

Representative Jacob L. Anderegg proposes the following substitute bill:

STUDENT PRIVACY AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill enacts the Student Data Protection Act and amends provisions related to student privacy.

Highlighted Provisions:

This bill:

- ▶ enacts the Student Data Protection Act;
- ▶ defines terms;
- ▶ provides for student data protection governance at the state and local levels;
- ▶ enacts requirements for data protection and maintenance by state and local education entities and third-party contractors;
- ▶ enacts penalties;
- ▶ gives rulemaking authority;
- ▶ amends provisions related to student privacy;
- ▶ enacts a requirement for notice given to a parent or guardian before a student is required to take a certain type of survey; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

This bill appropriates:



26 ▶ to the State Board of Education -- State Office of Education -- Assessment and
27 Accountability, as an ongoing appropriation:

- 28 • from the Education Fund, \$800,000.

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **53A-1-603**, as last amended by Laws of Utah 2015, Chapters 258, 415, and 444

34 **53A-1-708**, as last amended by Laws of Utah 2015, Chapter 415

35 **53A-11a-203**, as last amended by Laws of Utah 2015, Chapter 253

36 **53A-13-301**, as last amended by Laws of Utah 2015, Chapter 117

37 **53A-13-302**, as last amended by Laws of Utah 2014, Chapter 214

38 ENACTS:

39 **53A-1-1401**, Utah Code Annotated 1953

40 **53A-1-1402**, Utah Code Annotated 1953

41 **53A-1-1403**, Utah Code Annotated 1953

42 **53A-1-1404**, Utah Code Annotated 1953

43 **53A-1-1405**, Utah Code Annotated 1953

44 **53A-1-1406**, Utah Code Annotated 1953

45 **53A-1-1407**, Utah Code Annotated 1953

46 **53A-1-1408**, Utah Code Annotated 1953

47 **53A-1-1409**, Utah Code Annotated 1953

48 **53A-1-1410**, Utah Code Annotated 1953

49 **53A-1-1411**, Utah Code Annotated 1953

50 REPEALS:

51 **53A-1-711**, as enacted by Laws of Utah 2015, Chapter 384



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

54 Section 1. Section **53A-1-603** is amended to read:

55 **53A-1-603. Duties of State Board of Education.**

56 (1) The State Board of Education shall:

57 (a) require each school district and charter school to implement the Utah Performance
58 Assessment System for Students, hereafter referred to as U-PASS;

59 (b) require the state superintendent of public instruction to submit and recommend
60 criterion-referenced achievement tests or online computer adaptive tests, college readiness
61 assessments, an online writing assessment for grades 5 and 8, and a test for students in grade 3
62 to measure reading grade level to the board for approval and adoption and distribution to each
63 school district and charter school by the state superintendent;

64 (c) develop an assessment method to uniformly measure statewide performance, school
65 district performance, and school performance of students in grades 3 through 12 in mastering
66 basic academic subjects; and

67 (d) provide for the state to participate in the National Assessment of Educational
68 Progress state-by-state comparison testing program.

69 (2) Except as provided in Subsection (3) and Subsection 53A-1-611(3), under
70 U-PASS, the State Board of Education shall annually require each school district and charter
71 school, as applicable, to administer:

72 (a) as determined by the State Board of Education, statewide criterion-referenced tests
73 or online computer adaptive tests in grades 3 through 12 and courses in basic academic subjects
74 of the core standards for Utah public schools;

75 (b) an online writing assessment to all students in grades 5 and 8;

76 (c) college readiness assessments as detailed in Section 53A-1-611; and

77 (d) a test to all students in grade 3 to measure reading grade level.

78 (3) Beginning with the 2014-15 school year, the State Board of Education shall
79 annually require each school district and charter school, as applicable, to administer a computer
80 adaptive assessment system that is:

81 (a) adopted by the State Board of Education; and

82 (b) aligned to the core standards for Utah public schools.

83 (4) The board shall adopt rules for the conduct and administration of U-PASS to
84 include the following:

85 (a) the computation of student performance based on information that is disaggregated
86 with respect to race, ethnicity, gender, limited English proficiency, and those students who
87 qualify for free or reduced price school lunch;

88 (b) security features to maintain the integrity of the system, which could include
89 statewide uniform testing dates, multiple test forms, and test administration protocols;

90 (c) the exemption of student test scores, by exemption category, such as limited
91 English proficiency, mobility, and students with disabilities, with the percent or number of
92 student test scores exempted being publically reported at a district level;

93 (d) compiling of criterion-referenced, online computer adaptive, and online writing test
94 scores and test score averages at the classroom level to allow for:

95 (i) an annual review of those scores by parents of students and professional and other
96 appropriate staff at the classroom level at the earliest point in time;

97 (ii) the assessment of year-to-year student progress in specific classes, courses, and
98 subjects; and

99 (iii) a teacher to review, prior to the beginning of a new school year, test scores from
100 the previous school year of students who have been assigned to the teacher's class for the new
101 school year;

102 (e) allowing a school district or charter school to have its tests administered and scored
103 electronically to accelerate the review of test scores and their usefulness to parents and
104 educators under Subsection (4)(d), without violating the integrity of U-PASS; and

105 (f) providing that scores on the tests and assessments required under Subsection (2)(a)
106 and Subsection (3) may not be considered in determining:

107 (i) a student's academic grade for the appropriate course; or

108 (ii) whether a student may advance to the next grade level.

