

HB0068S03 compared with HB0068S02

~~deleted text~~ shows text that was in HB0068S02 but was deleted in HB0068S03.

inserted text shows text that was not in HB0068S02 but was inserted into HB0068S03.

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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

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under certain circumstances;

- ▶ prohibits a school district from eliciting certain information from students;
- ▶ provides what kinds of student data may be collected and under what circumstances;
- ▶ requires an education entity to provide a student data disclosure to parents and students at the beginning of each school year or at the time a student enrolls with the education entity;
- ▶ establishes requirements for the State Board of Education related to the collection, usage, and storage of student data;
- ▶ allows an education entity to create and maintain certain student disciplinary records in accordance with rules made by the State Board of Education;
- ▶ allows a student to request certain student data to be expunged or permanently destroyed;
- ▶ requires the State Board of Education to designate a student privacy coordinator to oversee the protection of student data;
- ▶ requires an education entity or third party contractor to collect, use, and store data in accordance with certain security measures;
- ▶ establishes penalties; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

ENACTS:

53A-13-300.5, Utah Code Annotated 1953

53A-13-303, Utah Code Annotated 1953

53A-13-304, Utah Code Annotated 1953

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53A-13-305, Utah Code Annotated 1953

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

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

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

Exceptions -- Penalties.

(1) As used in this section:

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

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

(2) School personnel may:

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

(i) progress;

(ii) health and wellness;

(iii) social interactions;

(iv) behavior; or

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

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

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

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

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

(f) complete a behavioral health evaluation form if requested by a student's parent or

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guardian to provide information to a licensed physician.

(3) School personnel shall:

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

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

and

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

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

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

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

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

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

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

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

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

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

(6) Notwithstanding Subsection (4), a school counselor or other mental health professional acting in accordance with Title 58, Chapter 60, Mental Health Professional

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Practice Act, or licensed through the State Board of Education, working within the school system may:

- (a) recommend, but not require, a psychiatric or behavioral health evaluation of a child;
 - (b) recommend, but not require, psychiatric, psychological, or behavioral treatment for a child;
 - (c) conduct a psychiatric or behavioral health evaluation or mental health screening, test, evaluation, or assessment of a child in accordance with Section 53A-13-302; and
 - (d) provide to a parent or guardian, upon the specific request of the parent or guardian, a list of three or more health care professionals or providers, including licensed physicians, psychologists, or other health specialists.
- (7) Local school boards or charter schools shall adopt a policy:
- (a) providing for training of appropriate school personnel on the provisions of this section; and
 - (b) indicating that an intentional violation of this section is cause for disciplinary action consistent with local school board or charter school policy and under Section 53A-8a-502.
- (8) Nothing in this section shall be interpreted as discouraging general communication not prohibited by this section between school personnel and a student's parent or guardian.

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

Part 3. Student Privacy Act

53A-13-300.5. Definitions.

As used in this part:

- (1) "Adult student" means a student who is at least 18 years old.
- (2) "Aggregate data" means data reported at the group, cohort, school, school district, region, or state level that:
 - (a) does not include personally identifiable information;
 - (b) includes at least 10 individuals in the level; and
 - (c) is collected in accordance with policies adopted by the board.
- (3) "Allowable student data" means the following student data contained in a record that an education entity may collect and include in a student's educational record without student authorization:
 - (a) name;

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- (b) date of birth;
 - (c) sex;
 - (d) parent or guardian contact information;
 - (e) custodial parent information;
 - (f) contact information;
 - (g) a public student identification number;
 - (h) local, state, and national assessment results;
 - (i) courses taken and completed, credits earned, and other transcript information;
 - (j) course grades and grade point average;
 - (k) grade level and expected graduation date or graduation cohort;
 - (l) degree, diploma, credential attainment, and other school exit information;
 - (m) attendance and mobility;
 - (n) drop-out data;
 - (o) an immunization record, including a record of an exemption from immunization;
 - (p) race;
 - (q) ethnicity;
 - (r) tribal affiliation;
 - (s) remediation efforts;
 - (t) local or state approved programs;
 - (u) child find and special education evaluation data;
 - (v) English language learners;
 - (w) information required to be collected pursuant to a vision screening required under Section 53A-11-203;
 - (x) information related to the Utah Registry of Autism and Developmental Disabilities described in Section 26-7-4;
 - (y) student injury information;
 - (~~f~~~~w~~~~z~~) discipline records in accordance with the requirements described in Subsection 53A-13-303(6); and
 - (~~f~~~~x~~~~aa~~) juvenile delinquency records.
- (4) (a) "Biometric identifier" means a retina or iris scan, fingerprint, human biological samples used for valid scientific testing or screening, or scan of hand or face geometry.

