

STUDENT PRIVACY AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

Senate Sponsor: _____

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:

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



- 28 • from the Education Fund, \$1,055,000.
- 29 ▶ to the State Board of Education -- State Office of Education -- Assessment and
- 30 Accountability, as a one-time appropriation:
- 31 • from the Education Fund, \$930,000.

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

- 36 **53A-1-603**, as last amended by Laws of Utah 2015, Chapters 258, 415, and 444
- 37 **53A-1-708**, as last amended by Laws of Utah 2015, Chapter 415
- 38 **53A-11a-203**, as last amended by Laws of Utah 2015, Chapter 253
- 39 **53A-13-301**, as last amended by Laws of Utah 2015, Chapter 117
- 40 **53A-13-302**, as last amended by Laws of Utah 2014, Chapter 214

41 ENACTS:

- 42 **53A-1-1401**, Utah Code Annotated 1953
- 43 **53A-1-1402**, Utah Code Annotated 1953
- 44 **53A-1-1403**, Utah Code Annotated 1953
- 45 **53A-1-1404**, Utah Code Annotated 1953
- 46 **53A-1-1405**, Utah Code Annotated 1953
- 47 **53A-1-1406**, Utah Code Annotated 1953
- 48 **53A-1-1407**, Utah Code Annotated 1953
- 49 **53A-1-1408**, Utah Code Annotated 1953
- 50 **53A-1-1409**, Utah Code Annotated 1953
- 51 **53A-1-1410**, Utah Code Annotated 1953
- 52 **53A-1-1411**, Utah Code Annotated 1953

53 REPEALS:

- 54 **53A-1-711**, as enacted by Laws of Utah 2015, Chapter 384



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

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

58 **53A-1-603. Duties of State Board of Education.**

59 (1) The State Board of Education shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

88 (a) the computation of student performance based on information that is disaggregated
89 with respect to race, ethnicity, gender, limited English proficiency, and those students who

90 qualify for free or reduced price school lunch;

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

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

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

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

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

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

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

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

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

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

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

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

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

118 (a) establishing procedures for applying for and awarding money for computer adaptive
119 tests;

120 (b) specifying how money for computer adaptive tests shall be allocated among school

121 districts and charter schools that qualify to receive the money; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151 **53A-1-708. Grants for online delivery of U-PASS tests.**

152 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

179 (ii) software;

180 (iii) networking equipment;

181 (iv) upgrades of existing equipment or software;

182 (v) upgrades of existing physical plant facilities;

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

214 purpose of generating revenue to provide matching funds for a grant under this section.

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

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

217 **53A-1-1401. Title.**

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

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

220 **53A-1-1402. Definitions.**

221 As used in this part:

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

223 (a) is at least 18 years old;

224 (b) is an emancipated student; or

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

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

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

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

229 level with at least 10 individuals in the level;

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

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

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

233 (i) retina or iris scan;

234 (ii) fingerprint;

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

236 (iv) scan of hand or face geometry.

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

238 (i) a writing sample;

239 (ii) a written signature;

240 (iii) a voiceprint;

241 (iv) a photograph;

242 (v) demographic data; or

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

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

245 collected, converted, stored, or shared:

246 (a) based on an individual's biometric identifier; and

247 (b) used to identify the individual.

248 (5) "Board" means the State Board of Education.

249 (6) "Data governance plan" means an education entity's comprehensive plan for
250 managing education data that:

251 (a) incorporates industry best practices to maintain and protect student data and other
252 education-related data;

253 (b) provides for necessary technical assistance, training, support, and auditing;

254 (c) describes the process for sharing student data between an education entity and
255 another person;

256 (d) describes the process for an adult student or parent to request that data be
257 expunged; and

258 (e) is published annually and available on the education entity's website.

259 (7) "Education entity" means:

260 (a) the board;

261 (b) a local school board;

262 (c) a charter school governing board;

263 (d) a school district;

264 (e) a charter school;

265 (f) the Utah Schools for the Deaf and the Blind; or

266 (g) for purposes of implementing the School Readiness Initiative described in Title
267 53A, Chapter 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created
268 in Section [53A-1b-103](#).

