

STUDENT DATA PRIVACY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: A. Cory Maloy

LONG TITLE

General Description:

This bill repeals provisions related to the State Board of Education sharing student data.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to the State Board of Education sharing student data with the Utah Registry of Autism and Developmental Disabilities;

- ▶ repeals provisions related to the State Board of Education sharing student data with the State Board of Regents; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53E-9-301, as last amended by Laws of Utah 2018, Chapters 304, 389 and renumbered and amended by Laws of Utah 2018, Chapter 1

53E-9-305, as last amended by Laws of Utah 2018, Chapter 304 and renumbered and amended by Laws of Utah 2018, Chapter 1

53E-9-308, as last amended by Laws of Utah 2018, Chapters 285, 304 and renumbered and amended by Laws of Utah 2018, Chapter 1

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

Section 1. Section **53E-9-301** is amended to read:

53E-9-301. 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.

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

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

59 (b) used to identify the individual.

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

61 (6) "Data breach" means an unauthorized release of or unauthorized access to
62 personally identifiable student data that is maintained by an education entity.

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

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

67 (b) describes the role, responsibility, and authority of an education entity data
68 governance staff member;

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

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

72 (e) describes the education entity's data expungement process, including how to
73 respond to requests for expungement;

74 (f) describes the data breach response process; and

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

76 (8) "Education entity" means:

77 (a) the board;

78 (b) a local school board;

79 (c) a charter school governing board;

80 (d) a school district;

81 (e) a charter school;

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

83 (g) for purposes of implementing the School Readiness Initiative described in Title
84 53F, Chapter 6, Part 3, School Readiness Initiative, the School Readiness Board created in
85 Section [35A-3-209](#).

86 (9) "Expunge" means to seal or permanently delete data, as described in board rule
87 made under Section [53E-9-306](#).

88 (10) "General audience application" means an Internet website, online service, online
89 application, mobile application, or software program that:

90 (a) is not specifically intended for use by an audience member that attends kindergarten
91 or a grade from 1 to 12, although an audience member may attend kindergarten or a grade from
92 1 to 12; and

93 (b) is not subject to a contract between an education entity and a third-party contractor.

94 [~~(11) "Higher education outreach student data" means the following student data for a~~
95 ~~student:]~~

96 [~~(a) name;~~]

97 [~~(b) parent name;~~]

98 [~~(c) grade;~~]

99 [~~(d) school and school district; and]~~

100 [~~(e) contact information, including:]~~

101 [~~(i) primary phone number;~~]

102 [~~(ii) email address; and]~~

103 [~~(iii) physical address.]~~

104 [~~(12)] (11) "Individualized education program" or "IEP" means a written statement:~~

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

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

108 [~~(13)] (12) "Local education agency" or "LEA" means:~~

109 (a) a school district;

110 (b) a charter school;
111 (c) the Utah Schools for the Deaf and the Blind; or
112 (d) for purposes of implementing the School Readiness Initiative described in Title
113 53F, Chapter 6, Part 3, School Readiness Initiative, the School Readiness Board created in
114 Section 35A-3-209.

115 ~~[(14)]~~ (13) "Metadata dictionary" means a record that:

116 (a) defines and discloses all personally identifiable student data collected and shared by
117 the education entity;

118 (b) comprehensively lists all recipients with whom the education entity has shared
119 personally identifiable student data, including:

120 (i) the purpose for sharing the data with the recipient;

121 (ii) the justification for sharing the data, including whether sharing the data was
122 required by federal law, state law, or a local directive; and

123 (iii) how sharing the data is permitted under federal or state law; and

124 (c) without disclosing personally identifiable student data, is displayed on the
125 education entity's website.

126 ~~[(15)]~~ (14) "Necessary student data" means data required by state statute or federal law
127 to conduct the regular activities of an education entity, including:

128 (a) name;

129 (b) date of birth;

130 (c) sex;

131 (d) parent contact information;

132 (e) custodial parent information;

133 (f) contact information;

134 (g) a student identification number;

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

- 137 (i) courses taken and completed, credits earned, and other transcript information;
- 138 (j) course grades and grade point average;
- 139 (k) grade level and expected graduation date or graduation cohort;
- 140 (l) degree, diploma, credential attainment, and other school exit information;
- 141 (m) attendance and mobility;
- 142 (n) drop-out data;
- 143 (o) immunization record or an exception from an immunization record;
- 144 (p) race;
- 145 (q) ethnicity;
- 146 (r) tribal affiliation;
- 147 (s) remediation efforts;
- 148 (t) an exception from a vision screening required under Section 53G-9-404 or
- 149 information collected from a vision screening required under Section 53G-9-404;
- 150 (u) information related to the Utah Registry of Autism and Developmental Disabilities,
- 151 described in Section 26-7-4;
- 152 (v) student injury information;
- 153 (w) a disciplinary record created and maintained as described in Section 53E-9-306;
- 154 (x) juvenile delinquency records;
- 155 (y) English language learner status; and
- 156 (z) child find and special education evaluation data related to initiation of an IEP.
- 157 ~~[(16)]~~ (15) (a) "Optional student data" means student data that is not:
- 158 (i) necessary student data; or
- 159 (ii) student data that an education entity may not collect under Section 53E-9-305.
- 160 (b) "Optional student data" includes:
- 161 (i) information that is:
- 162 (A) related to an IEP or needed to provide special needs services; and
- 163 (B) not necessary student data;

164 (ii) biometric information; and
165 (iii) information that is not necessary student data and that is required for a student to
166 participate in a federal or other program.

