{deleted text} shows text that was in HB0358S01 but was deleted in HB0358S03.

inserted text shows text that was not in HB0358S01 but was inserted into HB0358S03.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

{Representative Jacob L. Anderegg}Senator Howard A. Stephenson 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:

- ▸ to the State Board of Education -- State Office of Education -- Assessment and Accountability, as {an ongoing}a one-time appropriation:

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

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

ENACTS:

53A-1-1401, Utah Code Annotated 1953

53A-1-1402, Utah Code Annotated 1953

53A-1-1403, Utah Code Annotated 1953

53A-1-1404, Utah Code Annotated 1953

53A-1-1405, Utah Code Annotated 1953

53A-1-1406, Utah Code Annotated 1953

53A-1-1407, Utah Code Annotated 1953

53A-1-1408, Utah Code Annotated 1953

53A-1-1409, Utah Code Annotated 1953

53A-1-1410, Utah Code Annotated 1953

53A-1-1411, Utah Code Annotated 1953

REPEALS:

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

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

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

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

    (1) The State Board of Education shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The State Board of Education may award a grant to a school district or charter

school to pay for an online writing assessment and instruction program that may be used to assess the writing of students in grade 11.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The State Board of Education shall develop or adopt sample materials to be used by

a school district or charter school for professional development training on youth suicide prevention.

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) software;

(iii) networking equipment;

(iv) upgrades of existing equipment or software;

(v) upgrades of existing physical plant facilities;

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

(vii) teacher professional development.

(b) Equipment purchased in compliance with Subsection (3)(a), when not in use for the online delivery of summative tests or adaptive tests required under U-PASS may be used for other purposes.

(4) The State Board of Education shall make rules:

(a) establishing procedures for applying for and awarding grants;

(b) specifying how grant money shall be allocated among school districts and charter schools;

(c) requiring reporting of grant money expenditures and evidence showing that the grant money has been used to implement a uniform online summative test system, an online adaptive test system, or both;

(d) establishing technology standards for an online adaptive testing system;

(e) requiring a school district or charter school that receives a grant under this section to implement, in compliance with Chapter 1, Part 14, Student Data Protection Act, and Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act, an online adaptive test system by the 2014-15 school year that:

(i) meets the technology standards established under Subsection (4)(d); and

(ii) is aligned with the core standards for Utah public schools;

(f) requiring a school district or charter school to provide matching funds to implement a uniform online summative test system, an online adaptive test system, or both in an amount that is greater than or equal to the amount of a grant received under this section; and

(g) [assuring] ensuring that student identifiable data is not released to any person, except as provided by Chapter 1, Part 14, Student Data Protection Act, Section 53A-13-301, and rules of the State Board of Education adopted under that section.

(5) If a school district or charter school uses grant money for purposes other than those stated in Subsection (3), the school district or charter school is liable for reimbursing the State Board of Education in the amount of the grant money improperly used.

(6) A school district or charter school may not use federal funds to provide the matching funds required to receive a grant under this section.

(7) A school district may not impose a tax rate above the certified tax rate for the purpose of generating revenue to provide matching funds for a grant under this section.

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

Part 14. Student Data Protection Act

53A-1-1401. Title.

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

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

53A-1-1402. Definitions.

As used in this part:

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

(a) is at least 18 years old;

(b) is an emancipated student; or

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

(2) "Aggregate data" means data that:

(a) are totaled and reported at the group, cohort, school, school district, region, or state level with at least 10 individuals in the level;

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

(c) are collected in accordance with board rule.

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

(i) retina or iris scan;

(ii) fingerprint;

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

(iv) scan of hand or face geometry.

(b) "Biometric identifier" does not include:

(i) a writing sample;

(ii) a written signature;

(iii) a voiceprint;

(iv) a photograph;

(v) demographic data; or

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

(4) "Biometric information" means information, regardless of how the information is collected, converted, stored, or shared:

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

(b) used to identify the individual.

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

(6) "Cumulative disciplinary record" means disciplinary student data that is part of a cumulative record.

(7) "Cumulative record" means physical or electronic information that the education entity intends:

(a) to store in a centralized location for 12 months or more; and

(b) for the information to follow the student through the public education system.