269 (8) "Expunge" means to seal or permanently destroy data, as described in board rule
270 made under Section [53A-1-1407](#).

271 (9) "External application" means a general audience:

272 (a) application;

273 (b) software;

274 (c) website; or

275 (d) service.

- 276 (10) "Individualized education program" or "IEP" means a written statement:
- 277 (a) for a student with a disability; and
- 278 (b) that is developed, reviewed, and revised in accordance with the Individuals with
- 279 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.
- 280 (11) "Local education agency" or "LEA" means:
- 281 (a) a school district;
- 282 (b) a charter school;
- 283 (c) the Utah Schools for the Deaf and the Blind; or
- 284 (d) for purposes of implementing the School Readiness Initiative described in Title
- 285 53A, Chapter 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created
- 286 in Section [53A-1b-103](#).
- 287 (12) "Metadata dictionary" means a complete list of an education entity's student data
- 288 and other education-related data, that:
- 289 (a) defines and discloses all data collected, stored, and shared by the education entity;
- 290 (b) designates student data elements as:
- 291 (i) necessary student data; or
- 292 (ii) optional student data;
- 293 (c) designates student data elements as required by state or federal law; and
- 294 (d) without disclosing student data or security information, is displayed on the
- 295 education entity's website.
- 296 (13) "Necessary student data" means data required by state statute or federal law to
- 297 conduct the regular activities of an education entity, including:
- 298 (a) name;
- 299 (b) date of birth;
- 300 (c) sex;
- 301 (d) parent contact information;
- 302 (e) custodial parent information;
- 303 (f) contact information;
- 304 (g) a student identification number;
- 305 (h) local, state, and national assessment results;
- 306 (i) courses taken and completed, credits earned, and other transcript information;

- 307 (j) course grades and grade point average;
308 (k) grade level and expected graduation date or graduation cohort;
309 (l) degree, diploma, credential attainment, and other school exit information;
310 (m) attendance and mobility;
311 (n) drop-out data;
312 (o) immunization record or an exception from an immunization record;
313 (p) race;
314 (q) ethnicity;
315 (r) tribal affiliation;
316 (s) remediation efforts;
317 (t) an exception from a vision screening required under Section [53A-11-203](#) or
318 information collected from a vision screening required under Section [53A-11-203](#);
319 (u) information related to the Utah Registry of Autism and Developmental Disabilities,
320 described in Section [26-7-4](#);
321 (v) student injury information;
322 (w) a permanent disciplinary report created and maintained as described in Section
323 [53A-1-1407](#);
324 (x) juvenile delinquency records; and
325 (y) English language learner status.
326 (14) (a) "Optional student data" means student data that is not:
327 (i) necessary student data; or
328 (ii) student data that an education entity may not collect under Section [53A-1-1406](#).
329 (b) "Optional student data" includes:
330 (i) information related to an IEP;
331 (ii) information needed to provide special needs services;
332 (iii) biometric information; and
333 (iv) information that is not necessary student data and that is required for a student to
334 participate in a federal or other program.
335 (15) "Parent" means a student's parent or legal guardian.
336 (16) "Permanent disciplinary record" means disciplinary student data that is part of a
337 permanent record.

338 (17) "Permanent record" means physical or electronic information that the education
339 entity intends to:

- 340 (a) store in a centralized location for 12 months or more; and
- 341 (b) have follow the student through the public education system.

342 (18) (a) "Personally identifiable student data" means student data that identifies or
343 helps to identify a student.

344 (b) "Personally identifiable student data" includes:

- 345 (i) a student's first and last name;
- 346 (ii) the name of a student's family member;
- 347 (iii) a student's or a student's family's home or physical address;
- 348 (iv) a student's email address or online contact information;
- 349 (v) a student's telephone number;
- 350 (vi) a student's social security number;
- 351 (vii) a student's biometric identifier;
- 352 (viii) a student's health or disability data;
- 353 (ix) a student's education entity student identification number;
- 354 (x) a student's social media login or alias;
- 355 (xi) a student's persistent identifier, if the identifier is associated with personally
356 identifiable student data, including:
 - 357 (A) a customer number held in a cookie; or
 - 358 (B) a processor serial number;
- 359 (xii) a combination of a student's last name or photograph with other information that
360 together permits a person to contact the student online;
- 361 (xiii) information about a student or a student's family that a person collects online and
362 combines with other personally identifiable student data to identify the student; and
- 363 (xiv) other information that, alone or in combination, is linked or linkable to a specific
364 student that would allow a reasonable person in the school community, who does not have
365 first-hand knowledge of the student, to identify the student with reasonable certainty.

