

1 **STUDENT PRIVACY ACT**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jacob L. Anderegg**

5 Senate Sponsor: Howard A. Stephenson

6

LONG TITLE

7 **General Description:**

8 This bill creates the Student Privacy Act and addresses the release of public school
9 student information.
10

11 **Highlighted Provisions:**

- 12 This bill:
- 13 ▶ defines terms;
 - 14 ▶ requires certain people to protect student privacy;
 - 15 ▶ allows a student or the student's parent to authorize the collection and release of
16 certain student data;
 - 17 ▶ prohibits an education entity from releasing a student's personally identifiable
18 information under certain circumstances;
 - 19 ▶ allows an education entity to release a student's personally identifiable information
20 under certain circumstances;
 - 21 ▶ prohibits a school district from eliciting certain information from students;
 - 22 ▶ provides what kinds of student data may be collected and under what circumstances;
 - 23 ▶ requires an education entity to provide a student data disclosure to parents and
24 students at the beginning of each school year or at the time a student enrolls with the
25 education entity;
 - 26 ▶ establishes requirements for the State Board of Education related to the collection,
27 usage, and storage of student data;



- 28 ▶ requires the State Board of Education to designate a student privacy coordinator to
- 29 oversee the protection of student data;
- 30 ▶ requires an education entity or third party contractor to collect, use, and store data in
- 31 accordance with certain security measures;
- 32 ▶ establishes penalties; and
- 33 ▶ makes technical changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **53A-11-605**, as last amended by Laws of Utah 2013, Chapter 335

41 **53A-13-301**, as last amended by Laws of Utah 2011, Chapter 401

42 **53A-13-302**, as last amended by Laws of Utah 2014, Chapter 214

43 ENACTS:

44 **53A-13-300.5**, Utah Code Annotated 1953

45 **53A-13-303**, Utah Code Annotated 1953

46 **53A-13-304**, Utah Code Annotated 1953

47 **53A-13-305**, Utah Code Annotated 1953



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

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

51 **53A-11-605. Definitions -- School personnel -- Medical recommendations --**

52 **Exceptions -- Penalties.**

53 (1) As used in this section:

54 (a) "Health care professional" means a physician, physician assistant, nurse, dentist, or

55 mental health therapist.

56 (b) "School personnel" means a school district or charter school employee, including a

57 licensed, part-time, contract, or nonlicensed employee.

58 (2) School personnel may:

- 59 (a) provide information and observations to a student's parent or guardian about that
60 student, including observations and concerns in the following areas:
- 61 (i) progress;
62 (ii) health and wellness;
63 (iii) social interactions;
64 (iv) behavior; or
65 (v) topics consistent with Subsection [53A-13-302](#)~~(6)~~(2);
- 66 (b) communicate information and observations between school personnel regarding a
67 child;
- 68 (c) refer students to other appropriate school personnel and agents, consistent with
69 local school board or charter school policy, including referrals and communication with a
70 school counselor or other mental health professionals working within the school system;
- 71 (d) consult or use appropriate health care professionals in the event of an emergency
72 while the student is at school, consistent with the student emergency information provided at
73 student enrollment;
- 74 (e) exercise their authority relating to the placement within the school or readmission
75 of a child who may be or has been suspended or expelled for a violation of Section
76 [53A-11-904](#); and
- 77 (f) complete a behavioral health evaluation form if requested by a student's parent or
78 guardian to provide information to a licensed physician.
- 79 (3) School personnel shall:
- 80 (a) report suspected child abuse consistent with Section [62A-4a-403](#);
81 (b) comply with applicable state and local health department laws, rules, and policies;
82 and
- 83 (c) conduct evaluations and assessments consistent with the Individuals with
84 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent amendments.
- 85 (4) Except as provided in Subsection (2), Subsection (6), and Section [53A-11a-203](#),
86 school personnel may not:
- 87 (a) recommend to a parent or guardian that a child take or continue to take a
88 psychotropic medication;
- 89 (b) require that a student take or continue to take a psychotropic medication as a

