

Representative Jacob L. Anderegg proposes the following substitute bill:

STUDENT PRIVACY ACT

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

Senate Sponsor: Howard A. Stephenson

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;



- 26 ▶ establishes requirements for the State Board of Education related to the collection,
- 27 usage, and storage of student data;
- 28 ▶ allows an education entity to create and maintain certain student disciplinary records
- 29 in accordance with rules made by the State Board of Education;
- 30 ▶ allows a student to request certain student data to be expunged or permanently
- 31 destroyed;
- 32 ▶ requires the State Board of Education to designate a student privacy coordinator to
- 33 oversee the protection of student data;
- 34 ▶ requires an education entity or third party contractor to collect, use, and store data in
- 35 accordance with certain security measures;
- 36 ▶ establishes penalties; and
- 37 ▶ makes technical changes.

38 **Money Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 None

42 **Utah Code Sections Affected:**

43 AMENDS:

44 **53A-11-605**, as last amended by Laws of Utah 2013, Chapter 335

45 **53A-13-301**, as last amended by Laws of Utah 2011, Chapter 401

46 **53A-13-302**, as last amended by Laws of Utah 2014, Chapter 214

47 ENACTS:

48 **53A-13-300.5**, Utah Code Annotated 1953

49 **53A-13-303**, Utah Code Annotated 1953

50 **53A-13-304**, Utah Code Annotated 1953

51 **53A-13-305**, Utah Code Annotated 1953



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

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

55 **53A-11-605. Definitions -- School personnel -- Medical recommendations --**

56 **Exceptions -- Penalties.**

57 (1) As used in this section:

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

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

62 (2) School personnel may:

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

65 (i) progress;

66 (ii) health and wellness;

67 (iii) social interactions;

68 (iv) behavior; or

69 (v) topics consistent with Subsection [53A-13-302](#)~~(6)~~(2);

70 (b) communicate information and observations between school personnel regarding a
71 child;

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

75 (d) consult or use appropriate health care professionals in the event of an emergency
76 while the student is at school, consistent with the student emergency information provided at
77 student enrollment;

78 (e) exercise their authority relating to the placement within the school or readmission
79 of a child who may be or has been suspended or expelled for a violation of Section
80 [53A-11-904](#); and

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

83 (3) School personnel shall:

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

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

87 (c) conduct evaluations and assessments consistent with the Individuals with

88 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent amendments.

89 (4) Except as provided in Subsection (2), Subsection (6), and Section 53A-11a-203,
90 school personnel may not:

91 (a) recommend to a parent or guardian that a child take or continue to take a
92 psychotropic medication;

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

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

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

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

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

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

107 (5) Notwithstanding Subsection (4)(e), school personnel may make a report that would
108 otherwise be prohibited under Subsection (4)(e) if failure to take the action described under
109 Subsection (4)(e) would present a serious, imminent risk to the child's safety or the safety of
110 others.

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

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

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

118 (c) conduct a psychiatric or behavioral health evaluation or mental health screening,

119 test, evaluation, or assessment of a child in accordance with Section 53A-13-302; and

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

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

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

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

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

130 Section 2. Section 53A-13-300.5 is enacted to read:

131 **Part 3. Student Privacy Act**

132 **53A-13-300.5. Definitions.**

133 As used in this part:

134 (1) "Adult student" means a student who is at least 18 years old.

135 (2) "Aggregate data" means data reported at the group, cohort, school, school district,
136 region, or state level that:

137 (a) does not include personally identifiable information;

138 (b) includes at least 10 individuals in the level; and

139 (c) is collected in accordance with policies adopted by the board.