(8) "Data authorization" means written authorization to collect or share a student's student data, from:

(a) the student's parent, if the student is not an adult student; or

(b) the student, if the student is an adult student.

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

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

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

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

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

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

(10) "Education entity" means:

(a) the board;

(b) a local school board;

(c) a charter school governing board;

(d) a school district;

(e) a charter school;

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

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

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

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

(a) application;

(b) piece of software;

(c) website; or

(d) service.

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

(a) for a student with a disability; and

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

(14) "Internal application" means an Internet website, online service, online application, mobile application, or software, if the Internet website, online service, online application, mobile application, or software is subject to a third-party contractor's contract with an education entity.

({14}15) "Local education agency" or "LEA" means:

(a) a school district;

(b) a charter school;

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

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

({15}16) "Metadata dictionary" means a complete list of an education entity's student data elements and other education-related data elements, that:

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

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

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

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

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

(b) designates student data elements as:

(i) necessary student data; or

(ii) optional student data;

(c) designates student data elements as required by state or federal law; and

(d) without disclosing student data or security information, is displayed on the education entity's website.

({16}17) "Necessary student data" means data required by state statute or federal law to conduct the regular activities of an education entity, including:

(a) name;

(b) date of birth;

(c) sex;

(d) parent contact information;

(e) custodial parent information;

(f) contact information;

(g) a student identification number;

(h) local, state, and national assessment results or an exception from taking a local, state, or national assessment;

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

(j) course grades and grade point average;

(k) grade level and expected graduation date or graduation cohort;

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

(m) attendance and mobility;

(n) drop-out data;

(o) immunization record or an exception from an immunization record;

(p) race;

(q) ethnicity;

(r) tribal affiliation;

(s) remediation efforts;

(t) an exception from a vision screening required under Section 53A-11-203 or information collected from a vision screening required under Section 53A-11-203;

(u) information related to the Utah Registry of Autism and Developmental Disabilities, described in Section 26-7-4;

(v) student injury information;

(w) a cumulative disciplinary record created and maintained as described in Section 53A-1-1407;

(x) juvenile delinquency records;

(y) English language learner status; and

(z) child find and special education evaluation data related to initiation of an IEP.

({17}18) (a) "Optional student data" means student data that is not:

(i) necessary student data; or

(ii) student data that an education entity may not collect under Section 53A-1-1406.

(b) "Optional student data" includes:

(i) information that is:

(A) related to an IEP or needed to provide special needs services; and

(B) {is }not necessary student data;

(ii) biometric information; and

(iii) information that is not necessary student data and that is required for a student to participate in a federal or other program.

({18}19) "Parent" means a student's parent or legal guardian.

({19}20) (a) "Personally identifiable student data" means student data that identifies or {helps}is used by the holder to identify a student.

(b) "Personally identifiable student data" includes:

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

(ii) the first and last name of a student's family member;

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

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

(v) a student's telephone number;

(vi) a student's social security number;

(vii) a student's biometric identifier;

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

(ix) a student's education entity student identification number;

(x) a student's social media {login}user name and password or alias;

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

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

(B) a processor serial number;

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

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

(xiv) other information that{, alone or in combination,} is linked{ or linkable} to a specific student that would allow a reasonable person in the school community, who does not have first-hand knowledge of the student, to identify the student with reasonable certainty.

({20}21) "School official" means an employee or agent of an education entity, if the education entity has authorized the employee or agent to request or receive student data on behalf of the education entity.

({21}22) (a) "Student data" means information about a student at the individual student level.

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

({22}23) "Student data disclosure statement" means a student data disclosure statement described in Section 53A-1-1406.

({23}24) "Student data manager" means:

(a) the state student data officer; or

(b) an individual designated as a student data manager by an education entity under Section 53A-1-1404.

(25) "Targeted advertising" means advertising to a student on an internal or external application, if the advertisement is based on information or student data the third-party contractor collected or received under the third-party contractor's contract with an education entity.