109 (5) (a) A school district or charter school, as applicable, is encouraged to administer an
110 online writing assessment to students in grade 11.

111 (b) The State Board of Education may award a grant to a school district or charter
112 school to pay for an online writing assessment and instruction program that may be used to
113 assess the writing of students in grade 11.

114 (6) The State Board of Education shall make rules:

115 (a) establishing procedures for applying for and awarding money for computer adaptive
116 tests;

117 (b) specifying how money for computer adaptive tests shall be allocated among school
118 districts and charter schools that qualify to receive the money; and

119 (c) requiring reporting of the expenditure of money awarded for computer adaptive
120 testing and evidence that the money was used to implement computer adaptive testing.

121 (7) The State Board of Education shall [~~assure~~] ensure that computer adaptive tests are
122 administered in compliance with the requirements of Chapter 1, Part 14, Student Data
123 Protection Act, and Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act.

124 (8) (a) The State Board of Education shall establish a committee consisting of 15
125 parents of Utah public education students to review all computer adaptive test questions.

126 (b) The committee established in Subsection (8)(a) shall include the following parent
127 members:

128 (i) five members appointed by the chair of the State Board of Education;

129 (ii) five members appointed by the speaker of the House of Representatives; and

130 (iii) five members appointed by the president of the Senate.

131 (c) The State Board of Education shall provide staff support to the parent committee.

132 (d) The term of office of each member appointed in Subsection (8)(b) is four years.

133 (e) The chair of the State Board of Education, the speaker of the House of
134 Representatives, and the president of the Senate shall adjust the length of terms to stagger the
135 terms of committee members so that approximately 1/2 of the committee members are
136 appointed every two years.

137 (f) No member may receive compensation or benefits for the member's service on the
138 committee.

139 (9) (a) School districts and charter schools shall require each licensed employee to
140 complete two hours of professional development on youth suicide prevention within their
141 license cycle in accordance with Section [53A-6-104](#).

142 (b) The State Board of Education shall develop or adopt sample materials to be used by
143 a school district or charter school for professional development training on youth suicide
144 prevention.

145 (c) The training required by this Subsection (9) shall be incorporated into professional
146 development training required by rule in accordance with Section [53A-6-104](#).

147 Section 2. Section **53A-1-708** is amended to read:

148 **53A-1-708. Grants for online delivery of U-PASS tests.**

149 (1) As used in this section:

150 (a) "Adaptive tests" means tests administered during the school year using an online
151 adaptive test system.

152 (b) "Core standards for Utah public schools" means the standards developed and
153 adopted by the State Board of Education that define the knowledge and skills students should
154 have in kindergarten through grade 12 to enable students to be prepared for college or
155 workforce training.

156 (c) "Summative tests" means tests administered near the end of a course to assess
157 overall achievement of course goals.

158 (d) "Uniform online summative test system" means a single system for the online
159 delivery of summative tests required under U-PASS that:

160 (i) is coordinated by the Utah State Office of Education;

161 (ii) ensures the reliability and security of U-PASS tests; and

162 (iii) is selected through collaboration between Utah State Office of Education and
163 school district representatives with expertise in technology, assessment, and administration.

164 (e) "U-PASS" means the Utah Performance Assessment System for Students.

165 (2) The State Board of Education may award grants to school districts and charter
166 schools to implement one or both of the following:

167 (a) a uniform online summative test system to enable parents of students and school
168 staff to review U-PASS test scores by the end of the school year; or

169 (b) an online adaptive test system to enable parents of students and school staff to
170 measure and monitor a student's academic progress during a school year.

171 (3) (a) Grant money may be used to pay for any of the following, provided it is directly
172 related to implementing a uniform online summative test system, an online adaptive test
173 system, or both:

174 (i) computer equipment and peripherals, including electronic data capture devices
175 designed for electronic test administration and scoring;

176 (ii) software;

177 (iii) networking equipment;

178 (iv) upgrades of existing equipment or software;

179 (v) upgrades of existing physical plant facilities;

180 (vi) personnel to provide technical support or coordination and management; and

- 181 (vii) teacher professional development.
- 182 (b) Equipment purchased in compliance with Subsection (3)(a), when not in use for the
183 online delivery of summative tests or adaptive tests required under U-PASS may be used for
184 other purposes.
- 185 (4) The State Board of Education shall make rules:
- 186 (a) establishing procedures for applying for and awarding grants;
- 187 (b) specifying how grant money shall be allocated among school districts and charter
188 schools;
- 189 (c) requiring reporting of grant money expenditures and evidence showing that the
190 grant money has been used to implement a uniform online summative test system, an online
191 adaptive test system, or both;
- 192 (d) establishing technology standards for an online adaptive testing system;
- 193 (e) requiring a school district or charter school that receives a grant under this section
194 to implement, in compliance with Chapter 1, Part 14, Student Data Protection Act, and Chapter
195 13, Part 3, Utah Family Educational Rights and Privacy Act, an online adaptive test system by
196 the 2014-15 school year that:
- 197 (i) meets the technology standards established under Subsection (4)(d); and
- 198 (ii) is aligned with the core standards for Utah public schools;
- 199 (f) requiring a school district or charter school to provide matching funds to implement
200 a uniform online summative test system, an online adaptive test system, or both in an amount
201 that is greater than or equal to the amount of a grant received under this section; and
- 202 (g) [~~assuring~~] ensuring that student identifiable data is not released to any person,
203 except as provided by Chapter 1, Part 14, Student Data Protection Act, Section 53A-13-301,
204 and rules of the State Board of Education adopted under that section.
- 205 (5) If a school district or charter school uses grant money for purposes other than those
206 stated in Subsection (3), the school district or charter school is liable for reimbursing the State
207 Board of Education in the amount of the grant money improperly used.
- 208 (6) A school district or charter school may not use federal funds to provide the
209 matching funds required to receive a grant under this section.
- 210 (7) A school district may not impose a tax rate above the certified tax rate for the
211 purpose of generating revenue to provide matching funds for a grant under this section.