140 (3) "Allowable student data" means the following student data contained in a record
141 that an education entity may collect and include in a student's educational record without
142 student authorization:

143 (a) name;

144 (b) date of birth;

145 (c) sex;

146 (d) parent or guardian contact information;

147 (e) custodial parent information;

148 (f) contact information;

149 (g) a public student identification number;

- 150 (h) local, state, and national assessment results;
- 151 (i) courses taken and completed, credits earned, and other transcript information;
- 152 (j) course grades and grade point average;
- 153 (k) grade level and expected graduation date or graduation cohort;
- 154 (l) degree, diploma, credential attainment, and other school exit information;
- 155 (m) attendance and mobility;
- 156 (n) drop-out data;
- 157 (o) an immunization record, including a record of an exemption from immunization;
- 158 (p) race;
- 159 (q) ethnicity;
- 160 (r) tribal affiliation;
- 161 (s) remediation efforts;
- 162 (t) local or state approved programs;
- 163 (u) child find and special education evaluation data;
- 164 (v) English language learners;
- 165 (w) information required to be collected pursuant to a vision screening required under
- 166 Section [53A-11-203](#);
- 167 (x) information related to the Utah Registry of Autism and Developmental Disabilities
- 168 described in Section [26-7-4](#);
- 169 (y) student injury information;
- 170 (z) discipline records in accordance with the requirements described in Subsection
- 171 [53A-13-303\(6\)](#); and
- 172 (aa) juvenile delinquency records.
- 173 (4) (a) "Biometric identifier" means a retina or iris scan, fingerprint, human biological
- 174 samples used for valid scientific testing or screening, or scan of hand or face geometry.
- 175 (b) "Biometric identifier" does not include a writing sample, written signature,
- 176 voiceprint, photograph, demographic data, or physical descriptions such as height, weight, hair
- 177 color, or eye color.
- 178 (5) "Biometric information" means information, regardless of how it is captured,
- 179 converted, stored, or shared, based on an individual's biometric identifier used to identify an
- 180 individual.

- 181 (6) "Board" means the State Board of Education.
- 182 (7) "Chief privacy officer" means the chief privacy officer designated by the board
183 under Section [53A-13-305](#).
- 184 (8) "Education entity" means:
- 185 (a) the board;
- 186 (b) a local school board or charter school governing board;
- 187 (c) a school district;
- 188 (d) a public school;
- 189 (e) the Utah Schools for the Deaf and the Blind; or
- 190 (f) for purposes of implementing the School Readiness Initiative described in Title
191 53A, Chapter 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created
192 in Section [53A-1b-103](#).
- 193 (9) "Higher education institution" means:
- 194 (a) an institution of higher education described in Subsection [53B-2-101\(1\)](#); or
- 195 (b) the State Board of Regents established in Section [53B-1-103](#).
- 196 (10) "Individualized education program" or "IEP" means a written statement, for a
197 student with a disability, that is developed, reviewed, and revised in accordance with the
198 Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.
- 199 (11) (a) "Optional student data" means student data contained in a record that an
200 education entity may not collect except in accordance with Section [53A-13-303](#).
- 201 (b) "Optional student data" includes:
- 202 (i) except for an immunization record or a record related to a vision screening
203 described in Subsection (3), medical and health records;
- 204 (ii) information related to an IEP;
- 205 (iii) information needed to provide special needs services;
- 206 (iv) federal program participation information for a federal program not approved by an
207 education entity; and
- 208 (v) biometric information in accordance with the requirements described in Section
209 [53A-13-303](#).
- 210 (12) "Out-of-state educational agency" means an educational agency or institution
211 located outside the state.

- 212 (13) "Parent" means a student's parent or legal guardian.
- 213 (14) (a) "Personally identifiable information" means information that identifies an
- 214 individual.
- 215 (b) "Personally identifiable information" includes:
- 216 (i) a student's first or last name;
- 217 (ii) a name of a student's family member;
- 218 (iii) a student's or student's family's home or physical address;
- 219 (iv) a student's email address or online contact information;
- 220 (v) a student's telephone number;
- 221 (vi) a student's Social Security number;
- 222 (vii) a student's biometric identifier;
- 223 (viii) a student's health or disability data;
- 224 (ix) a student's student identification number;
- 225 (x) a student's social media login or alias;
- 226 (xi) a student's persistent identifier, if the identifier is associated with personally
- 227 identifiable information, including:
- 228 (A) a customer number held in a cookie; or
- 229 (B) a processor serial number;
- 230 (xii) a combination of a student's last name or photograph of the student with other
- 231 information that together permits a person to contact the student online;
- 232 (xiii) information about a student or a student's family that a person collects online and
- 233 combines with other personally identifiable information; and
- 234 (xiv) other information that, alone or in combination, is linked or linkable to a specific
- 235 student that would allow a reasonable person in the school community, who does not have
- 236 personal knowledge of the relevant circumstances, to identify the student with reasonable
- 237 certainty.
- 238 (15) (a) "Prohibited student data" means student data contained in a record that may
- 239 not be collected by an education entity.
- 240 (b) "Prohibited student data" includes a student's:
- 241 (i) except if required under Section [78A-6-112](#), criminal record; and
- 242 (ii) Social Security number.