(({24}}26) "Third-party contractor" means a person who:

(a) is not an education entity; and

(b) pursuant to a contract with an education entity, collects or receives student data in order to provide a product or service, as described in the contract, if the product or service is not related to school photography, yearbooks, graduation announcements, or a similar product or service.

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

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

(1) (a) An education entity or a third-party contractor who collects, uses, stores, shares, or deletes student data shall protect student data as described in this part.

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

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

(a) a statewide data governance plan; and

(b) a state-level metadata dictionary.

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

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

(i) composed of members from:

(A) the Legislature;

(B) the board and board employees; and

(C) one or more LEAs;

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

(A) enacted or proposed legislation; and

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

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

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

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

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

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

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

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

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

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

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

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

(b) The state student data officer shall:

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

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

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

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

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

(iv) report violations of this part to:

(A) the board;

(B) an applicable education entity; and

(C) the student data policy advisory group; and

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

(5) The board shall designate:

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

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

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

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

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

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

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

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

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

(a) data governance plan; and

(b) metadata dictionary.

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

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

53A-1-1405. Student data ownership -- {Student and parent liability -- }Notification in case of breach.

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

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

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

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

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

use.

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

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

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

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

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

(3)(b) A student may download, export, transfer, save, or maintain the student's student data, including a document.

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

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

(b) the student's parent or legal guardian, if the student is not an adult student.

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

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

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

(2) An education entity may not collect a student's:

(a) social security number; or

(b) except as required in Section 78A-6-112, criminal record.

(3) An education entity that collects student data into a cumulative record shall, in accordance with this section, prepare and distribute to parents and students a student data disclosure statement that:

(a) is a prominent, stand-alone document;

(b) is annually updated and published on the education entity's website;

(c) states the necessary and optional student data the education entity collects;

(d) states that the education entity will not collect the student data described in Subsection (2);

(e) states the student data described in Section 53A-1-1409 that the education entity

may not share without a data authorization;

(f) states that students and parents are responsible for the collection, use, or sharing of student data as described in Subsection 53A-1-1405(2)(a)(ii);

(g) describes how the education entity may collect, use, and share student data;

(h) includes the following statement:

"The collection, use, and sharing of student data has both benefits and risks. Parents and students should learn about these benefits and risks and make choices regarding student data accordingly.";

(i) describes in general terms how the education entity stores and protects student data; and

(j) states a student's rights under this part.

(4) An education entity may collect the necessary student data of a student into a cumulative record if the education entity provides a student data disclosure statement to:

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

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

(5) An education entity may collect optional student data into a cumulative record if the education entity:

(a) provides, to an individual described in Subsection (4), a student data disclosure statement that includes a description of:

(i) the optional student data to be collected; and

(ii) how the education entity will use the optional student data; and

(b) obtains a data authorization to collect the optional student data from an individual described in Subsection (4).

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

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

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

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

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

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

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

53A-1-1407. Using and {destroying}deleting student data -- Rulemaking -- Cumulative disciplinary record.

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

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

(i) one year;

(ii) three years; and

(iii) except as required in Subsection ({2)(b}3), as determined by the education entity;

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

(i) medical records; and

(ii) behavioral test assessments; and

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

(i) grades;

(ii) transcripts;

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

(iv) assessment information.

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

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

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

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

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

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

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

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

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

(a) an education entity; and

(b) a third-party contractor; and

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

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

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

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

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

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

(b) this part.

(3) A student data manager shall:

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

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

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

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

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

(a) a school official;

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

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

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

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

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

(a) the Department of Human Services is:

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

(ii) providing services to the student;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) define directory information; and

(ii) determine how a student data manager may share personally identifiable information that is directory information.

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

53A-1-1410. Third-party contractors -- Use and protection of student data -- Contract requirements -- Completion of contract -- Required and allowed uses of student data -- Restrictions on the use of student data -- Exceptions.

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

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

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

(ii) If a third-party contractor shares student data outside of the education entity, the third-party contractor shall work with the student data manager to fulfill the requirements of Section 53A-1-1409.