366 (19) "School official" means an employee or agent of an education entity, if the
367 education entity determines the employee or agent has a legitimate interest in the student data.

368 (20) "Security plan" means an annually updated plan for maintaining the security of

- 369 stored student data and other education-related data that includes the following confidential
370 components:
- 371 (a) privacy compliance standards;
 - 372 (b) privacy and annual security audits;
 - 373 (c) breach planning and notification procedures;
 - 374 (d) data retention and disposition policies, approved by the State Records Committee
375 under Section [63G-2-502](#);
 - 376 (e) specifications for creating and maintaining a secure database that:
 - 377 (i) protects personally identifiable student data; and
 - 378 (ii) allows for statistical analyses, research, and evaluation of student data;
 - 379 (f) guidelines for sharing student data, including authentication of authorized access;
 - 380 (g) guidelines for the safeguarding of electronic and physical student data, including
381 data encryption; and
 - 382 (h) guidelines for education entity employees and third-party contractors to safeguard
383 student data.
- 384 (21) "Student authorization" means written authorization to collect a student's student
385 data from:
- 386 (a) the student's parent, if the student is not an adult student; or
 - 387 (b) the student, if the student is an adult student.
- 388 (22) (a) "Student data" means information about a student at the individual student
389 level.
- 390 (b) "Student data" does not include aggregate or de-identified data.
- 391 (23) "Student data disclosure statement" means a student data disclosure statement
392 described in Section [53A-1-1406](#).
- 393 (24) "Student data manager" means:
- 394 (a) the state student data officer; or
 - 395 (b) an individual designated as a student data manager by an education entity under
396 Section [53A-1-1404](#).
- 397 (25) "Third-party contractor" means a person who:
- 398 (a) is not an education entity; and
 - 399 (b) pursuant to a contract with an education entity, collects or receives student data in

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

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

402 **53A-1-1403. State student data protection governance.**

403 (1) (a) The board and other entities who collect, use, store, share, or delete student data
404 shall protect student data as described in this part.

405 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
406 board shall makes rules to administer this part, including student data protection standards for
407 public education employees, student aides, and volunteers.

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

409 (a) a statewide data governance plan; and

410 (b) for student data protection at the state level:

411 (i) a security plan; and

412 (ii) a metadata dictionary.

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

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

417 (i) composed of members from:

418 (A) the Legislature;

419 (B) the board and board employees; and

420 (C) one or more LEAs;

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

422 (A) enacted or proposed legislation; and

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

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

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

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

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

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

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

431 (B) reviewing and recommending for approval local security plans; and
432 (C) preparing and maintaining the board's student data governance plan under the
433 direction of the student data policy advisory group.
434 (c) The board shall establish a student data users advisory group:
435 (i) composed of members who use student data at the local level; and
436 (ii) that provides feedback and suggestions on the practicality of actions proposed by
437 the student data policy advisory group and the student data governance advisory group.
438 (4) (a) The board shall designate a state student data officer.
439 (b) The state student data officer shall:
440 (i) act as the primary point of contact for state student data protection administration in
441 assisting the board to administer this part;
442 (ii) ensure compliance with student privacy laws throughout the public education
443 system, including:
444 (A) providing training and support to applicable board and LEA employees; and
445 (B) producing resource materials and forms, including a model student data disclosure
446 statement;
447 (iii) investigate complaints of alleged violations of this part;
448 (iv) report violations of this part to:
449 (A) the board;
450 (B) an applicable education entity; and
451 (C) the student data policy advisory group; and
452 (v) act as a state level student data manager.
453 (5) The board shall designate:
454 (a) at least one support manager to assist the state student data officer; and
455 (b) a student data protection auditor to assist the state student data officer.
456 (6) The board shall establish an external research review process for a request for data
457 for the purpose of external research or evaluation.
458 Section 6. Section **53A-1-1404** is enacted to read:
459 **53A-1-1404. Local student data protection governance.**
460 (1) An LEA shall adopt policies to protect student data in accordance with this part and
461 board rule, taking into account the specific needs and priorities of the LEA.