243 (16) "Record" means a record that is:

244 (a) incorporated, transferred, maintained, shared, or stored in a digital or electronic
245 format; and

246 (b) maintained or stored for more than 12 months.

247 (17) "School official" means an employee or agent of an education entity who the
248 education entity has determined has a legitimate educational interest in the student data.

249 (18) "Student authorization" means the authorization of:

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

251 (b) the student, if:

252 (i) the student is an adult student;

253 (ii) the student is emancipated; or

254 (iii) the student qualifies under the McKinney-Vento Homeless Education Assistance
255 Improvements Act of 2001, 42 U.S.C. Sec. 11431, et seq.

256 (19) (a) "Student data" means student data contained in a record that is collected or
257 reported at the individual student level and may be included in a student's educational record.

258 (b) "Student data" includes:

259 (i) allowable student data; and

260 (ii) optional student data.

261 (c) "Student data" does not include aggregate or de-identified data.

262 (20) "Student data system" means the State Board of Education's system for collecting,
263 storing, and using student data.

264 (21) "Student educational record" means a student educational record as defined by the
265 board.

266 (22) "Student records manager" means a student records manager designated by an
267 education entity as described in Section 53A-13-301 to authorize and manage the release of a
268 student's personally identifiable information.

269 (23) "Third party contractor" means a person, other than an education entity, that $\hat{S} \rightarrow$:

269a (a) enters into a contract or written agreement with an education entity to provide a
269b service or product; and $\leftarrow \hat{S}$

270 $\hat{S} \rightarrow$ (b) $\leftarrow \hat{S}$ receives student data from $\hat{S} \rightarrow$ [an] the $\leftarrow \hat{S}$ education entity pursuant to $\hat{S} \rightarrow$ [a]

270a the $\leftarrow \hat{S}$ contract or written agreement.

271 Section 3. Section 53A-13-301 is amended to read:

272 **53A-13-301. Application of state law to the administration and operation of**
273 **public schools -- Student information confidentiality standards -- Local school board and**

274 **charter school governing board policies.**

275 (1) An [~~employee, student aide, volunteer, or other agent of the state's public education~~
276 ~~system~~] education entity and an employee, school official, student aide, volunteer, third party
277 contractor, or other agent of an education entity shall protect the privacy of [~~students, their~~
278 ~~parents, and their families~~] a student, the student's parents, and the student's family, and support
279 parental involvement in the education of their children through compliance with the protections
280 provided for family and student privacy under [~~Section 53A-13-302 and the Federal Family~~
281 ~~Educational Rights and Privacy Act and related provisions under 20 U.S.C. 1232g and 1232h,~~]
282 this part in the administration and operation of all public school programs, regardless of the
283 source of funding.

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

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

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

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

288 (3) Except as provided in Subsections (5), (7), and (8), beginning with the 2016-17
289 school year, an education entity may not release a student's personally identifiable information
290 without student authorization.

291 (4) (a) Beginning with the 2016-17 school year, an education entity shall designate a
292 student records manager to authorize the release of a student's personally identifiable
293 information.