212 Section 3. Section **53A-1-1401** is enacted to read:

213 **Part 14. Student Data Protection Act**

214 **53A-1-1401. Title.**

215 This part is known as the "Student Data Protection Act."

216 Section 4. Section **53A-1-1402** is enacted to read:

217 **53A-1-1402. Definitions.**

218 As used in this part:

219 (1) "Adult student" means a student who:

220 (a) is at least 18 years old;

221 (b) is an emancipated student; or

222 (c) qualifies under the McKinney-Vento Homeless Education Assistance

223 Improvements Act of 2001, 42 U.S.C. Sec. 11431 et seq.

224 (2) "Aggregate data" means data that:

225 (a) are totaled and reported at the group, cohort, school, school district, region, or state

226 level with at least 10 individuals in the level;

227 (b) do not reveal personally identifiable student data; and

228 (c) are collected in accordance with board rule.

229 (3) (a) "Biometric identifier" means a:

230 (i) retina or iris scan;

231 (ii) fingerprint;

232 (iii) human biological sample used for valid scientific testing or screening; or

233 (iv) scan of hand or face geometry.

234 (b) "Biometric identifier" does not include:

235 (i) a writing sample;

236 (ii) a written signature;

237 (iii) a voiceprint;

238 (iv) a photograph;

239 (v) demographic data; or

240 (vi) a physical description, such as height, weight, hair color, or eye color.

241 (4) "Biometric information" means information, regardless of how the information is

242 collected, converted, stored, or shared:

- 243 (a) based on an individual's biometric identifier; and
- 244 (b) used to identify the individual.
- 245 (5) "Board" means the State Board of Education.
- 246 (6) "Cumulative disciplinary record" means disciplinary student data that is part of a
- 247 cumulative record.
- 248 (7) "Cumulative record" means physical or electronic information that the education
- 249 entity intends:
 - 250 (a) to store in a centralized location for 12 months or more; and
 - 251 (b) for the information to follow the student through the public education system.
- 252 (8) "Data authorization" means written authorization to collect or share a student's
- 253 student data, from:
 - 254 (a) the student's parent, if the student is not an adult student; or
 - 255 (b) the student, if the student is an adult student.
- 256 (9) "Data governance plan" means an education entity's comprehensive plan for
- 257 managing education data that:
 - 258 (a) incorporates reasonable data industry best practices to maintain and protect student
 - 259 data and other education-related data;
 - 260 (b) provides for necessary technical assistance, training, support, and auditing;
 - 261 (c) describes the process for sharing student data between an education entity and
 - 262 another person;
 - 263 (d) describes the process for an adult student or parent to request that data be
 - 264 expunged; and
 - 265 (e) is published annually and available on the education entity's website.
- 266 (10) "Education entity" means:
 - 267 (a) the board;
 - 268 (b) a local school board;
 - 269 (c) a charter school governing board;
 - 270 (d) a school district;
 - 271 (e) a charter school;
 - 272 (f) the Utah Schools for the Deaf and the Blind; or
 - 273 (g) for purposes of implementing the School Readiness Initiative described in Chapter

274 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section
275 53A-1b-103.

276 (11) "Expunge" means to seal or permanently destroy data, as described in board rule
277 made under Section 53A-1-1407.

278 (12) "External application" means a general audience:

279 (a) application;

280 (b) piece of software;

281 (c) website; or

282 (d) service.

283 (13) "Individualized education program" or "IEP" means a written statement:

284 (a) for a student with a disability; and

285 (b) that is developed, reviewed, and revised in accordance with the Individuals with
286 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

287 (14) "Local education agency" or "LEA" means:

288 (a) a school district;

289 (b) a charter school;

290 (c) the Utah Schools for the Deaf and the Blind; or

291 (d) for purposes of implementing the School Readiness Initiative described in Chapter
292 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section
293 53A-1b-103.