- 462 (2) (a) An LEA shall designate an individual to act as a student data manager.
- 463 (b) Beginning with the 2017-18 school year, a student data manager shall manage all
- 464 requests for a student's personally identifiable student data, in accordance with this part.
- 465 (3) An LEA shall create and maintain, for the LEA:
- 466 (a) a data governance plan;
- 467 (b) a security plan that is approved by the board; and
- 468 (c) a metadata dictionary.
- 469 (4) An LEA shall establish an external research review process for a request for data
- 470 for the purpose of external research or evaluation.

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

472 **53A-1-1405. Student data ownership -- Student and parent liability -- Notification**
473 **in case of breach.**

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

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

- 476 (i) a student or parent has self-initiated the collection, use, or sharing of the student
- 477 data by accessing or using an external application; and
- 478 (ii) the education entity does not require the student or parent to access or use the
- 479 external application.

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

- 481 (i) the collection, use, or sharing of student data as described in Subsection (2)(a); or
- 482 (ii) the sales, marketing, or advertising promulgated by an external application, if a
- 483 student or parent consented to the sales, marketing, or advertising.

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

- 486 (a) the student, if the student is an adult student; or
- 487 (b) the student's parent, if the student is not an adult student.

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

489 **53A-1-1406. Collecting student data -- Prohibition -- Student data disclosure**
490 **statement -- Authorization.**

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

493 (2) An education entity may not collect a student's:
494 (a) social security number; or
495 (b) except as required in Section 78A-6-112, criminal record.
496 (3) An education entity that collects student data into a permanent record shall, in
497 accordance with this section, prepare and distribute to parents and students a student data
498 disclosure statement that:
499 (a) is a written, stand-alone document;
500 (b) is published on the education entity's website;
501 (c) states the necessary and optional student data the education entity collects;
502 (d) states that the education entity will not collect the student data described in
503 Subsection (2);
504 (e) states the student data described in Section 53A-1-1409 that the education entity
505 may not share without authorization;
506 (f) describes how the education entity may collect, use, and share student data;
507 (g) describes the implications of authorizing the education entity to collect student
508 data;
509 (h) describes in general terms how the education entity stores and protects student data;
510 and
511 (i) states a student's rights under this part.
512 (4) An education entity may collect the necessary student data of a student into a
513 permanent record if the education entity provides a student data disclosure statement to:
514 (a) the student, if the student is an adult student; or
515 (b) the student's parent, if the student is not an adult student.
516 (5) An education entity may collect optional student data into a permanent record if the
517 education entity:
518 (a) provides, to an individual described in Subsection (4), a student data disclosure
519 statement that includes a description of:
520 (i) the optional student data to be collected; and
521 (ii) how the education entity will use the optional student data; and
522 (b) obtains student authorization to collect the optional student data from an individual
523 described in Subsection (4).

524 (6) An education entity may collect a student's biometric identifier or biometric
525 information into a permanent record if the education entity:

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

528 (i) the biometric identifier or biometric information to be collected;

529 (ii) the purpose of collecting the biometric identifier or biometric information; and

530 (iii) how the education entity will use and store the biometric identifier or biometric
531 information; and

532 (b) obtains student authorization to collect the biometric identifier or biometric
533 information from an individual described in Subsection (4).

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

535 **53A-1-1407. Using and destroying student data -- Rulemaking -- Permanent**
536 **disciplinary record.**

537 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
538 board shall make rules regarding using and expunging student data, including:

539 (a) a classification of permanent disciplinary records that includes the following levels
540 of maintenance:

541 (i) one year;

542 (ii) three years; and

543 (iii) except as required in Subsection (2)(b), as determined by the education entity;

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

545 (i) medical records; and

546 (ii) behavioral test assessments; and

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

548 (i) grades;

549 (ii) transcripts;

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

551 (iv) assessment information.