294 (b) Beginning with the 2016-17 school year, all requests for a student's personally
295 identifiable information shall be ~~to~~ :

295a (i) ~~to~~ handled by a student records manager ~~to~~ [] ; and

295b (ii) **governed by a contract or agreement related to the personally identifiable**

295c **information.** ~~to~~

296 (5) Subject to the requirements of this section, beginning with the 2016-17 school year,
297 a student records manager may release a student's personally identifiable information without
298 student authorization to:

299 (a) a school official;

300 (b) a higher education institution;

301 (c) subject to the requirements of Subsection (7), an authorized caseworker or other
302 representative of the Department of Human Services;

303 (d) a third party contractor, consultant, or other party to whom the education entity has
304 outsourced services or functions for the following purposes:

305 (i) to conduct a study or perform research on the effectiveness of an implementation of
 306 a program; or

307 (ii) to perform a service or function for which the education entity would otherwise use
 308 the education entity's employees; or

309 (e) an out-of-state education agency if:

310 (i) the student seeks or intends to enroll, or if the student is already enrolled, at the
 311 out-of-state education agency; and

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

314 (6) ~~Beginning with the 2016-17 school year, a student records manager~~ **An education**
 314a **entity or school official** may release

315 ~~aggregate~~ student data to a person if the student data is ~~;~~

315a ~~— (a) de-identified; or~~

315b ~~— (b) provided to the person in the aggregate form~~ .

316 (7) Beginning with the 2016-17 school year, a student records manager may release a
 317 student's personally identifiable information to a caseworker or other representative of the
 318 Department of Human Services without student authorization if:

319 (a) the Department of Human Services is:

320 (i) legally responsible for the care and protection of the student; or

321 (ii) providing services to the student;

322 (b) the personally identifiable information is not disclosed or released to a person:

323 (i) who is not authorized to address the student's education needs; and

324 (ii) who is not authorized by the Department of Human Services to receive the
 325 information; and

326 (c) the Department of Human Services maintains and secures the personally
 327 identifiable data in accordance with the requirements of this part.

328 (8) Beginning with the 2016-17 school year, the Department of Human Services, a
 329 school official, and the Utah Juvenile Court, may share educational information, including a
 330 student's personally identifiable information, to improve education outcomes for youth:

331 (a) in the custody of, or under the guardianship of, the Department of Human Services;

332 (b) receiving services from the Division of Juvenile Justice Services;

333 (c) in the custody of the Division of Child and Family Services;

334 (d) receiving services from the Division of Services for People with Disabilities; or

335 (e) under the jurisdiction of the Utah Juvenile Court.

336 ~~[(2)]~~ (9) A local school board or charter school governing board shall enact policies
337 governing the protection of family and student privacy as required by this ~~[section]~~ part.

338 ~~[(3)]~~ (10) (a) In accordance with Title 63G, Chapter 3, Utah Administrative
339 Rulemaking Act, the State Board of Education shall makes rules to establish standards for
340 public education employees, student aides, and volunteers in public schools regarding the
341 confidentiality of student information and student records.

342 (b) The rules described in Subsection ~~[(3)]~~ (9)(a) shall provide that a local school board
343 or charter school governing board may adopt policies related to public school student
344 confidentiality to address the specific needs or priorities of the school district or charter school.

345 ~~[(4)]~~ (11) The State Board of Education shall:

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

349 (b) provide the materials described in Subsection ~~[(4)]~~ (10)(a) to each school district
350 and charter school.

351 Section 4. Section **53A-13-302** is amended to read:

352 **53A-13-302. Activities prohibited -- Qualifications -- Training on**
353 **implementation.**

354 (1) Except as provided in Subsection (7), Section **53A-11a-203**, and ~~[Section~~
355 ~~53A-15-1301]~~ this part, policies adopted by a school district or charter school under Section
356 **53A-13-301** shall include prohibitions on the administration to a student of any psychological
357 or psychiatric examination, test, or treatment, ~~[or]~~ any survey, analysis, or evaluation, or
358 predictive test without the prior written consent of the student's parent or legal guardian, in
359 which the purpose or evident intended effect is to cause the student to reveal information,
360 whether the information is personally identifiable or not, concerning the student's or any family
361 member's:

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

364 (b) mental or psychological problems;

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

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

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

369 (f) religious affiliations or beliefs;

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

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

373 (2) Prior written consent under Subsection (1) is required in all grades, [~~kindergarten~~]
374 pre-kindergarten through grade 12.

375 (3) Except as provided in Subsection (7), Section [53A-11a-203](#), and Section
376 [53A-15-1301](#), the prohibitions under Subsection (1) shall also apply within the curriculum and
377 other school activities unless prior written consent of the student's parent or legal guardian has
378 been obtained.

