

Senator John L. Valentine proposes the following substitute bill:

**PARENTAL PERMISSION TO RELEASE STUDENT  
INFORMATION**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John L. Valentine**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses the release of public school student information.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ 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 if the student or the student's parent gives written permission to release the information;
- ▶ prohibits an education entity from administering a psychological or psychiatric examination, test, or treatment, or a survey, analysis, or evaluation for certain purposes; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **53A-11-605**, as last amended by Laws of Utah 2013, Chapter 335

30 **53A-13-301**, as last amended by Laws of Utah 2011, Chapter 401

31 **53A-13-302**, as last amended by Laws of Utah 2013, Chapter 335



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

34 Section 1. Section **53A-11-605** is amended to read:

35 **53A-11-605. Definitions -- School personnel -- Medical recommendations --**

36 **Exceptions -- Penalties.**

37 (1) As used in this section:

38 (a) "Health care professional" means a physician, physician assistant, nurse, dentist, or  
39 mental health therapist.

40 (b) "School personnel" means a school district or charter school employee, including a  
41 licensed, part-time, contract, or nonlicensed employee.

42 (2) School personnel may:

43 (a) provide information and observations to a student's parent or guardian about that  
44 student, including observations and concerns in the following areas:

45 (i) progress;

46 (ii) health and wellness;

47 (iii) social interactions;

48 (iv) behavior; or

49 (v) topics consistent with Subsection **53A-13-302**~~(6)~~(5);

50 (b) communicate information and observations between school personnel regarding a  
51 child;

52 (c) refer students to other appropriate school personnel and agents, consistent with  
53 local school board or charter school policy, including referrals and communication with a  
54 school counselor or other mental health professionals working within the school system;

55 (d) consult or use appropriate health care professionals in the event of an emergency  
56 while the student is at school, consistent with the student emergency information provided at

57 student enrollment;

58 (e) exercise their authority relating to the placement within the school or readmission  
59 of a child who may be or has been suspended or expelled for a violation of Section  
60 [53A-11-904](#); and

61 (f) complete a behavioral health evaluation form if requested by a student's parent or  
62 guardian to provide information to a licensed physician.

63 (3) School personnel shall:

64 (a) report suspected child abuse consistent with Section [62A-4a-403](#);

65 (b) comply with applicable state and local health department laws, rules, and policies;  
66 and

67 (c) conduct evaluations and assessments consistent with the Individuals with  
68 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent amendments.

69 (4) Except as provided in Subsection (2), Subsection (6), and Section [53A-11a-203](#),  
70 school personnel may not:

71 (a) recommend to a parent or guardian that a child take or continue to take a  
72 psychotropic medication;

73 (b) require that a student take or continue to take a psychotropic medication as a  
74 condition for attending school;

75 (c) recommend that a parent or guardian seek or use a type of psychiatric or  
76 psychological treatment for a child;

77 (d) conduct a psychiatric or behavioral health evaluation or mental health screening,  
78 test, evaluation, or assessment of a child, except where this Subsection (4)(d) conflicts with the  
79 Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent  
80 amendments; or

81 (e) make a child abuse or neglect report to authorities, including the Division of Child  
82 and Family Services, solely or primarily on the basis that a parent or guardian refuses to  
83 consent to:

84 (i) a psychiatric, psychological, or behavioral treatment for a child, including the  
85 administration of a psychotropic medication to a child; or

86 (ii) a psychiatric or behavioral health evaluation of a child.

87 (5) Notwithstanding Subsection (4)(e), school personnel may make a report that would

88 otherwise be prohibited under Subsection (4)(e) if failure to take the action described under  
89 Subsection (4)(e) would present a serious, imminent risk to the child's safety or the safety of  
90 others.

91 (6) Notwithstanding Subsection (4), a school counselor or other mental health  
92 professional acting in accordance with Title 58, Chapter 60, Mental Health Professional  
93 Practice Act, or licensed through the State Board of Education, working within the school  
94 system may:

95 (a) recommend, but not require, a psychiatric or behavioral health evaluation of a child;

96 (b) recommend, but not require, psychiatric, psychological, or behavioral treatment for  
97 a child;

98 (c) conduct a psychiatric or behavioral health evaluation or mental health screening,  
99 test, evaluation, or assessment of a child in accordance with Section 53A-13-302; and

100 (d) provide to a parent or guardian, upon the specific request of the parent or guardian,  
101 a list of three or more health care professionals or providers, including licensed physicians,  
102 psychologists, or other health specialists.