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(b) "Biometric identifier" does not include a writing sample, written signature, voiceprint, photograph, demographic data, or physical descriptions such as height, weight, hair color, or eye color.

(5) "Biometric information" means information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual.

(6) "Board" means the State Board of Education.

(7) "Chief privacy officer" means the chief privacy officer designated by the board under Section 53A-13-305.

(8) "Education entity" means:

(a) the board;

(b) a local school board or charter school governing board;

(c) a school district;

(d) a public school;

(e) the Utah Schools for the Deaf and the Blind; or

(f) for purposes of implementing the School Readiness Initiative described in Title 53A, Chapter 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section 53A-1b-103.

(9) "Higher education institution" means:

(a) an institution of higher education described in Subsection 53B-2-101(1); or

(b) the State Board of Regents established in Section 53B-1-103.

(10) "Individualized education program" or "IEP" means a written statement, for a student with a disability, that is developed, reviewed, and revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

(11) (a) "Optional student data" means student data contained in a record that an education entity may not collect except in accordance with Section 53A-13-303.

(b) "Optional student data" includes:

(i) **except for an immunization record or a record related to a vision screening described in Subsection (3),** medical and health records;

(ii) information related to an IEP;

(iii) information needed to provide special needs services;

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(iv) federal program participation information for a federal program not approved by an education entity; and

(v) biometric information in accordance with the requirements described in ~~Subsection~~ Section 53A-13-303.

(12) "Out-of-state educational agency" means an educational agency or institution located outside the state.

(13) "Parent" means a student's parent or legal guardian.

(14) (a) "Personally identifiable information" means information that identifies an individual.

(b) "Personally identifiable information" includes:

(i) a student's first or last name;

(ii) a name of a student's family member;

(iii) a student's or student's family's home or physical address;

(iv) a student's email address or online contact information;

(v) a student's telephone number;

(vi) a student's Social Security number;

(vii) a student's biometric identifier;

(viii) a student's health or disability data;

(ix) a student's student identification number;

(x) a student's social media login or alias;

(xi) a student's persistent identifier, if the identifier is associated with personally identifiable information, including:

(A) a customer number held in a cookie; or

(B) a processor serial number;

(xii) a combination of a student's last name or photograph of the student with other information that together permits a person to contact the student online;

(xiii) information about a student or a student's family that a person collects online and combines with other personally identifiable information; and

(xiv) other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable

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certainty.

(15) (a) "Prohibited student data" means student data contained in a record that may not be collected by an education entity.

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

(i) except if required under Section 78A-6-112, ~~fa~~ criminal record; and

(ii) Social Security number.

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

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

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

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

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

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

(b) the student, if:

(i) the student is an adult student;

(ii) the student is emancipated; or

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

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

(b) "Student data" includes:

(i) allowable student data; and

(ii) optional student data.

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

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

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

(22) "Student records manager" means a student records manager designated by an education entity as described in Section 53A-13-301 to authorize and manage the release of a

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student's personally identifiable information.

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

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

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

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

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

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

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

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

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

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

(b) ~~§AII~~ **Beginning with the 2016-17 school year, all** requests for a student's personally identifiable information shall be handled by a student records manager.

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

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(a) a school official;

(b) a higher education institution;

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

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

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

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

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

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

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

(6) ~~{A}~~ Beginning with the 2016-17 school year, a student records manager may release aggregate student data to a person.

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

(a) the Department of Human Services is:

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

(ii) providing services to the student;

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

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

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

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

(8) Beginning with the 2016-17 school year, the Department of Human Services, a school official, and the Utah Juvenile Court, may share educational information, including a

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student's personally identifiable information, to improve education outcomes for youth:

- (a) in the custody of, or under the guardianship of, the Department of Human Services;
- (b) receiving services from the Division of Juvenile Justice Services;
- (c) in the custody of the Division of Child and Family Services;
- (d) receiving services from the Division of Services for People with Disabilities; or
- (e) under the jurisdiction of the Utah Juvenile Court.