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

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

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

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

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

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

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

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

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

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

401 (d) A written withdrawal of authorization submitted to the school principal by the
402 authorizing parent or guardian terminates the authorization.

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

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

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

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

416 (iii) The division may be exempted from the notification requirements described in this
417 Subsection (6)(b)(ii) only if it determines that the student would be endangered by notification
418 of his parent or guardian, or if that notification is otherwise prohibited by state or federal law.

419 (7) (a) If a school employee, agent, or school resource officer believes a student is
420 at-risk of attempting suicide, physical self-harm, or harming others, the school employee,
421 agent, or school resource officer may intervene and ask a student questions regarding the
422 student's suicidal thoughts, physically self-harming behavior, or thoughts of harming others for
423 the purposes of:

424 (i) referring the student to appropriate prevention services; and

425 (ii) informing the student's parent or legal guardian.

426 (b) On or before September 1, 2014, a school district or charter school shall develop
427 and adopt a policy regarding intervention measures consistent with Subsection (7)(a) while
428 requiring the minimum degree of intervention to accomplish the goals of this section.

429 (8) Local school boards and charter school governing boards shall provide inservice for
430 teachers and administrators on the implementation of this section.

431 (9) The board shall provide procedures for disciplinary action for violations of this
432 section.

433 Section 5. Section **53A-13-303** is enacted to read:

434 **53A-13-303. Requirements for collection of student data -- Student data**
435 **disclosure -- Student discipline related records -- Data expungement requirements.**

436 (1) Beginning with the 2016-17 school year, an education entity may collect allowable
437 student data if the education entity provides a student data disclosure that complies with
438 Subsection (4) to:

439 (a) an adult student; or

440 (b) a student's parent.

441 (2) Beginning with the 2016-17 school year, an education entity may collect optional
442 student data if the education entity:

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

444 (i) an adult student; or

445 (ii) a student's parent; and

446 (b) obtains student authorization to collect the optional student data.

447 (3) An education entity may not collect prohibited student data.

448 (4) (a) Beginning with the 2016-17 school year, an education entity that collects
449 student data shall prepare a written student data disclosure for distribution to parents and adult
450 students:

451 (i) (A) at the beginning of each school year; or

452 (B) at the time the student enrolls with the education entity; and

453 (ii) that includes a description of:

454 (A) the allowable student data that the education entity collects;

455 (B) the optional student data that the education entity collects;

456 (C) the prohibited student data that the education entity may not collect;

457 (D) how the allowable and optional student data will be collected and used, shared, or
458 accessed;

459 (E) the implications of authorizing the collection of allowable or optional student data;

460 (F) how the student data is stored and a general description of security measures used
 461 to protect the student data; and

462 (G) the parent's and adult student's rights related to the student's student data, including
 463 the information described in Subsection 53A-13-301(2) ~~§~~ → [] ; and

463a (iii) includes a disclosure that:

463b (A) the education entity does not manage, control, or regulate the access, collection, or
 463c use of student data, including personally identifiable information, related to a student's access
 463d to a general audience application, software, website or service; and

463e (B) a student's access or use of a general audience application, software, website, or
 463f service may include marketing or advertising as part of the student's access or use of the
 463g general audience application, software, website, or service. ←~~§~~

464 (b) Beginning with the 2016-17 school year, in addition to providing a written student
 465 data disclosure described in Subsection (4)(a), an education entity that collects ~~§~~ → optional ←~~§~~
 465a student data, as

466 a condition of a student's participation in a program, shall develop a separate written student
 467 data disclosure specific to the program, that includes:

468 (i) a disclosure of the student data needed for the student to participate in the program;
 469 and

470 (ii) a description of how the student data will be used as part of the student's
 471 participation in the program.