103 (7) Local school boards or charter schools shall adopt a policy:

104 (a) providing for training of appropriate school personnel on the provisions of this  
105 section; and

106 (b) indicating that an intentional violation of this section is cause for disciplinary action  
107 consistent with local school board or charter school policy and under Section 53A-8a-502.

108 (8) Nothing in this section shall be interpreted as discouraging general communication  
109 not prohibited by this section between school personnel and a student's parent or guardian.

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

111 **53A-13-301. Application of state and federal law to the administration and**  
112 **operation of public schools -- Student information confidentiality standards -- Local**  
113 **school board and charter school governing board policies -- Education entities prohibited**  
114 **from sharing student information without parental consent.**

115 (1) As used in this part:

116 (a) "Authorized representative" has the same meaning as defined in 34 C.F.R. 99.3.

117 (b) "Education entity" means:

118 (i) the State Board of Education;

119 (ii) a local school board or charter school governing board;  
 120 (iii) a school district;  
 121 (iv) a public school;  
 122 (v) the Utah Schools for the Deaf and the Blind; or  
 123 (vi) an authorized representative or a third party contractor of an entity listed in  
 124 Subsections (1)(b)(i) through (v).

125 (c) "Higher education entity" means:  
 126 (i) an institution of higher education described in Subsection [53B-2-101\(1\)](#); or  
 127 (ii) the State Board of Regents established in Section [53B-1-103](#).  
 128 (d) "Out of state educational agency":  
 129 (i) means an education agency or institution:  
 130 (A) located outside of the state; and  
 131 (B) subject to the federal Family Educational Rights and Privacy Act under 20 U.S.C.  
 132 1232g and 1232h and related federal regulations; and

133 (ii) includes an authorized representative or a third party contractor of an education  
 134 agency or institution described in Subsection (1)(d)(i).

135 (e) "Person" has the same meaning as defined in Section [68-3-12.5](#).

136 (f) "Personally identifiable information" has the same meaning as defined by the  
 137 Family Educational Rights and Privacy Act in 34 C.F.R. Section 99.3.

138 (g) "Third party contractor" means a person that receives student information from an  
 139 education entity pursuant to a contract or written agreement for the purposes of providing  
 140 services to the education entity.

141 ~~[(1)]~~ (2) An [employee, student aide, volunteer, or other agent of the state's public  
 142 education system] education entity, employee, student aide, volunteer, or other agent of the  
 143 education entity shall protect the privacy of [students] a student, [their] a student's parents, and  
 144 [their families] a student's family, and support parental involvement in the education of their  
 145 children through compliance with the protections provided for family and student privacy  
 146 under Section [53A-13-302](#) and the federal Family Educational Rights and Privacy Act and  
 147 related provisions under 20 U.S.C. 1232g and 1232h, in the administration and operation of all  
 148 public school programs, regardless of the source of funding.

149 (3) (a) Subject to the requirements of the federal Family Educational Rights and

150 Privacy Act in 20 U.S.C. 1232g and 1232h and related federal regulations, an education entity  
151 may release a student's personally identifiable information to:

152 (i) another education entity;

153 (ii) a third party contractor, consultant, or other party to whom the education entity has

154 outsourced services or functions for the following purposes:

155 (A) to conduct a study or perform research; or

156 (B) to perform a service or function for which the education entity would otherwise use  
157 employees;

158 (iii) a higher education entity;

159 (iv) the federal government, or the federal government's authorized representative, if  
160 required under state or federal law;

161 (v) a person, if required under state or federal law; or

162 (vi) an out of state educational agency if:

163 (A) the student seeks or intends to enroll, or where the student is already enrolled, at  
164 the out of state educational agency; and

165 (B) the release of personally identifiable information is for purposes related to the  
166 student's enrollment or transfer.

167 (b) Except as provided in Subsections (3)(a) and (c), and in addition to the protections  
168 provided for family and student privacy described in Subsection (2), an education entity may  
169 not release a student's personally identifiable information to:

170 (i) an out of state educational agency; or

171 (ii) a person other than a person listed in Subsection (3)(a).