90 condition for attending school;

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

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

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

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

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

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

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

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

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

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

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

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

120 (a) providing for training of appropriate school personnel on the provisions of this

121 section; and

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

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

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

127 **Part 13. Student Privacy Act**

128 **53A-13-300.5. Definitions.**

129 As used in this part:

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

131 (2) "Aggregate data" means data collected or reported at the group, cohort, school,
132 school district, or state level that:

133 (a) does not include personally identifiable information; and

134 (b) at the level collected, includes at least 40 individuals in the level.

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

137 (a) name;

138 (b) date of birth;

139 (c) gender;

140 (d) parent or guardian information;

141 (e) contact information;

142 (f) a public student identification number;

143 (g) state and national assessment results;

144 (h) courses taken and completed, credits earned, and other transcript information;

145 (i) course grades and grade point average;

146 (j) grade level and expected graduation date or graduation cohort;

147 (k) degree, diploma, credential attainment, and other school exit information;

148 (l) attendance and mobility;

149 (m) drop-out data;

150 (n) an immunization record, including a record of an exemption from immunization;

151 and

- 152 (o) ethnicity.
- 153 (4) "Board" means the State Board of Education.
- 154 (5) "Education entity" means:
- 155 (a) the board;
- 156 (b) a local school board or charter school governing board;
- 157 (c) a school district;
- 158 (d) a public school;
- 159 (e) the Utah Schools for the Deaf and the Blind; or
- 160 (f) a school community council.
- 161 (6) "Higher education entity" means:
- 162 (a) an institution of higher education described in Subsection [53B-2-101\(1\)](#); or
- 163 (b) the State Board of Regents established in Section [53B-1-103](#).
- 164 (7) (a) "Optional student data" means student data that an education entity may not
- 165 collect except in accordance with Section [53A-13-303](#).
- 166 (b) "Optional student data" includes:
- 167 (i) discipline reports;
- 168 (ii) remediation efforts;
- 169 (iii) special education data;
- 170 (iv) demographic data;
- 171 (v) medical and health records; and
- 172 (vi) program participation information.
- 173 (8) "Out-of-state educational agency" means an education agency or institution located
- 174 outside the state.
- 175 (9) "Parent" means a student's parent or legal guardian.
- 176 (10) (a) "Personally identifiable information" means information that identifies an
- 177 individual.
- 178 (b) "Personally identifiable information" includes:
- 179 (i) a student's first or last name;
- 180 (ii) a name of a student's family member;
- 181 (iii) a student's or student's family's home or physical address;
- 182 (iv) a student's email address or online contact information;

- 183 (v) a student's telephone number;
184 (vi) a student's Social Security number;
185 (vii) a student's biometric identifier;
186 (viii) a student's health or disability data;
187 (ix) a student's student identification number;
188 (x) a student's social media login or alias;
189 (xi) a student's persistent identifier, if the identifier is associated with personally
190 identifiable information, including:
191 (A) a customer number held in a cookie; or
192 (B) a processor serial number;
193 (xii) a combination of a student's last name or photograph of the student with other
194 information that together permits a person to contact the student online;
195 (xiii) information about a student or a student's family that a person collects online and
196 combines with other personally identifiable information; and
197 (xiv) other information that, alone or in combination, is linked or linkable to a specific
198 student that would allow a reasonable person in the school community, who does not have
199 personal knowledge of the relevant circumstances, to identify the student with reasonable
200 certainty.
201 (11) (a) "Prohibited student data" means student data that may not be collected by an
202 education entity.
203 (b) "Prohibited student data" includes a student's:
204 (i) juvenile delinquency records;
205 (ii) criminal records;
206 (iii) Social Security number; and
207 (iv) biometric information.
208 (12) "Student authorization" means the authorization of:
209 (a) the student's parent, if the student is less than 18 years old; or
210 (b) the student, if the student is an adult student.
211 (13) (a) "Student data" means student data collected or reported at the individual
212 student level and may be included in a student's educational record.
213 (b) "Student data" includes:

- 214 (i) allowable student data;
215 (ii) optional student data; and
216 (iii) prohibited student data.