472 (c) Beginning with the 2016-17 school year, an education entity may collect, capture,
 473 purchase, or otherwise obtain a student's biometric identifier or biometric information if:

474 (i) in addition to the written student data disclosures described in Subsections (4)(a)
 475 and (b), the education entity provides a separate student data disclosure specific to the
 476 biometric information;

477 (ii) the disclosure described in Subsection (4)(c)(i) informs the student's parent or an
 478 adult student:

479 (A) that a biometric identifier or biometric information will be collected or stored;

480 (B) of the specific purpose and length of term for which the biometric identifier or
 481 biometric information is being collected, stored, and used; and

482 (iii) the student's parent or the adult student consents to the collection of the biometric
 483 identifier or biometric information.

484 (5) On or before January 31, 2016, the board shall develop model student data
 485 disclosures in accordance with Subsection (4).

486 (6) (a) An education entity may create and maintain disciplinary reports on students in
487 accordance with rules developed by the board.

488 (b) On or before January 31, 2016, the board shall make rules that classify at least three
489 levels of retention schedules for disciplinary records, including:

490 (i) a level of disciplinary records that may be created and maintained for up to one

491 year;

492 (ii) a level of disciplinary records that may be created and maintained for up to three
493 years; and

494 (iii) subject to the expungement requirements of Subsection (7), a level of disciplinary
495 records that may be created and maintained as determined by the education entity.

496 (c) The board shall ensure that the rules described in Subsection (6)(b) classify the
497 types of disciplinary actions that fall into each of the levels described in Subsection (6)(b).

498 (7) (a) Beginning with the 2016-17 school year, an education entity shall expunge or
499 permanently destroy a student's student data retained by the education entity:

500 (i) if a student is at least 23 years old and the student requests the student data to be
501 expunged or permanently destroyed; and

502 (ii) in accordance with board rules described in Subsection (7)(b).

503 (b) On or before January 31, 2016, the board shall make rules:

504 (i) that describe the types of student data that may be expunged or permanently
505 destroyed, including:

506 (A) medical records; and

507 (B) behavioral test assessments;

508 (ii) that describe the types of student data that may not be expunged or permanently
509 destroyed, including:

510 (A) grades;

511 (B) transcripts;

512 (C) a record of the student's enrollment; and

513 (D) assessment data.

514 Section 6. Section **53A-13-304** is enacted to read:

515 **53A-13-304. Security requirements related to the collection, usage, and storage of**
516 **student data -- Board duties -- Third party contractor requirements.**

517 (1) An education entity shall:

518 (a) maintain, secure, and safeguard all student data by using industry best practices to
519 maintain, secure, and safeguard the student data as defined by the board in rule;

520 (b) develop, publish, and make publicly available policies and procedures to comply
521 with this part and other relevant privacy laws, including ensuring that a contract entered into

522 between an education entity and a third party contractor, which allows the third party contractor
523 to have access to student data, includes:

524 (i) provisions requiring specific restrictions on the use of student data;

525 (ii) specific dates governing the destruction of student data given to a third party

526 contractor;

527 (iii) provisions that prohibit a third party contractor from using personally identifiable

528 information for a secondary use, including sales, marketing, or advertising; and

529 (iv) provisions limiting a third party contractor's use of student data strictly for the

530 purpose of providing services to the education entity;

531 (c) require a third party contractor to maintain, secure, and safeguard all student data by

532 using industry best practices to maintain, secure, and safeguard the student data as defined by

533 the board in rule; and

534 (d) require a third party contractor to use student data received under a contract with an

535 education entity strictly for the purpose of providing the contracted services to the education

536 entity.

537 (2) On or before January 31, 2016, the board shall:

538 (a) create, publish, annually update, and make publicly available, a data inventory and

539 dictionary or index of data elements with definitions of student data fields currently in the

540 student data system, including:

541 (i) student data required to be reported by state or federal law;

542 (ii) student data that has been proposed for inclusion in the student data system with a

543 statement regarding the purpose or reason for collecting the student data; and

544 (iii) student data collected or maintained with no current purpose or reason;

545 (b) develop a detailed security plan for education entities that includes:

546 (i) guidelines for authorizing the sharing and access to student data, including

547 guidelines for authentication of authorized access;

548 (ii) guidelines for administrative safeguards providing for the security of electronic and

549 physical student data, including provisions related to data encryption;

550 (iii) guidelines for education entity employees to better ensure the safety and security

551 of student data;

552 (iv) privacy compliance standards;

553 (v) privacy and annual security audits;

554 (vi) breach planning, notification, and procedures; and

555 (vii) data retention and disposition policies approved by the State Records Committee
556 as described in Section 63G-2-502;

557 (c) develop a model governance policy for education entities regarding the collection,
558 access, security, and use of student data; and

559 (d) ensure that the following entities adopt a governance policy in accordance with the
560 requirements of this part:

561 (i) local school boards;

562 (ii) charter schools; and

563 (iii) the Utah Schools for the Deaf and the Blind.