167 [~~(17)~~] (16) "Parent" means:

- 168 (a) a student's parent;
- 169 (b) a student's legal guardian; or
- 170 (c) an individual who has written authorization from a student's parent or legal
171 guardian to act as a parent or legal guardian on behalf of the student.

172 [~~(18)~~] (17) (a) "Personally identifiable student data" means student data that identifies
173 or is used by the holder to identify a student.

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

- 175 (i) a student's first and last name;
- 176 (ii) the first and last name of a student's family member;
- 177 (iii) a student's or a student's family's home or physical address;
- 178 (iv) a student's email address or other online contact information;
- 179 (v) a student's telephone number;
- 180 (vi) a student's social security number;
- 181 (vii) a student's biometric identifier;
- 182 (viii) a student's health or disability data;
- 183 (ix) a student's education entity student identification number;
- 184 (x) a student's social media user name and password or alias;
- 185 (xi) if associated with personally identifiable student data, the student's persistent
186 identifier, including:
 - 187 (A) a customer number held in a cookie; or
 - 188 (B) a processor serial number;
- 189 (xii) a combination of a student's last name or photograph with other information that
190 together permits a person to contact the student online;

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

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

197 [~~(19)~~] (18) "School official" means an employee or agent of an education entity, if the
198 education entity has authorized the employee or agent to request or receive student data on
199 behalf of the education entity.

200 [~~(20)~~] (19) (a) "Student data" means information about a student at the individual
201 student level.

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

203 [~~(21)~~] (20) "Student data manager" means:

204 (a) the state student data officer; or

205 (b) an individual designated as a student data manager by an education entity under
206 Section [53E-9-303](#), who fulfills the duties described in Section [53E-9-308](#).

207 [~~(22)~~] (21) (a) "Targeted advertising" means presenting advertisements to a student
208 where the advertisement is selected based on information obtained or inferred over time from
209 that student's online behavior, usage of applications, or student data.

210 (b) "Targeted advertising" does not include advertising to a student:

211 (i) at an online location based upon that student's current visit to that location; or

212 (ii) in response to that student's request for information or feedback, without retention
213 of that student's online activities or requests over time for the purpose of targeting subsequent
214 ads.

215 [~~(23)~~] (22) "Third-party contractor" means a person who:

216 (a) is not an education entity; and

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

218 order to provide a product or service, as described in the contract, if the product or service is
219 not related to school photography, yearbooks, graduation announcements, or a similar product
220 or service.

221 ~~[(24)]~~ (23) "Written consent" means written authorization to collect or share a student's
222 student data, from:

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

225 Section 2. Section **53E-9-305** is amended to read:

226 **53E-9-305. Collecting student data -- Prohibition -- Student data collection notice**
227 **-- Written consent.**

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

- 229 (a) social security number; or
- 230 (b) except as required in Section [78A-6-112](#), criminal record.

231 (2) An education entity that collects student data shall, in accordance with this section,
232 prepare and distribute, except as provided in Subsection (3), to parents and students a student
233 data collection notice statement that:

- 234 (a) is a prominent, stand-alone document;
- 235 (b) is annually updated and published on the education entity's website;
- 236 (c) states the student data that the education entity collects;
- 237 (d) states that the education entity will not collect the student data described in

238 Subsection (1);

239 (e) states the student data described in Section [53E-9-308](#) that the education entity may
240 not share without written consent;

241 (f) includes the following statement:

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

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

247 (h) states a student's rights under this part~~[-and]~~.

248 ~~[(i) for an education entity that teaches students in grade 9, 10, 11, or 12, requests~~
249 ~~written consent to share student data with the State Board of Regents as described in Section~~
250 ~~53E-9-308.]~~

251 (3) The board may publicly post the board's collection notice described in Subsection
252 (2).

253 (4) An education entity may collect the necessary student data of a student if the
254 education entity provides a student data collection notice to:

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

257 (5) An education entity may collect optional student data if the education entity:

258 (a) provides, to an individual described in Subsection (4), a student data collection
259 notice that includes a description of:

- 260 (i) the optional student data to be collected; and
- 261 (ii) how the education entity will use the optional student data; and
- 262 (b) obtains written consent to collect the optional student data from an individual
263 described in Subsection (4).