294 (15) "Metadata dictionary" means a complete list of an education entity's student data
295 elements and other education-related data elements, that:

296 (a) defines and discloses all data collected, used, stored, and shared by the education
297 entity, including:

298 (i) who uses a data element within an education entity and how a data element is used
299 within an education entity;

300 (ii) if a data element is shared externally, who uses the data element externally and how
301 a data element is shared externally;

302 (iii) restrictions on the use of a data element; and

303 (iv) parent and student rights to a data element;

304 (b) designates student data elements as:

- 305 (i) necessary student data; or
- 306 (ii) optional student data;
- 307 (c) designates student data elements as required by state or federal law; and
- 308 (d) without disclosing student data or security information, is displayed on the
- 309 education entity's website.
- 310 (16) "Necessary student data" means data required by state statute or federal law to
- 311 conduct the regular activities of an education entity, including:
- 312 (a) name;
- 313 (b) date of birth;
- 314 (c) sex;
- 315 (d) parent contact information;
- 316 (e) custodial parent information;
- 317 (f) contact information;
- 318 (g) a student identification number;
- 319 (h) local, state, and national assessment results or an exception from taking a local,
- 320 state, or national assessment;
- 321 (i) courses taken and completed, credits earned, and other transcript information;
- 322 (j) course grades and grade point average;
- 323 (k) grade level and expected graduation date or graduation cohort;
- 324 (l) degree, diploma, credential attainment, and other school exit information;
- 325 (m) attendance and mobility;
- 326 (n) drop-out data;
- 327 (o) immunization record or an exception from an immunization record;
- 328 (p) race;
- 329 (q) ethnicity;
- 330 (r) tribal affiliation;
- 331 (s) remediation efforts;
- 332 (t) an exception from a vision screening required under Section [53A-11-203](#) or
- 333 information collected from a vision screening required under Section [53A-11-203](#);
- 334 (u) information related to the Utah Registry of Autism and Developmental Disabilities,
- 335 described in Section [26-7-4](#);

- 336 (v) student injury information;
337 (w) a cumulative disciplinary record created and maintained as described in Section
338 53A-1-1407;
339 (x) juvenile delinquency records;
340 (y) English language learner status; and
341 (z) child find and special education evaluation data related to initiation of an IEP.
342 (17) (a) "Optional student data" means student data that is not:
343 (i) necessary student data; or
344 (ii) student data that an education entity may not collect under Section 53A-1-1406.
345 (b) "Optional student data" includes:
346 (i) information that is:
347 (A) related to an IEP or needed to provide special needs services; and
348 (B) ~~is~~ not necessary student data;
349 (ii) biometric information; and
350 (iii) information that is not necessary student data and that is required for a student to
351 participate in a federal or other program.
352 (18) "Parent" means a student's parent or legal guardian.
353 (19) (a) "Personally identifiable student data" means student data that identifies or
354 helps to identify a student.
355 (b) "Personally identifiable student data" includes:
356 (i) a student's first and last name;
357 (ii) the name of a student's family member;
358 (iii) a student's or a student's family's home or physical address;
359 (iv) a student's email address or online contact information;
360 (v) a student's telephone number;
361 (vi) a student's social security number;
362 (vii) a student's biometric identifier;
363 (viii) a student's health or disability data;
364 (ix) a student's education entity student identification number;
365 (x) a student's social media login or alias;
366 (xi) a student's persistent identifier, if the identifier is associated with personally

367 identifiable student data, including:

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

369 (B) a processor serial number;

370 (xii) a combination of a student's last name or photograph with other information that

371 together permits a person to contact the student online;

372 (xiii) information about a student or a student's family that a person collects online and

373 combines with other personally identifiable student data to identify the student; and

374 (xiv) other information that, alone or in combination, is linked or linkable to a specific

375 student that would allow a reasonable person in the school community, who does not have

376 first-hand knowledge of the student, to identify the student with reasonable certainty.

377 (20) "School official" means an employee or agent of an education entity, if the

378 education entity has authorized the employee or agent to request or receive student data on

379 behalf of the education entity.

380 (21) (a) "Student data" means information about a student at the individual student

381 level.

382 (b) "Student data" does not include aggregate or de-identified data.

383 (22) "Student data disclosure statement" means a student data disclosure statement

384 described in Section [53A-1-1406](#).

385 (23) "Student data manager" means:

386 (a) the state student data officer; or

387 (b) an individual designated as a student data manager by an education entity under

388 Section [53A-1-1404](#).

389 (24) "Third-party contractor" means a person who:

390 (a) is not an education entity; and

391 (b) pursuant to a contract with an education entity, collects or receives student data in

392 order to provide a product or service, as described in the contract.

393 Section 5. Section **53A-1-1403** is enacted to read:

394 **53A-1-1403. State student data protection governance.**

395 (1) (a) An education entity or a third-party contractor who collects, uses, stores, shares,

396 or deletes student data shall protect student data as described in this part.

397 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

398 board shall makes rules to administer this part, including student data protection standards for
399 public education employees, student aides, and volunteers.

400 (2) The board shall oversee the preparation and maintenance of:

401 (a) a statewide data governance plan; and

402 (b) a state-level metadata dictionary.

403 (3) As described in this Subsection (3), the board shall establish advisory groups to
404 oversee student data protection in the state and make recommendations to the board regarding
405 student data protection.

406 (a) The board shall establish a student data policy advisory group:

407 (i) composed of members from:

408 (A) the Legislature;

409 (B) the board and board employees; and

410 (C) one or more LEAs;

411 (ii) to discuss and make recommendations to the board regarding:

412 (A) enacted or proposed legislation; and

413 (B) state and local student data protection policies across the state;

414 (iii) that reviews and monitors the state student data governance plan; and

415 (iv) that performs other tasks related to student data protection as designated by the
416 board.

417 (b) The board shall establish a student data governance advisory group:

418 (i) composed of the state student data officer and other board employees; and

419 (ii) that performs duties related to state and local student data protection, including:

420 (A) overseeing data collection and usage by board program offices; and

421 (B) preparing and maintaining the board's student data governance plan under the
422 direction of the student data policy advisory group.