552 (2) (a) In accordance with board rule, an education entity may create and maintain a
553 permanent disciplinary record for a student.

554 (b) An education entity shall, in accordance with board rule, expunge a student's

555 student data that is stored by the education entity if:

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

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

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

559 **53A-1-1408. Securing and cataloguing student data.**

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

562 (1) using industry best practices, prescribe the maintenance and protection of stored
563 student data by:

564 (a) an education entity; and

565 (b) a third-party contractor;

566 (2) state requirements for an education entity's:

567 (a) metadata dictionary; and

568 (b) security plan.

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

570 **53A-1-1409. Sharing student data -- Prohibition -- Requirements for student data**
571 **manager.**

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

574 (2) Except as provided in the Federal Family Education Rights and Privacy Act and
575 related provisions under 20 U.S.C. Secs. 1232G and 1232h and this section, an education entity
576 may not share a student's personally identifiable student data.

577 (3) A student data manager shall:

578 (a) authorize and manage the sharing of personally identifiable student data from a
579 permanent record for the education entity as described in this section; and

580 (b) act as the primary local point of contact for the state student data officer described
581 in Section [53A-1-1403](#).

582 (4) Except as provided in this section, a student data manager may not share personally
583 identifiable student data from a permanent record without student authorization.

584 (5) A student data manager may share a student's personally identifiable student data
585 from a permanent record with:

586 (a) a school official;
587 (b) as described in Subsection (6), an authorized caseworker or other representative of
588 the Department of Human Services; or
589 (c) a person to whom the student data manager's education entity has outsourced a
590 service or function:
591 (i) to research the effectiveness of a program's implementation; or
592 (ii) that the education entity's employees would typically perform.
593 (6) A student data manager may share a student's personally identifiable student data
594 from a permanent record with a caseworker or representative of the Department of Human
595 Services if:
596 (a) the Department of Human Services is:
597 (i) legally responsible for the care and protection of the student; or
598 (ii) providing services to the student;
599 (b) the student's personally identifiable student data is not shared with a person who is
600 not authorized:
601 (i) to address the student's education needs; or
602 (ii) by the Department of Human Services to receive the student's personally
603 identifiable student data; and
604 (c) the Department of Human Services maintains and protects the student's personally
605 identifiable student data.
606 (7) The Department of Human Services, a school official, or the Utah Juvenile Court
607 may share education information, including a student's personally identifiable student data, to
608 improve education outcomes for youth:
609 (a) in the custody of, or under the guardianship of, the Department of Human Services;
610 (b) receiving services from the Division of Juvenile Justice Services;
611 (c) in the custody of the Division of Child and Family Services;
612 (d) receiving services from the Division of Services for People with Disabilities; or
613 (e) under the jurisdiction of the Utah Juvenile Court.
614 (8) Subject to Subsection (9), a student data manager may share aggregate data.
615 (9) (a) If a student data manager receives a request to share data for the purpose of
616 external research or evaluation, the student data manager shall:

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

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

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

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

622 **53A-1-1410. Third-party contractors -- Use and protection of student data --**

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

624 (1) (a) A third-party contractor shall use student data received through a contract with
625 an education entity strictly for the purpose of providing the contracted product or service.

626 (b) A third-party contractor shall maintain and protect student data in accordance with
627 this part and board rule.

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

630 (ii) If a third-party contractor shares student data, the third-party contractor shall work
631 with the student data manager to fulfill the requirements of Section [53A-1-1409](#).

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

634 (a) requirements and restrictions on the use of student data by the third-party
635 contractor, including an acknowledgment that the third-party contractor will abide by
636 Subsection (1);

637 (b) dates that govern the permanent destruction of student data received by the
638 third-party contractor;

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

641 (d) an agreement by the third-party contractor that, at the request of the education
642 entity, the education entity may audit the third-party contractor to ensure compliance with the
643 contract.

644 (3) At the completion of a contract with an education entity, a third-party contractor
645 shall:

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

647 (b) destroy all personally identifiable student data related to the third-party contractor's

648 work.

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

650 (a) use student data for a purpose not described in the third-party's contract with an
651 education entity;

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

654 (c) sell student data.