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

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

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

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

224 **53A-13-301. Application of state law to the administration and operation of**
225 **public schools -- Student information confidentiality standards -- Local school board and**
226 **charter school governing board policies.**

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

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

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

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

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

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

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

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

247 (a) another education entity;

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

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

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

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

255 (d) an out-of-state education agency if:

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

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

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

261 ~~[(2)]~~ (6) A local school board or charter school governing board shall enact policies
262 governing the protection of family and student privacy as required by this section.

263 ~~[(3)]~~ (7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
264 Act, the State Board of Education shall makes rules to establish standards for public education
265 employees, student aides, and volunteers in public schools regarding the confidentiality of
266 student information and student records.

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

270 ~~[(4)]~~ (8) The State Board of Education shall:

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

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

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

277 **53A-13-302. Activities prohibited -- Qualifications -- Training on**
278 **implementation.**

279 (1) Except as provided in Subsection (7), Section 53A-11a-203, and [Section
280 ~~53A-15-1301~~] this part, policies adopted by a school district or charter school under Section
281 53A-13-301 shall include prohibitions on the administration to a student of any psychological
282 or psychiatric examination, test, or treatment, or any survey, analysis, or evaluation without the
283 prior written consent of the student's parent or legal guardian, in which the purpose or evident
284 intended effect is to cause the student to reveal information, whether the information is
285 personally identifiable or not, concerning the student's or any family member's:

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

288 (b) mental or psychological problems;

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

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

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

293 (f) religious affiliations or beliefs;

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

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

297 (2) Prior written consent under Subsection (1) is required in all grades, kindergarten
298 through grade 12.

299 (3) Except as provided in Subsection (7), Section 53A-11a-203, and Section
300 ~~53A-15-1301~~, the prohibitions under Subsection (1) shall also apply within the curriculum and
301 other school activities unless prior written consent of the student's parent or legal guardian has
302 been obtained.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

336 (ii) If, however, the matter has been reported to the Division of Child and Family
337 Services within the Department of Human Services, it is the responsibility of the division to

338 notify the student's parent or guardian of any possible investigation, prior to the student's return
339 home from school.

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

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

- 348 (i) referring the student to appropriate prevention services; and
- 349 (ii) informing the student's parent or legal guardian.

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

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

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

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

358 **53A-13-303. Requirements for collection of student data -- Student data**
359 **disclosure.**

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

- 362 (a) the student, if the student is an adult student; and
- 363 (b) the student's parent.

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

- 365 (a) provides a student data disclosure that complies with Subsection (4) to:
 - 366 (i) the student, if the student is an adult student; and
 - 367 (ii) the student's parent; and
 - 368 (b) obtains student authorization to collect the optional student data.

- 369 (3) An education entity may not collect prohibited student data.
- 370 (4) An education entity that collects student data shall prepare a written student data
- 371 disclosure for distribution to parents and adult students:
- 372 (a) (i) at the beginning of each school year; or
- 373 (ii) at the time the student enrolls with the education entity; and
- 374 (b) that includes a description of:
- 375 (i) the allowable student data that the education entity collects;
- 376 (ii) the optional student data that the education entity collects;
- 377 (iii) the prohibited student data that the education entity may not collect;
- 378 (iv) how the allowable and optional student data will be collected and used, shared, or
- 379 accessed;
- 380 (v) the consequences of authorizing the collection of allowable or optional student
- 381 data;
- 382 (vi) how the student data is stored and any security measures used to protect the student
- 383 data; and
- 384 (vii) the parent's and adult student's rights related to the student's student data,
- 385 including the information described in Subsection [53A-13-301\(2\)](#).
- 386 (5) The board shall develop a model student data disclosure in accordance with
- 387 Subsection (4).