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

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

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

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

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

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

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

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

(1) Except as provided in Subsection (7), Section 53A-11a-203, and ~~[Section 53A-15-130]~~ this part, policies adopted by a school district or charter school under Section 53A-13-301 shall include prohibitions on the administration to a student of any psychological or psychiatric examination, test, or treatment, ~~[or]~~ any survey, analysis, or evaluation, or predictive test without the prior written consent of the student's parent or legal guardian, in which the purpose or evident intended effect is to cause the student to reveal information, whether the information is personally identifiable or not, concerning the student's or any family

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member's:

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

(b) mental or psychological problems;

(c) sexual behavior, orientation, or attitudes;

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

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

(f) religious affiliations or beliefs;

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

(h) income, except as required by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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the purposes of:

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

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

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

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

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

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

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

- (a) an adult student; or
- (b) a student's parent.

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

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

- (i) an adult student; or
- (ii) a student's parent; and

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

(3) ~~{Beginning with the 2016-17 school year, an}~~ **An** education entity may not collect prohibited student data.

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

- (i) (A) at the beginning of each school year; or
- (B) at the time the student enrolls with the education entity; and

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(ii) that includes a description of:

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

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

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

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

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

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

(G) the parent's and adult student's rights related to the student's student data, including the information described in Subsection 53A-13-301(2).

(b) Beginning with the 2016-17 school year, in addition to providing a written student data disclosure described in Subsection (4)(a), an education entity that collects ~~optional~~ student data, as a condition of a student's participation in a program, shall develop a separate written student data disclosure specific to the program, that includes:

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

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

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

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

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

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

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

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

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

(6) (a) ~~{Beginning with the 2016-17 school year, an}~~ An education entity may create and maintain disciplinary reports on students in accordance with rules developed by the board.

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

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

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

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

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

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

(i) if a student is at least ~~{21}~~23 years old and the student requests the student data to be expunged or permanently destroyed; and

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

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

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

(A) medical records; ~~and~~

(B) behavioral test assessments; ~~{and}~~

~~{~~ (C) disciplinary records; and

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

(A) grades;

(B) transcripts;

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

(D) assessment data.

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

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

(1) An education entity shall:

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

(b) develop, publish, and make publicly available policies and procedures to comply with this part and other relevant privacy laws, including ensuring that a contract entered into between an education entity and a third party contractor, which allows the third party contractor to have access to student data, includes:

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

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

(iii) provisions that prohibit a third party contractor from using personally identifiable information for a secondary use, including sales, marketing, or advertising; and

(iv) provisions limiting a third party contractor's use of student data strictly for the purpose of providing services to the education entity; ~~and~~

(c) require a third party contractor to maintain, secure, and safeguard all student data by using industry best practices to maintain, secure, and safeguard the student data ~~as defined by the board in rule; and~~

(d) require a third party contractor to use student data received under a contract with an education entity strictly for the purpose of providing the contracted services to the education entity; ~~and~~

~~(e) in a contract with a third party vendor, provide that a contract with the third party vendor is void if the third party vendor permits unauthorized release or use of student data.~~

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

(a) create, publish, annually update, and make publicly available, a data inventory and dictionary or index of data elements with definitions of student data fields currently in the student data system, including:

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

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

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

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

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

(i) guidelines for authorizing the sharing and access to student data, including guidelines for authentication of authorized access;

(ii) guidelines for administrative safeguards providing for the security of electronic and physical student data, including provisions related to data encryption;

(iii) guidelines for education entity employees to better ensure the safety and security of student data;

(iv) privacy compliance standards;

(v) privacy and annual security audits;

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

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

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

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

(i) local school boards;

(ii) charter schools; and

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

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

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

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

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

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

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

(4) A third party contractor may not:

(a) use student data received under a contract with an education entity for a use not

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described in the contract:

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

(c) sell student data.

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

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

-- Penalties.

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

(b) The chief privacy officer shall:

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

(ii) review complaints of:

(A) an unauthorized release of student data;

(B) an unauthorized collection of student data; or

(C) an unauthorized use of student data;

(iii) report any violations of this part to:

(A) the board;

(B) the applicable education entity; and

(C) the Education Interim Committee; and

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

Subsection 53A-13-303(5).

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

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

~~†~~ (ii) may be found guilty of a class A misdemeanor;

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

(~~†††~~iii) may be required to pay:

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

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

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

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

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

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

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

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

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

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

(i) damages;

(ii) costs; and

(iii) reasonable attorney fees.