii) criminal records;

126 (iii) medical and health records;

127 (iv) Social Security number; and

128 (v) biometric information.

129 (12) (a) "Student data" means student data collected or reported at the individual  
130 student level and may be included in a student's educational record.

131 (b) "Student data" includes:

132 (i) allowable student data;

133 (ii) optional student data; and

134 (iii) prohibited student data.

135 (13) "Student authorization" means the authorization of:

136 (a) the student's parent, if the student is less than 18 years old; or

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

138 (14) "Student data system" means the State Board of Education's system for collecting,  
139 storing, and using student data.

140 (15) "Student privacy coordinator" means the State Office of Education student privacy  
141 coordinator designated by the board under Section [53A-13-305](#).

142 (16) "Third party contractor" means a person, other than an education entity, that  
143 receives student data from an education entity pursuant to a contract or written agreement.

144 Section 2. Section **53A-13-301** is amended to read:

145 **53A-13-301. Application of state law to the administration and operation of**  
146 **public schools -- Student information confidentiality standards -- Local school board and**  
147 **charter school governing board policies.**

148 (1) An [~~employee, student aide, volunteer, or other agent of the state's public education~~  
149 ~~system~~] education entity and an employee, student aide, volunteer, third party contractor, or  
150 other agent of an education entity shall protect the privacy of [students, their parents, and their  
151 families] a student, the student's parents, and the student's family, and support parental

152 involvement in the education of their children through compliance with the protections  
153 provided for family and student privacy under [~~Section 53A-13-302 and the Federal Family~~  
154 ~~Educational Rights and Privacy Act and related provisions under 20 U.S.C. 1232g and 1232h,~~  
155 this part in the administration and operation of all public school programs, regardless of the  
156 source of funding.

157 (2) (a) A student owns the student's personally identifiable information.

158 (b) A parent of a student or an adult student has the discretion to authorize:

159 (i) collection of the student's optional student data; and

160 (ii) sharing or accessing of the student's optional student data.

161 (c) When a student leaves the state's public education system, the student's parent or  
162 the student, if the student is an adult student, may require an education entity to expunge all of  
163 the student's student data.

164 (3) Except as provided in Subsection (4), an education entity may not release a  
165 student's personally identifiable information without student authorization.

166 (4) Subject to the requirements of this section, an education entity may release a  
167 student's personally identifiable information without student authorization to:

168 (a) another education entity;

169 (b) a higher education entity, upon request of the student's parent, or the student, if the  
170 student is an adult student;

171 (c) a third party contractor, consultant, or other party to whom the education entity has  
172 outsourced services or functions for the following purposes:

173 (i) to conduct a study or perform research; or

174 (ii) to perform a service or function for which the education entity would otherwise use  
175 employees; or

176 (d) an out-of-state educational agency if:

177 (i) the student seeks or intends to enroll, or if the student is already enrolled, at the  
178 out-of-state educational agency; and

179 (ii) the release of personally identifiable information is for purposes related to the  
180 student's enrollment or transfer.

181 (5) An education entity may release aggregate student data to a person.

182 [~~2~~] (6) A local school board or charter school governing board shall enact policies

183 governing the protection of family and student privacy as required by this section.

184 ~~[(3)]~~ (7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
 185 Act, the State Board of Education shall makes rules to establish standards for public education  
 186 employees, student aides, and volunteers in public schools regarding the confidentiality of  
 187 student information and student records.

188 (b) The rules described in Subsection ~~[(3)]~~ (7)(a) shall provide that a local school board  
 189 or charter school governing board may adopt policies related to public school student  
 190 confidentiality to address the specific needs or priorities of the school district or charter school.

191 ~~[(4)]~~ (8) The State Board of Education shall:

192 (a) develop resource materials for purposes of training employees, student aides, and  
 193 volunteers of a school district or charter school regarding the confidentiality of student  
 194 information and student records; and

195 (b) provide the materials described in Subsection ~~[(4)]~~ (8)(a) to each school district and  
 196 charter school.

197 Section 3. Section 53A-13-302 is amended to read:

198 **53A-13-302. Activities prohibited -- Qualifications -- Training on**  
 199 **implementation.**

200 (1) Policies adopted by a school district under ~~[Section 53A-13-301]~~ this part shall  
 201 include prohibitions on the administration to a student of any psychological or psychiatric  
 202 examination, test, or treatment, or any survey, analysis, or evaluation ~~[without the prior written~~  
 203 ~~consent of the student's parent or legal guardian,]~~ in which the purpose or evident intended  
 204 effect is to cause the student to reveal information, whether the information is personally  
 205 identifiable or not, concerning the student's or any family member's:

206 (a) political affiliations or, except as provided under Section 53A-13-101.1 or rules of  
 207 the State Board of Education, political philosophies;

208 (b) mental or psychological problems;

209 (c) sexual behavior, orientation, or attitudes;

210 (d) illegal, anti-social, self-incriminating, or demeaning behavior;

211 (e) critical appraisals of individuals with whom the student or family member has close  
 212 family relationships;

213 (f) religious affiliations or beliefs;

214 (g) legally recognized privileged and analogous relationships, such as those with  
215 lawyers, medical personnel, or ministers; and

216 (h) income, except as required by law.