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

(a) requirements and restrictions {on}related to the collection, use, storage, or sharing of student data by the third-party contractor{, including an acknowledgment that the third-party contractor will abide by Subsection (1);

(b) a prohibition on the sharing of student data with any entity or} that are necessary for the education entity to ensure compliance with the provisions of this part and board rule;

(b) a description of a person, or type of person, including an affiliate of the third-party contractor{ if the entity or affiliate of}, with whom the third-party contractor {is not named and authorized in the contract to receive the}may share student data;

(c) {dates that govern the permanent destruction of}provisions that, at the request of the education entity, govern the deletion of the student data received by the third-party contractor;

(d) {prohibitions on}except as provided in Subsection (4) and if required by the education entity, provisions that prohibit the secondary use of personally identifiable student data by {a}the third-party contractor{, including sales, marketing, or advertising}; and

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

(3) As authorized by law or court order, a third-party contractor shall share student data as requested by law enforcement.

(4) A third-party contractor may:

(a) use student data for adaptive learning or customized student learning purposes;

(b) market an educational application or product to a parent or legal guardian of a student if the third-party contractor did not use student data, shared by or collected on behalf of an education entity, to market the educational application or product;

(c) use a recommendation engine to recommend to a student:

(i) content that relates to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party; or

(ii) services that relate to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party;

(d) respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party; or

(e) use student data to allow or improve operability and functionality of the third-party contractor's internal application.

({3}5) At the completion of a contract with an education entity, if the contract has not been renewed, a third-party contractor shall:

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

(b) {destroy}as reasonable, delete all personally identifiable student data related to the third-party contractor's work.

({4}6) (a) A third-party contractor may not:

({a}i) except as provided in Subsection (6)(b), sell student data;{ or}

({b}ii) collect, use, or share student data{ in a way that is not authorized in the contract with an}, if the collection, use or sharing of the student data is inconsistent with the third-party contractor's contract with the education entity; or

(iii) use student data for targeted advertising.

(b) A person may obtain student data through the purchase of, merger with, or otherwise acquiring a third-party contractor if the third-party contractor remains in compliance with this section.

(7) A provider of an external application that receives content from a third-party content provider is not required to ensure that the third-party content provider is in compliance with this section.

(8) A provider of an electronic store, gateway, marketplace, or other means of purchasing an external application is not required to ensure that the external application obtained through the provider complies with this section.

(9) The provisions of this section do not apply to:

(a) the use of an external application, including the access of an external application with login credentials created by a third-party contractor's internal application; or

(b) the providing of Internet service.

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

53A-1-1411. Penalties.

(1) (a) A third-party contractor that knowingly or recklessly permits unauthorized

collecting, sharing, or use of student data under this part:

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

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

(iii) may be required to pay:

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

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

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

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

(ii) the third-party contractor demonstrates:

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

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

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

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

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

(2) (a) A parent or student may bring an action in a court of competent jurisdiction for damages caused by a knowing or reckless violation of {this part}Section 53A-1-1410 by a third-party contractor.

(b) If the court finds that a third-party contractor has violated {this part}Section 53A-1-1410, the court may award to the parent or student:

(i) damages; and

(ii) costs{; and

(iii) reasonable attorney fees}.

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

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

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

(2) A school shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) A school shall:

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

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

(i) has graduated from high school; and

(ii) requests the record be expunged.

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

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

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

(a) the State Board of Education;

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

(c) a school district;

(d) a public school; or

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

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

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

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

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

school.]

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

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

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

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

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

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

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

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

(b) mental or psychological problems;

(c) sexual behavior, orientation, or attitudes;

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

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

(f) religious affiliations or beliefs;

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

(h) income, except as required by law.

(2) Prior written consent under Subsection (1) is required in all grades, kindergarten

through grade 12.

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

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

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

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

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

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

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

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

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

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

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

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

(d) A written withdrawal of authorization submitted to the school principal by the

authorizing parent or guardian terminates the authorization.

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

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

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

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

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

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

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

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

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

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

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

Section 17. **Appropriation.**

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

To State Board of Education -- State Office of Education

From Education Fund, one-time $800,000

Schedule of Programs:

Assessment and Accountability $800,000

The Legislature intends that:

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

(2) the appropriation described under this section not lapse.

Section 18. **Repealer.**

This bill repeals:

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