264 (6) An education entity may collect a student's biometric identifier or biometric
265 information if the education entity:

- 266 (a) provides, to an individual described in Subsection (4), a biometric information
267 collection notice that is separate from a student data collection notice, which states:
 - 268 (i) the biometric identifier or biometric information to be collected;
 - 269 (ii) the purpose of collecting the biometric identifier or biometric information; and
 - 270 (iii) how the education entity will use and store the biometric identifier or biometric
271 information; and

272 (b) obtains written consent to collect the biometric identifier or biometric information
273 from an individual described in Subsection (4).

274 (7) Except under the circumstances described in Subsection 53G-8-211(2), an
275 education entity may not refer a student to an alternative evidence-based intervention described
276 in Subsection 53G-8-211(3) without written consent.

277 Section 3. Section 53E-9-308 is amended to read:

278 **53E-9-308. Sharing student data -- Prohibition -- Requirements for student data**
279 **manager -- Authorized student data sharing.**

280 (1) (a) Except as provided in Subsection (1)(b), an education entity, including a student
281 data manager, may not share personally identifiable student data without written consent.

282 (b) An education entity, including a student data manager, may share personally
283 identifiable student data:

284 (i) in accordance with the Family Education Rights and Privacy Act and related
285 provisions under 20 U.S.C. Secs. 1232g and 1232h;

286 (ii) as required by federal law; and

287 (iii) as described in Subsections (3), (5), and (6).

288 (2) A student data manager shall:

289 (a) authorize and manage the sharing, outside of the student data manager's education
290 entity, of personally identifiable student data for the education entity as described in this
291 section;

292 (b) act as the primary local point of contact for the state student data officer described
293 in Section 53E-9-302; and

294 (c) fulfill other responsibilities described in the data governance plan of the student
295 data manager's education entity.

296 (3) A student data manager may share a student's personally identifiable student data
297 with a caseworker or representative of the Department of Human Services if:

298 (a) the Department of Human Services is:

- 299 (i) legally responsible for the care and protection of the student, including the
300 responsibility to investigate a report of educational neglect, as provided in Subsection
301 [62A-4a-409\(5\)](#); or
- 302 (ii) providing services to the student;
- 303 (b) the student's personally identifiable student data is not shared with a person who is
304 not authorized:
- 305 (i) to address the student's education needs; or
- 306 (ii) by the Department of Human Services to receive the student's personally
307 identifiable student data; and
- 308 (c) the Department of Human Services maintains and protects the student's personally
309 identifiable student data.
- 310 (4) The Department of Human Services, a school official, or the Utah Juvenile Court
311 may share personally identifiable student data to improve education outcomes for youth:
- 312 (a) in the custody of, or under the guardianship of, the Department of Human Services;
- 313 (b) receiving services from the Division of Juvenile Justice Services;
- 314 (c) in the custody of the Division of Child and Family Services;
- 315 (d) receiving services from the Division of Services for People with Disabilities; or
- 316 (e) under the jurisdiction of the Utah Juvenile Court.
- 317 (5) (a) A student data manager may share personally identifiable student data in
318 response to a subpoena issued by a court.
- 319 (b) A person who receives personally identifiable student data under Subsection (5)(a)
320 may not use the personally identifiable student data outside of the use described in the
321 subpoena.
- 322 (6) (a) A student data manager may share student data, including personally
323 identifiable student data, in response to a request to share student data for the purpose of
324 research or evaluation, if the student data manager:
- 325 (i) verifies that the request meets the requirements of 34 C.F.R. Sec. 99.31(a)(6);

326 (ii) submits the request to the education entity's research review process; and
327 (iii) fulfills the instructions that result from the review process.

328 (b) (i) In accordance with state and federal law, and subject to Subsection (6)(b)(ii), the
329 board shall share student data, including personally identifiable student data, as requested by
330 the Utah Registry of Autism and Developmental Disabilities described in Section 26-7-4.

331 (ii) (A) At least 30 days before the state board shares student data in accordance with
332 Subsection (6)(b)(i), the education entity from which the state board received the student data
333 shall provide notice to the parent of each student for which the state board intends to share
334 student data.

335 (B) The state board may not, for a particular student, share student data as described in
336 Subsection (6)(b)(i) if the student's parent requests that the state board not share the student
337 data.

338 ~~[(ii)]~~ (iii) A person who receives student data under Subsection (6)(b)(i):

339 (A) shall maintain and protect the student data in accordance with board rule described
340 in Section 53E-9-307;

341 (B) may not use the student data for a purpose not described in Section 26-7-4; and

342 (C) is subject to audit by the state student data officer described in Section 53E-9-302.

343 ~~[(c) The board shall enter into an agreement with the State Board of Regents,~~
344 ~~established in Section 53B-1-103, to share higher education outreach student data, for students~~
345 ~~in grades 9 through 12 who have obtained written consent under Subsection 53E-9-305(2)(i), to~~
346 ~~be used strictly for the purpose of:]~~

347 ~~[(i) providing information and resources to students in grades 9 through 12 about~~
348 ~~higher education; and]~~

349 ~~[(ii) helping students in grades 9 through 12 enter the higher education system and~~
350 ~~remain until graduation.]~~