217 ~~[(2) Prior written consent under Subsection (1) is required in all grades, kindergarten  
218 through grade 12.]~~

219 ~~[(3) Except as provided in Section 53A-11a-203, the prohibitions under Subsection (1)  
220 shall also apply within the curriculum and other school activities unless prior written consent of  
221 the student's parent or legal guardian has been obtained.]~~

222 ~~[(4) Written parental consent is valid only if a parent or legal guardian has been first  
223 given written notice, including notice that a copy of the educational or student survey questions  
224 to be asked of the student in obtaining the desired information is made available at the school,  
225 and a reasonable opportunity to obtain written information concerning:]~~

226 ~~[(a) records or information, including information about relationships, that may be  
227 examined or requested;]~~

228 ~~[(b) the means by which the records or information shall be examined or reviewed;]~~

229 ~~[(c) the means by which the information is to be obtained;]~~

230 ~~[(d) the purposes for which the records or information are needed;]~~

231 ~~[(e) the entities or persons, regardless of affiliation, who will have access to the  
232 personally identifiable information; and]~~

233 ~~[(f) a method by which a parent of a student can grant permission to access or examine  
234 the personally identifiable information.]~~

235 ~~[(5) (a) Except in response to a situation which a school employee reasonably believes  
236 to be an emergency, or as authorized under Title 62A, Chapter 4a, Part 4, Child Abuse or  
237 Neglect Reporting Requirements, or by order of a court, disclosure to a parent or legal guardian  
238 must be given at least two weeks before information protected under this section is sought.]~~

239 ~~[(b) Following disclosure, a parent or guardian may waive the two week minimum  
240 notification period.]~~

241 ~~[(c) Unless otherwise agreed to by a student's parent or legal guardian and the person  
242 requesting written consent, the authorization is valid only for the activity for which it was  
243 granted.]~~

244 ~~[(d) A written withdrawal of authorization submitted to the school principal by the~~



245 ~~authorizing parent or guardian terminates the authorization.]~~

246 ~~[(e) A general consent used to approve admission to school or involvement in special~~  
 247 ~~education, remedial education, or a school activity does not constitute written consent under~~  
 248 ~~this section.]~~

249 ~~[(6)] (2) (a) This section does not limit the ability of a student under Section~~  
 250 ~~53A-13-101.3 to spontaneously express sentiments or opinions [otherwise protected against~~  
 251 ~~disclosure under this section].~~

252 (b) (i) If a school employee or agent believes that a situation exists which presents a  
 253 serious threat to the well-being of a student, that employee or agent shall notify the student's  
 254 parent or guardian without delay.

255 (ii) If, however, the matter has been reported to the Division of Child and Family  
 256 Services within the Department of Human Services, it is the responsibility of the division to  
 257 notify the student's parent or guardian of any possible investigation, prior to the student's return  
 258 home from school.

259 (iii) The division may be exempted from the notification requirements described in  
 260 ~~[this] Subsection [(6)] (2)(b)(ii)~~ only if it determines that the student would be endangered by  
 261 notification of his parent or guardian, or if that notification is otherwise prohibited by state or  
 262 federal law.

263 ~~[(7)] (3) Local school boards shall provide inservice for teachers and administrators~~  
 264 ~~within their respective school districts on the implementation of this section.~~

265 ~~[(8)] (4) The board shall provide procedures for disciplinary action for violations of~~  
 266 ~~this section.~~

267 Section 4. Section **53A-13-303** is enacted to read:

268 **53A-13-303. Requirements for collection of student data -- Student data**  
 269 **disclosure.**

270 (1) An education entity may collect allowable student data if the education entity  
 271 provides a student data disclosure that complies with Subsection (4) to:

272 (a) the student, if the student is an adult student; and

273 (b) the student's parent.