423 (c) The board shall establish a student data users advisory group:

424 (i) composed of members who use student data at the local level; and

425 (ii) that provides feedback and suggestions on the practicality of actions proposed by
426 the student data policy advisory group and the student data governance advisory group.

427 (4) (a) The board shall designate a state student data officer.

428 (b) The state student data officer shall:

429 (i) act as the primary point of contact for state student data protection administration in
430 assisting the board to administer this part;

431 (ii) ensure compliance with student privacy laws throughout the public education
432 system, including:

433 (A) providing training and support to applicable board and LEA employees; and

434 (B) producing resource materials, model plans, and model forms for local student data
435 protection governance, including a model student data disclosure statement;

436 (iii) investigate complaints of alleged violations of this part;

437 (iv) report violations of this part to:

438 (A) the board;

439 (B) an applicable education entity; and

440 (C) the student data policy advisory group; and

441 (v) act as a state level student data manager.

442 (5) The board shall designate:

443 (a) at least one support manager to assist the state student data officer; and

444 (b) a student data protection auditor to assist the state student data officer.

445 (6) The board shall establish an external research review process for a request for data
446 for the purpose of external research or evaluation.

447 Section 6. Section **53A-1-1404** is enacted to read:

448 **53A-1-1404. Local student data protection governance.**

449 (1) An LEA shall adopt policies to protect student data in accordance with this part and
450 board rule, taking into account the specific needs and priorities of the LEA.

451 (2) (a) An LEA shall designate an individual to act as a student data manager to fulfill
452 the responsibilities of a student data manager described in Section [53A-1-1409](#).

453 (b) If possible, an LEA shall designate the LEA's records officer as defined in Section
454 [63G-2-103](#), as the student data manager.

455 (3) An LEA shall create and maintain an LEA:

456 (a) data governance plan; and

457 (b) metadata dictionary.

458 (4) An LEA shall establish an external research review process for a request for data
459 for the purpose of external research or evaluation.

460 Section 7. Section 53A-1-1405 is enacted to read:

461 **53A-1-1405. Student data ownership -- Student and parent liability -- Notification**
462 **in case of breach.**

463 (1) A student owns the student's personally identifiable student data.

464 (2) (a) The provisions of this part do not apply to student data if:

465 (i) a student or parent self-initiates the collection, use, or sharing of the student data by
466 accessing or using an external application and the education entity does not require the student
467 or parent to access or use the external application; or

468 (ii) a student or parent self-initiates the collection, use, or sharing of the student data by
469 accessing or using open-source applications or materials that the education entity requires the
470 student or parent to access or use and the education entity has included the information
471 described in Subsection 53A-1-1406(3)(f) as part of the student data disclosure statement.

472 (b) An education entity may not penalize a student or a parent who opts not to use an
473 open-source application or material that the education entity requires the student or parent to
474 use.

475 (c) An education entity or a third-party contractor is not liable for:

476 (i) the collection, use, or sharing of student data as described in Subsection (2)(a)(i) or
477 (ii); or

478 (ii) the sales, marketing, or advertising promoted by an external application, if a
479 student or parent:

480 (A) self-initiated the use of the external application; and

481 (B) consented to the sales, marketing, or advertising.

482 (3) If there is a release of a student's personally identifiable student data due to a
483 security breach, an education entity shall notify:

484 (a) the student, if the student is an adult student; or

485 (b) the student's parent, if the student is not an adult student.

486 Section 8. Section 53A-1-1406 is enacted to read:

487 **53A-1-1406. Collecting student data -- Prohibition -- Student data disclosure**
488 **statement -- Authorization.**

489 (1) An education entity shall comply with this section beginning with the 2017-18
490 school year.

- 491 (2) An education entity may not collect a student's:
492 (a) social security number; or
493 (b) except as required in Section 78A-6-112, criminal record.
494 (3) An education entity that collects student data into a cumulative record shall, in
495 accordance with this section, prepare and distribute to parents and students a student data
496 disclosure statement that:
497 (a) is a prominent, stand-alone document;
498 (b) is annually updated and published on the education entity's website;
499 (c) states the necessary and optional student data the education entity collects;
500 (d) states that the education entity will not collect the student data described in
501 Subsection (2);
502 (e) states the student data described in Section 53A-1-1409 that the education entity
503 may not share without a data authorization;
504 (f) states that students and parents are responsible for the collection, use, or sharing of
505 student data as described in Subsection 53A-1-1405(2)(a)(ii);
506 (g) describes how the education entity may collect, use, and share student data;
507 (h) includes the following statement:
508 "The collection, use, and sharing of student data has both benefits and risks. Parents
509 and students should learn about these benefits and risks and make choices regarding student
510 data accordingly.";
511 (i) describes in general terms how the education entity stores and protects student data;
512 and
513 (j) states a student's rights under this part.
514 (4) An education entity may collect the necessary student data of a student into a
515 cumulative record if the education entity provides a student data disclosure statement to:
516 (a) the student, if the student is an adult student; or
517 (b) the student's parent, if the student is not an adult student.
518 (5) An education entity may collect optional student data into a cumulative record if
519 the education entity:
520 (a) provides, to an individual described in Subsection (4), a student data disclosure
521 statement that includes a description of:

522 (i) the optional student data to be collected; and
 523 (ii) how the education entity will use the optional student data; and
 524 (b) obtains a data authorization to collect the optional student data from an individual
 525 described in Subsection (4).