172 (c) Except as provided in Subsection (3)(a), an education entity may release a student's  
173 personally identifiable information to a person or out of state educational agency if the student  
174 or the student's parent gives written permission to the education entity to release the student's  
175 personally identifiable information to the person or out of state educational agency.

176 ~~[(2)]~~ (4) A local school board or charter school governing board shall enact policies  
177 governing the protection of family and student privacy as required by this section.

178 ~~[(3)]~~ (5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
179 Act, the State Board of Education shall makes rules to establish standards;

180 (i) for public education employees, student aides, and volunteers in public schools

181 regarding the confidentiality of student information and student records[-]; and

182 (ii) regarding the provisions related to the release of a student's personally identifiable  
183 information described in Subsection (3).

184 (b) The rules described in Subsection [~~(3)~~] (5)(a) shall provide that a local school board  
185 or charter school governing board may adopt policies related to public school student  
186 confidentiality to address the specific needs or priorities of the school district or charter school.

187 [~~(4)~~] (6) The State Board of Education shall:

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

191 (b) provide the materials described in Subsection [~~(4)~~] (6)(a) to each school district and  
192 charter school.

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

194 **53A-13-302. Activities prohibited without prior written consent -- Validity of**  
195 **consent -- Qualifications -- Training on implementation.**

196 (1) Policies adopted by [~~a school district~~] an education entity under [~~Section~~  
197 ~~53A-13-301~~] this part shall include prohibitions on the administration to a student of [~~any~~] a  
198 psychological or psychiatric examination, test, or treatment, or [~~any~~] a survey, analysis, or  
199 evaluation [~~without the prior written consent of the student's parent or legal guardian,~~] in which  
200 the purpose or evident intended effect is to cause the student to reveal information, whether the  
201 information is personally identifiable or not, concerning the student's or any family member's:

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

204 (b) mental or psychological problems;

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

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

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

209 (f) religious affiliations or beliefs;

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

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

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

215 [~~(3)~~] (2) Except as provided in Section 53A-11a-203, the prohibitions under Subsection  
216 (1) shall also apply within the curriculum and other school activities unless prior written  
217 consent of the student's parent or legal guardian has been obtained.

218 [~~(4)~~] (3) Written parental consent required in Subsection (2), is valid only if a parent or  
219 legal guardian has been first given written notice, including notice that a copy of the  
220 educational or student survey questions to be asked of the student in obtaining the desired  
221 information is made available at the school, and a reasonable opportunity to obtain written  
222 information concerning:

223 (a) records or information, including information about relationships, that may be  
224 examined or requested;

225 (b) the means by which the records or information shall be examined or reviewed;

226 (c) the means by which the information is to be obtained;

227 (d) the purposes for which the records or information are needed;

228 (e) the entities or persons, regardless of affiliation, who will have access to the  
229 personally identifiable information; and

230 (f) a method by which a parent of a student can grant permission to access or examine  
231 the personally identifiable information.

232 [~~(5)~~] (4) (a) Except in response to a situation which a school employee reasonably  
233 believes to be an emergency, or as authorized under Title 62A, Chapter 4a, Part 4, Child Abuse  
234 or Neglect Reporting Requirements, or by order of a court, disclosure to a parent or legal  
235 guardian must be given at least two weeks before information protected under this section is  
236 sought.

237 (b) Following disclosure, a parent or guardian may waive the two week minimum  
238 notification period.

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

242 (d) A written withdrawal of authorization submitted to the school principal by the



243 authorizing parent or guardian terminates the authorization.

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

247 [~~(6)~~] (5) (a) This section does not limit the ability of a student under Section  
248 [53A-13-101.3](#) to spontaneously express sentiments or opinions otherwise protected against  
249 disclosure under this section.

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

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

257 (iii) The division may be exempted from the notification requirements described in this  
258 Subsection [~~(6)~~] (5)(b)(ii) only if it determines that the student would be endangered by  
259 notification of his parent or guardian, or if that notification is otherwise prohibited by state or  
260 federal law.

261 [~~(7)~~] (6) Local school boards shall provide inservice for teachers and administrators  
262 within their respective school districts on the implementation of this section.

263 [~~(8)~~] (7) The board shall provide procedures for disciplinary action for violations of  
264 this section.