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

656 **53A-1-1411. Penalties.**

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

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

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

662 (iii) may be required to pay:

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

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

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

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

670 (ii) the third-party contractor demonstrates an ability to comply with the requirements
671 of this part.

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

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

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

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

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

683 (i) damages;

684 (ii) costs; and

685 (iii) reasonable attorney fees.

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

687 **53A-11a-203. Parental notification of certain incidents and threats required.**

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

689 (2) A school shall:

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

691 (b) notify the parents of each student involved in an incident of bullying,
 692 cyber-bullying, harassment, hazing, or retaliation, of the incident involving each parent's
 693 student.

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

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

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

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

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

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

703 (iii) [~~20 U.S.C. 1232g,~~] Federal Family Educational Rights and Privacy Act, 20 U.S.C.
 704 1232g; and

705 (iv) C.F.R. Part 99.

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

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

709 (b) producing and retaining a record that verifies that a parent was notified of an

710 incident or threat as required in Subsection (3).

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

713 (6) A school shall:

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

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

718 (i) has graduated from high school; and

719 (ii) requests the record be expunged.

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

721 **53A-13-301. Application of state and federal law to the administration and**
722 **operation of public schools -- Local school board and charter school governing board**
723 **policies.**

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

725 (a) the State Board of Education;

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

727 (c) a school district;

728 (d) a public school; or

729 (e) the Utah Schools for the Deaf and the Blind.

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

737 (3) A local school board or charter school governing board shall enact policies
738 governing the protection of family and student privacy as required by this section and Section
739 53A-13-302.

740 [~~(4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~

741 ~~the State Board of Education shall makes rules to establish standards for public education~~
742 ~~employees, student aides, and volunteers in public schools regarding the confidentiality of~~
743 ~~student information and student records.]~~

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

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

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

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

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

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

757 **53A-13-302. Activities prohibited without prior written consent -- Validity of**
758 **consent -- Qualifications -- Training on implementation.**

759 (1) Except as provided in Subsection (7), Section **53A-11a-203**, and Section
760 **53A-15-1301**, policies adopted by a school district or charter school under Section **53A-13-301**
761 shall include prohibitions on the administration to a student of any psychological or psychiatric
762 examination, test, or treatment, or any survey, analysis, or evaluation without the prior written
763 consent of the student's parent or legal guardian, in which the purpose or evident intended
764 effect is to cause the student to reveal information, whether the information is personally
765 identifiable or not, concerning the student's or any family member's:

- 766 (a) political affiliations or, except as provided under Section **53A-13-101.1** or rules of
767 the State Board of Education, political philosophies;
768 (b) mental or psychological problems;
769 (c) sexual behavior, orientation, or attitudes;
770 (d) illegal, anti-social, self-incriminating, or demeaning behavior;
771 (e) critical appraisals of individuals with whom the student or family member has close

772 family relationships;

773 (f) religious affiliations or beliefs;

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

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

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

779 (3) Except as provided in Subsection (7), Section [53A-11a-203](#), and Section
780 [53A-15-1301](#), the prohibitions under Subsection (1) shall also apply within the curriculum and
781 other school activities unless prior written consent of the student's parent or legal guardian has
782 been obtained.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

833 (b) On or before September 1, 2014, a school district or charter school shall develop

834 and adopt a policy regarding intervention measures consistent with Subsection (7)(a) while
835 requiring the minimum degree of intervention to accomplish the goals of this section.

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

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

840 Section 17. **Appropriation.**

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

846 To State Board of Education -- State Office of Education

847 From Education Fund \$1,055,000

848 From Education Fund, one-time \$930,000

849 Schedule of Programs:

850 Assessment and Accountability \$1,985,000

851 The Legislature intends that:

852 (1) the State Board of Education use the appropriation described in this section to
853 administer Title 53A, Chapter 1, Part 14, Student Data Protection Act; and

854 (2) \$1,055,000 of the appropriation described under this section be:

855 (a) ongoing; and

856 (b) non-lapsing.

857 Section 18. **Repealer.**

858 This bill repeals:

859 Section **53A-1-711**, **State Board of Education student privacy study -- Chief**
860 **privacy officer.**