274 (2) An education entity may collect optional student data if the education entity:

275 (a) provides a student data disclosure that complies with Subsection (4) to:

- 276 (i) the student, if the student is an adult student; and  
277 (ii) the student's parent; and  
278 (b) obtains student authorization to collect the optional student data.  
279 (3) An education entity may not collect prohibited student data.  
280 (4) An education entity that collects student data shall prepare a written student data  
281 disclosure for distribution to parents and adult students:  
282 (a) (i) at the beginning of each school year; or  
283 (ii) at the time the student enrolls with the education entity; and  
284 (b) that includes a description of:  
285 (i) the allowable student data that the education entity collects;  
286 (ii) the optional student data that the education entity collects;  
287 (iii) the prohibited student data that the education entity may not collect;  
288 (iv) how the allowable and optional student data will be collected and used, shared, or  
289 accessed;  
290 (v) the consequences of authorizing the collection of allowable or optional student  
291 data;  
292 (vi) how the student data is stored and any security measures used to protect the student  
293 data; and  
294 (vii) the parent's and adult student's rights related to the student's student data,  
295 including the information described in Subsection [53A-13-301\(2\)](#).  
296 (5) The board shall develop a model student data disclosure in accordance with  
297 Subsection (4).  
298 Section 5. Section **53A-13-304** is enacted to read:  
299 **53A-13-304. Security requirements related to the collection, usage, and storage of**  
300 **student data -- Board duties.**  
301 The board shall:  
302 (1) maintain, secure, and safeguard all student data with an equivalent PCI DSS, third  
303 party verified compliant certification;  
304 (2) create, publish, annually update, and make publicly available, a data inventory and  
305 dictionary or index of data elements with definitions of student data fields currently in the  
306 student data system, including:

- 307 (a) student data required to be reported by state or federal law;  
308 (b) student data that has been proposed for inclusion in the student data system with a  
309 statement regarding the purpose or reason for collecting the student data; and  
310 (c) student data collected or maintained with no current purpose or reason;  
311 (3) develop, publish, and make publicly available policies and procedures to comply  
312 with this part and other relevant privacy laws, including ensuring that a contract entered into  
313 between an education entity and a third party contractor, which allows the third party contractor  
314 to have access to student data, includes:  
315 (a) provisions requiring specific restrictions on the use of student data;  
316 (b) specific dates governing the destruction of student data given to a third party  
317 contractor;  
318 (c) provisions that prohibit a third party contractor from using the student data for a  
319 secondary use, including sales, marketing, or advertising; and  
320 (d) provisions limiting a third party contractor's use of student data strictly for the  
321 purpose of providing services to the education entity;  
322 (4) develop a detailed security plan for education entities that includes:  
323 (a) guidelines for authorizing sharing and access to student data, including guidelines  
324 for authentication of authorized access;  
325 (b) guidelines for administrative safeguards providing for the security of electronic and  
326 physical student data, including provisions related to data encryption;  
327 (c) guidelines for education entity employees to better ensure the safety and security of  
328 student data;  
329 (d) privacy compliance standards;  
330 (e) privacy and annual security audits;  
331 (f) breach planning, notification, and procedures; and  
332 (g) data retention and disposition policies;  
333 (5) develop a model governance policy for education entities regarding the collection,  
334 access, security, and use of student data; and  
335 (6) ensure that the following entities adopt the model governance policy described in  
336 Subsection (5):  
337 (a) local school boards;

338 (b) charter schools; and

339 (c) the Utah Schools for the Deaf and the Blind.

340 Section 6. Section **53A-13-305** is enacted to read:

341 **53A-13-305. Student privacy coordinator -- Reports of violations of student**  
342 **privacy laws -- Penalties.**

343 (1) (a) The board shall designate a State Office of Education student privacy  
344 coordinator.

345 (b) The student privacy coordinator shall:

346 (i) oversee the administration of student privacy laws, including the requirements of  
347 this part;

348 (ii) review complaints of:

349 (A) an unauthorized release of student data;

350 (B) an unauthorized collection of student data; or

351 (C) an unauthorized use of student data;

352 (iii) report any violations of this part to:

353 (A) the board;

354 (B) the applicable education entity; and

355 (C) the Education Interim Committee; and

356 (iv) work with the board to develop a model student data disclosure described in  
357 Subsection [53A-13-303\(4\)](#).

358 (2) (a) A third party contractor that knowingly or recklessly permits unauthorized  
359 release or use of student data:

360 (i) may not enter into a future contract with the board or another education entity; and

361 (ii) may be required by the board to pay a civil penalty of \$25,000.

362 (b) The board may assess the civil penalty described in Subsection (2)(a)(ii) in  
363 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

364 (c) The board may bring an action in the district court of the county in which the office  
365 of the board is located, if necessary, to enforce payment of the civil penalty described in  
366 Subsection (2)(a)(ii).

367 (3) (a) A parent or adult student may bring an action in a court of competent  
368 jurisdiction for damages caused by violation of this part by an education entity or a third party

369 contractor.

370 (b) If the court finds that an education entity or third party contractor has violated this  
371 part, the court shall award to the parent or adult student:

372 (i) damages;

373 (ii) costs; and

374 (iii) reasonable attorney fees.

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**Legislative Review Note**  
as of 2-26-14 11:13 AM

**Office of Legislative Research and General Counsel**