526 (6) An education entity may collect a student's biometric identifier or biometric
 527 information into a cumulative record if the education entity:

528 (a) provides, to an individual described in Subsection (4), a biometric information
 529 disclosure statement that is separate from a student data disclosure statement, which states:

530 (i) the biometric identifier or biometric information to be collected;
 531 (ii) the purpose of collecting the biometric identifier or biometric information; and
 532 (iii) how the education entity will use and store the biometric identifier or biometric
 533 information; and

534 (b) obtains a data authorization to collect the biometric identifier or biometric
 535 information from an individual described in Subsection (4).

536 Section 9. Section **53A-1-1407** is enacted to read:

537 **53A-1-1407. Using and destroying student data -- Rulemaking -- Cumulative**
 538 **disciplinary record.**

539 (1) In accordance with Title 63G, Chapter 2, Government Records Access and
 540 Management Act, and Chapter 3, Utah Administrative Rulemaking Act, the board shall make
 541 rules regarding using and expunging student data, including:

542 (a) a categorization of cumulative disciplinary records that includes the following
 543 levels of maintenance:

544 (i) one year;

545 (ii) three years; and

546 (iii) except as required in Subsection ~~H~~→ [(2)(b)] (3) ←H , as determined by the
 546a education entity;

547 (b) the types of student data that may be expunged, including:

548 (i) medical records; and

549 (ii) behavioral test assessments; and

550 (c) the types of student data that may not be expunged, including:

551 (i) grades;

552 (ii) transcripts;

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

554 (iv) assessment information.

555 (2) In accordance with board rule, an education entity may create and maintain a
556 cumulative disciplinary record for a student.

557 (3) (a) An education entity shall, in accordance with board rule, expunge a student's
558 student data that is stored by the education entity if:

559 (i) the student is at least 23 years old; and

560 (ii) the student requests that the education entity expunge the student data.

561 (b) An education entity shall retain and dispose of records in accordance with Section
562 63G-2-604 and board rule.

563 Section 10. Section **53A-1-1408** is enacted to read:

564 **53A-1-1408. Securing and cataloguing student data.**

565 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
566 board shall make rules that:

567 (1) using reasonable data industry best practices, prescribe the maintenance and
568 protection of stored student data by:

569 (a) an education entity; and

570 (b) a third-party contractor; and

571 (2) state requirements for an education entity's metadata dictionary.

572 Section 11. Section **53A-1-1409** is enacted to read:

573 **53A-1-1409. Sharing student data -- Prohibition -- Requirements for student data**
574 **manager.**

575 (1) An education entity shall comply with this section beginning with the 2017-18
576 school year.

577 (2) An education entity may not share a student's personally identifiable student data if
578 the personally identifiable student data is not shared in accordance with:

579 (a) the Family Education Rights and Privacy Act and related provisions under 20
580 U.S.C. Secs. 1232G and 1232h; and

581 (b) this part.

582 (3) A student data manager shall:

583 (a) authorize and manage the sharing, outside of the education entity, of personally

584 identifiable student data from a cumulative record for the education entity as described in this
585 section; and

586 (b) act as the primary local point of contact for the state student data officer described
587 in Section 53A-1-1403.

588 (4) (a) Except as provided in this section ~~H~~→ **or required by federal law** ←~~H~~ , a student
588a data manager may not share,
589 outside of the education entity, personally identifiable student data from a cumulative record
590 without a data authorization.

591 (b) A student data manager may share the personally identifiable student data of a
592 student with the student and the student's parent.

593 (5) A student data manager may share a student's personally identifiable student data
594 from a cumulative record with:

595 (a) a school official;

596 (b) as described in Subsection (6), an authorized caseworker or other representative of
597 the Department of Human Services; or

598 (c) a person to whom the student data manager's education entity has outsourced a
599 service or function:

600 (i) to research the effectiveness of a program's implementation; or

601 (ii) that the education entity's employees would typically perform.

602 (6) A student data manager may share a student's personally identifiable student data
603 from a cumulative record with a caseworker or representative of the Department of Human
604 Services if:

605 (a) the Department of Human Services is:

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

607 (ii) providing services to the student;

608 (b) the student's personally identifiable student data is not shared with a person who is
609 not authorized:

610 (i) to address the student's education needs; or

611 (ii) by the Department of Human Services to receive the student's personally
612 identifiable student data; and

613 (c) the Department of Human Services maintains and protects the student's personally
614 identifiable student data.

615 (7) The Department of Human Services, a school official, or the Utah Juvenile Court
 616 may share education information, including a student's personally identifiable student data, to
 617 improve education outcomes for youth:

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

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

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

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

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

623 (8) Subject to Subsection (9), a student data manager may share aggregate data.

624 (9) (a) If a student data manager receives a request to share data for the purpose of
 625 external research or evaluation, the student data manager shall:

626 (i) submit the request to the education entity's external research review process; and

627 (ii) fulfill the instructions that result from the review process.

628 (b) A student data manager may not share personally identifiable student data for the
 629 purpose of external research or evaluation.