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

389 **53A-13-304. Security requirements related to the collection, usage, and storage of**

390 **student data -- Board duties -- Third party contractor requirements.**

391 The board shall:

392 (1) maintain, secure, and safeguard all student data:

393 (a) by using industry best practices to maintain, secure, and safeguard the student data;

394 and

395 (b) subject to regular audits by a third party;

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

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

398 student data system, including:

399 (a) student data required to be reported by state or federal law;

- 400 (b) student data that has been proposed for inclusion in the student data system with a
401 statement regarding the purpose or reason for collecting the student data; and
- 402 (c) student data collected or maintained with no current purpose or reason;
- 403 (3) develop, publish, and make publicly available policies and procedures to comply
404 with this part and other relevant privacy laws, including ensuring that a contract entered into
405 between an education entity and a third party contractor, which allows the third party contractor
406 to have access to student data, includes:
- 407 (a) provisions requiring specific restrictions on the use of student data;
- 408 (b) specific dates governing the destruction of student data given to a third party
409 contractor;
- 410 (c) provisions that prohibit a third party contractor from using the student data for a
411 secondary use, including sales, marketing, or advertising; and
- 412 (d) provisions limiting a third party contractor's use of student data strictly for the
413 purpose of providing services to the education entity;
- 414 (4) develop a detailed security plan for education entities that includes:
- 415 (a) guidelines for authorizing sharing and access to student data, including guidelines
416 for authentication of authorized access;
- 417 (b) guidelines for administrative safeguards providing for the security of electronic and
418 physical student data, including provisions related to data encryption;
- 419 (c) guidelines for education entity employees to better ensure the safety and security of
420 student data;
- 421 (d) privacy compliance standards;
- 422 (e) privacy and annual security audits;
- 423 (f) breach planning, notification, and procedures; and
- 424 (g) data retention and disposition policies;
- 425 (5) develop a model governance policy for education entities regarding the collection,
426 access, security, and use of student data;
- 427 (6) ensure that the following entities adopt the model governance policy described in
428 Subsection (5):
- 429 (a) local school boards;
- 430 (b) charter schools; and

- 431 (c) the Utah Schools for the Deaf and the Blind;
432 (7) require a third party contractor to maintain, secure, and safeguard all student data:
433 (a) by using industry best practices to maintain, secure, and safeguard the student data;
434 and
435 (b) subject to regular audits by a third party;
436 (8) require a third party contractor to use student data received under a contract with an
437 education entity strictly for the purpose of providing the contracted services to the education
438 entity; and
439 (9) prohibit a third party contractor from using student data received under a contract
440 with an education entity for a use not described in the contract.

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

442 **53A-13-305. Student privacy coordinator -- Reports of violations of student**
443 **privacy laws -- Penalties.**

- 444 (1) (a) The board shall designate a State Office of Education student privacy
445 coordinator.
446 (b) The student privacy coordinator shall:
447 (i) oversee the administration of student privacy laws, including the requirements of
448 this part;
449 (ii) review complaints of:
450 (A) an unauthorized release of student data;
451 (B) an unauthorized collection of student data; or
452 (C) an unauthorized use of student data;
453 (iii) report any violations of this part to:
454 (A) the board;
455 (B) the applicable education entity; and
456 (C) the Education Interim Committee; and
457 (iv) work with the board to develop a model student data disclosure described in
458 Subsection [53A-13-303\(4\)](#).
459 (2) (a) A third party contractor that knowingly or recklessly permits unauthorized
460 release or use of student data:
461 (i) may not enter into a future contract with the board or another education entity; and

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

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

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

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

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

473 (i) damages;

474 (ii) costs; and

475 (iii) reasonable attorney fees.

Legislative Review Note
as of 12-10-14 1:15 PM

Office of Legislative Research and General Counsel