564 (3) (a) Except as provided in Subsection (3)(b), at the end of a contract between an
565 education entity and a third party contractor, the third party contractor shall:

566 (i) return all personally identifiable information to the education entity; or

567 (ii) destroy all personally identifiable information related to the contract.

568 (b) Subsection (3)(a) does not apply to a third party contractor if:

569 (i) the third party contractor is affiliated with a higher education institution; and

570 (ii) the personally identifiable information is maintained in accordance with policies
571 established by the higher education institution.

572 (4) A third party contractor may not:

573 (a) use student data received under a contract with an education entity for a use not
574 described in the contract;

575 (b) collect student data from a student that is unrelated to the services the third party
576 vendor is required to perform pursuant to a contract with an education entity; or

577 (c) sell student data.

577a **Ŝ→ (5)(a) Nothing in this part shall be construed to prohibit the use or disclosure of student**
577b **data, including personally identifiable information, if a student or student's parent**
577c **self-initiates access or use of a general audience application, software, website, or service.**

577d **(b) A student or student's parent, may access or use a general audience application,**
577e **software, website, or service.**

577f **(c) If a student or student's parent accesses or uses a general audience application,**
577g **software, website, or service, the student or parent maintains the responsibility for agreeing or**
577h **consenting to the third party's use of student data that may be shared as part of the student's**
577i **or parent's access or use of the general audience application, software, website, or service. ✪**

577j ⊕ **(d) A general audience application, software, website, or service may allow for sales,**
577k **marketing, or advertising if:**

577l **(i) a student or student's parent accesses or uses the general audience application,**
577m **software, website, or service; and**

577n **(ii) the student or student's parent consents to the sales, marketing, or advertising.** ←Ŝ

578 Section 7. Section **53A-13-305** is enacted to read:

579 **53A-13-305. Chief privacy officer -- Reports of violations of student privacy laws**

580 **-- Penalties.**

581 **(1) (a) The board shall designate a chief privacy officer.**

582 **(b) The chief privacy officer shall:**

583 **(i) oversee the administration of student privacy laws, including the requirements of**

584 this part;

585 (ii) review complaints of:

586 (A) an unauthorized release of student data;

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

588 (C) an unauthorized use of student data;

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

590 (A) the board;

591 (B) the applicable education entity; and

592 (C) the Education Interim Committee; and

593 (iv) work with the board to develop a model student data disclosure as required in

594 Subsection [53A-13-303\(5\)](#).

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

597 (i) except as provided in Subsection (2)(b), may not enter into a future contract with the
598 board or another education entity;

599 (ii) may be required by the board to pay a civil penalty of up to \$25,000; and

600 (iii) may be required to pay:

601 (A) the cost of notifying parents and students of the unauthorized release or use of
602 student data; and

603 (B) expenses incurred as a result of the unauthorized release or use of student data.

604 (b) The board or an education entity may enter into a contract with a third party
605 provider that knowingly or recklessly permits unauthorized release or use of student data if:

606 (i) the board or education entity determines that the third party provider has corrected
607 the errors that caused the unauthorized release or use of student data; and

608 (ii) the third party provider demonstrates an ability to comply with the requirements of
609 this part.

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

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

615 (e) An individual who knowingly or intentionally permits unauthorized release or use
616 of student data may be found guilty of a class A misdemeanor.

617 (3) (a) A parent or student may bring an action in a court of competent jurisdiction for
618 damages caused by violation of this part by a third party contractor.

619 (b) If the court finds that a third party contractor has violated this part, the court may
620 award to the parent or student:

621 (i) damages;

622 (ii) costs; and

623 (iii) reasonable attorney fees.