629a **Ĥ→ (10) (a) A student data manager may share personally identifiable student data in**
 629b **response to a subpoena issued by a court.**

629c **(b) A person who receives personally identifiable student data under Subsection (10)(a)**
 629d **may not use the personally identifiable student data outside of the use described in the**
 629e **subpoena.**

629f **(11) (a) In accordance with board rule, a student data manager may share personally**
 629g **identifiable information that is directory information.**

629h **(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the**
 629i **board shall make rules to:**

629j **(i) define directory information; and**

629k **(ii) determine how a student data manager may share personally identifiable**
 629l **information that is directory information.** ←Ĥ

630 Section 12. Section **53A-1-1410** is enacted to read:

631 **53A-1-1410. Third-party contractors -- Use and protection of student data --**

632 **Contract requirements -- Completion of contract -- Restrictions on use of student data.**

633 **(1) Ĥ→ [(a)] ←Ĥ A third-party contractor shall use student data received through a contract**
 633a **with**

634 **an education entity strictly for the purpose of providing the contracted product or service.**

635 **Ĥ→ [(b) A third-party contractor shall maintain and protect student data in accordance with**
 636 **this part and board rule.**⊗

637 ~~⊗(i) If a third-party contractor collects student data, the third-party contractor shall abide~~
638 ~~by the same provisions as an education entity under Section [53A-1-1406](#);~~

639 ~~⊗(ii) If a third-party contractor shares student data outside of the education entity, the~~
640 ~~third-party contractor shall work with the student data manager to fulfill the requirements of~~
641 ~~Section [53A-1-1409](#).] ←Ĥ~~

642 (2) When contracting with a third-party contractor, an education entity shall require the
643 following provisions in the contract:

644 ~~Ĥ→ [(a) requirements and restrictions on the use of student data by the third-party~~
645 ~~contractor, including an acknowledgment that the third-party contractor will abide by⊗~~

646 ~~Subsection (1):~~

646a (a) requirements and restrictions related to collection, use, storage, or sharing of student data
 646b by the third-party contractor that are necessary for the education entity to ensure compliance
 646c with the provisions of this part and board rule; ←H

647 (b) a prohibition on the sharing of student data with any entity or affiliate of the
 648 third-party contractor if the entity or affiliate of the third-party contractor is not named and
 649 authorized in the contract to receive the student data;

650 (c) dates that govern the permanent destruction of student data received by the
 651 third-party contractor;

652 (d) prohibitions on the secondary use of personally identifiable student data by a
 653 third-party contractor, including sales, marketing, or advertising; and

654 (e) an agreement by the third-party contractor that, at the request of the education entity
 655 that is a party to the contract, the education entity or the education entity's designee may audit
 656 the third-party contractor to verify compliance with the contract.

657 (3) At the completion of a contract with an education entity, if the contract has not
 658 been renewed, a third-party contractor shall:

659 (a) return all personally identifiable student data to the education entity; or

660 (b) destroy all personally identifiable student data related to the third-party contractor's
 661 work.

662 (4) A third-party contractor may not:

663 (a) sell student data; or

664 (b) collect, use, or share student data in a way that is not authorized in the contract with
 665 an education entity.

666 Section 13. Section **53A-1-1411** is enacted to read:

667 **53A-1-1411. Penalties.**

668 (1) (a) A third-party contractor that knowingly or recklessly permits unauthorized
 669 collecting, sharing, or use of student data under this part:

670 (i) except as provided in Subsection (1)(b), may not enter into a future contract with an
 671 education entity;

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

673 (iii) may be required to pay:

674 (A) the education entity's cost of notifying parents and students of the unauthorized
 675 sharing or use of student data; and

676 (B) expenses incurred by the education entity as a result of the unauthorized sharing or

677 use of student data.

678 (b) An education entity may enter into a contract with a third-party contractor that
679 knowingly or recklessly permitted unauthorized collecting, sharing, or use of student data if:

680 (i) the board or education entity determines that the third-party contractor has corrected
681 the errors that caused the unauthorized collecting, sharing, or use of student data; and

682 (ii) the third-party contractor demonstrates:

683 (A) if the third-party contractor is under contract with an education entity, current
684 compliance with this part; or

685 (B) an ability to comply with the requirements of this part.

686 (c) The board may assess the civil penalty described in Subsection (1)(a)(ii) in
687 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

688 (d) The board may bring an action in the district court of the county in which the office
689 of the board is located, if necessary, to enforce payment of the civil penalty described in
690 Subsection (1)(a)(ii).

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

693 (2) (a) A parent or student may bring an action in a court of competent jurisdiction for
694 damages caused by violation of this part by a third-party contractor.

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

697 (i) damages;

698 (ii) costs; and

699 (iii) reasonable attorney fees.

700 Section 14. Section **53A-11a-203** is amended to read:

701 **53A-11a-203. Parental notification of certain incidents and threats required.**

702 (1) For purposes of this section, "parent" includes a student's guardian.

703 (2) A school shall:

704 (a) notify a parent if the parent's student threatens to commit suicide; or

705 (b) notify the parents of each student involved in an incident of bullying,

706 cyber-bullying, harassment, hazing, or retaliation, of the incident involving each parent's
707 student.

708 (3) (a) If a school notifies a parent of an incident or threat required to be reported under
 709 Subsection (2), the school shall produce and maintain a record that verifies that the parent was
 710 notified of the incident or threat.

711 (b) A school shall maintain a record described in Subsection (3)(a) in accordance with
 712 the requirements of:

713 [~~(i) Section 53A-13-301;~~]

714 [~~(ii) Section 53A-13-302;~~]

715 (i) Chapter 1, Part 14, Student Data Protection Act;

716 (ii) Sections 53A-13-301 and 53A-13-302;

717 (iii) [~~20 U.S.C. 1232g;~~] Federal Family Educational Rights and Privacy Act, 20 U.S.C.
 718 1232g; and

719 (iv) 34 C.F.R. Part 99.

720 (4) A local school board or charter school governing board shall adopt a policy
 721 regarding the process for:

722 (a) notifying a parent as required in Subsection (2); and

723 (b) producing and retaining a record that verifies that a parent was notified of an
 724 incident or threat as required in Subsection (3).

725 (5) At the request of a parent, a school may provide information and make
 726 recommendations related to an incident or threat described in Subsection (2).

727 (6) A school shall:

728 (a) provide a student a copy of a record maintained in accordance with this section that
 729 relates to the student if the student requests a copy of the record; and

730 (b) expunge a record maintained in accordance with this section that relates to a
 731 student if the student:

732 (i) has graduated from high school; and

733 (ii) requests the record be expunged.

734 Section 15. Section **53A-13-301** is amended to read:

735 **53A-13-301. Application of state and federal law to the administration and**
 736 **operation of public schools -- Local school board and charter school governing board**
 737 **policies.**

738 (1) As used in this section "education entity" means:

- 739 (a) the State Board of Education;
- 740 (b) a local school board or charter school governing board;
- 741 (c) a school district;
- 742 (d) a public school; or
- 743 (e) the Utah Schools for the Deaf and the Blind.

744 (2) An education entity and an employee, student aide, volunteer, third party
745 contractor, or other agent of an education entity shall protect the privacy of a student, the
746 student's parents, and the student's family and support parental involvement in the education of
747 their children through compliance with the protections provided for family and student privacy
748 under Section [53A-13-302](#) and the [Federal] Family Educational Rights and Privacy Act and
749 related provisions under 20 U.S.C. Secs. 1232(g) and 1232(h), in the administration and
750 operation of all public school programs, regardless of the source of funding.

751 (3) A local school board or charter school governing board shall enact policies
752 governing the protection of family and student privacy as required by this section and Section
753 [53A-13-302](#).

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

758 [~~(b) The rules described in Subsection (4)(a) shall provide that a local school board or~~
759 ~~charter school governing board may adopt policies related to public school student~~
760 ~~confidentiality to address the specific needs or priorities of the school district or charter~~
761 ~~school.]~~

762 [~~(5) The State Board of Education shall:]~~

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

766 [~~(b) provide the materials described in Subsection (5)(a) to each school district and~~
767 ~~charter school.]~~

768 [~~(6) An education entity shall notify the parent or guardian of a student if there is a~~
769 ~~release of the student's personally identifiable student data due to a security breach.]~~

770 Section 16. Section 53A-13-302 is amended to read:

771 **53A-13-302. Activities prohibited without prior written consent -- Validity of**
772 **consent -- Qualifications -- Training on implementation.**

773 (1) Except as provided in Subsection (7), Section 53A-11a-203, and Section
774 53A-15-1301, policies adopted by a school district or charter school under Section 53A-13-301
775 shall include prohibitions on the administration to a student of any psychological or psychiatric
776 examination, test, or treatment, or any survey, analysis, or evaluation without the prior written
777 consent of the student's parent or legal guardian, in which the purpose or evident intended
778 effect is to cause the student to reveal information, whether the information is personally
779 identifiable or not, concerning the student's or any family member's:

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

782 (b) mental or psychological problems;

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

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

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

787 (f) religious affiliations or beliefs;

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

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

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

793 (3) Except as provided in Subsection (7), Section 53A-11a-203, and Section
794 53A-15-1301, the prohibitions under Subsection (1) shall also apply within the curriculum and
795 other school activities unless prior written consent of the student's parent or legal guardian has
796 been obtained.

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

801 ~~[(a)]~~ (i) records or information, including information about relationships, that may be
802 examined or requested;

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

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

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

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

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

810 (b) For a survey described in Subsection (1), written notice described in Subsection
811 (4)(a) shall include an Internet address where a parent or legal guardian can view the exact
812 survey to be administered to the parent or legal guardian's student.

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

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

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

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

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

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

830 (b) (i) If a school employee or agent believes that a situation exists which presents a
831 serious threat to the well-being of a student, that employee or agent shall notify the student's

832 parent or guardian without delay.

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

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

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

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

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

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

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

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

854 **Section 17. Appropriation.**

855 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for
856 the fiscal year beginning July 1, 2016, and ending June 30, 2017, the following sums of money
857 are appropriated from resources not otherwise appropriated, or reduced from amounts
858 previously appropriated, out of the funds or amounts indicated. These sums of money are in
859 addition to amounts previously appropriated for fiscal year 2017.

860 To State Board of Education -- State Office of Education

861 From Education Fund

\$800,000

862 Schedule of Programs:

863 Assessment and Accountability \$800,000
864 The Legislature intends that:
865 (1) the State Board of Education use the appropriation described in this section to
866 administer Title 53A, Chapter 1, Part 14, Student Data Protection Act; and
867 (2) the appropriation described under this section not lapse.
868 Section 18. **Repealer.**
869 This bill repeals:
870 Section **53A-1-711**, State Board of Education student privacy study -- Chief
871 **privacy officer.**