

Senator Jacob L. Anderegg proposes the following substitute bill:

**STUDENT DATA PRIVACY AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jacob L. Anderegg**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- 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



26 and amended by Laws of Utah 2018, Chapter 1

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

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

30 **53E-9-301. Definitions.**

31 As used in this part:

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

33 (a) is at least 18 years old;

34 (b) is an emancipated student; or

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

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

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

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

39 level with at least 10 individuals in the level;

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

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

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

43 (i) retina or iris scan;

44 (ii) fingerprint;

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

46 (iv) scan of hand or face geometry.

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

48 (i) a writing sample;

49 (ii) a written signature;

50 (iii) a voiceprint;

51 (iv) a photograph;

52 (v) demographic data; or

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

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

55 collected, converted, stored, or shared:

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

- 57 (b) used to identify the individual.
- 58 (5) "Board" means the State Board of Education.
- 59 (6) "Data breach" means an unauthorized release of or unauthorized access to  
60 personally identifiable student data that is maintained by an education entity.
- 61 (7) "Data governance plan" means an education entity's comprehensive plan for  
62 managing education data that:
- 63 (a) incorporates reasonable data industry best practices to maintain and protect student  
64 data and other education-related data;
- 65 (b) describes the role, responsibility, and authority of an education entity data  
66 governance staff member;
- 67 (c) provides for necessary technical assistance, training, support, and auditing;
- 68 (d) describes the process for sharing student data between an education entity and  
69 another person;
- 70 (e) describes the education entity's data expungement process, including how to  
71 respond to requests for expungement;
- 72 (f) describes the data breach response process; and
- 73 (g) is published annually and available on the education entity's website.
- 74 (8) "Education entity" means:
- 75 (a) the board;
- 76 (b) a local school board;
- 77 (c) a charter school governing board;
- 78 (d) a school district;
- 79 (e) a charter school;
- 80 (f) the Utah Schools for the Deaf and the Blind; or
- 81 (g) for purposes of implementing the School Readiness Initiative described in Title  
82 53F, Chapter 6, Part 3, School Readiness Initiative, the School Readiness Board created in  
83 Section [35A-3-209](#).
- 84 (9) "Expunge" means to seal or permanently delete data, as described in board rule  
85 made under Section [53E-9-306](#).
- 86 (10) "General audience application" means an Internet website, online service, online  
87 application, mobile application, or software program that:

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

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

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

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

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

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

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

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

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

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

101 ~~[(iii) physical address:]~~

102 ~~[(12)]~~ (11) "Individualized education program" or "IEP" means a written statement:

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

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

106 ~~[(13)]~~ (12) "Local education agency" or "LEA" means:

107 (a) a school district;

108 (b) a charter school;

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

110 (d) for purposes of implementing the School Readiness Initiative described in Title  
111 53F, Chapter 6, Part 3, School Readiness Initiative, the School Readiness Board created in  
112 Section [35A-3-209](#).

113 ~~[(14)]~~ (13) "Metadata dictionary" means a record that:

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

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

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

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

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

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

124 [(15)] (14) "Necessary student data" means data required by state statute or federal law  
125 to conduct the regular activities of an education entity, including:

126 (a) name;

127 (b) date of birth;

128 (c) sex;

129 (d) parent contact information;

130 (e) custodial parent information;

131 (f) contact information;

132 (g) a student identification number;

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

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

136 (j) course grades and grade point average;

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

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

139 (m) attendance and mobility;

140 (n) drop-out data;

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

142 (p) race;

143 (q) ethnicity;

144 (r) tribal affiliation;

145 (s) remediation efforts;

146 (t) an exception from a vision screening required under Section 53G-9-404 or  
147 information collected from a vision screening required under Section 53G-9-404;

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

- 150 (v) student injury information;
- 151 (w) a disciplinary record created and maintained as described in Section [53E-9-306](#);
- 152 (x) juvenile delinquency records;
- 153 (y) English language learner status; and
- 154 (z) child find and special education evaluation data related to initiation of an IEP.
- 155 ~~[(16)]~~ (15) (a) "Optional student data" means student data that is not:
  - 156 (i) necessary student data; or
  - 157 (ii) student data that an education entity may not collect under Section [53E-9-305](#).
  - 158 (b) "Optional student data" includes:
    - 159 (i) information that is:
      - 160 (A) related to an IEP or needed to provide special needs services; and
      - 161 (B) not necessary student data;
    - 162 (ii) biometric information; and
    - 163 (iii) information that is not necessary student data and that is required for a student to
    - 164 participate in a federal or other program.
- 165 ~~[(17)]~~ (16) "Parent" means:
  - 166 (a) a student's parent;
  - 167 (b) a student's legal guardian; or
  - 168 (c) an individual who has written authorization from a student's parent or legal
  - 169 guardian to act as a parent or legal guardian on behalf of the student.
- 170 ~~[(18)]~~ (17) (a) "Personally identifiable student data" means student data that identifies
- 171 or is used by the holder to identify a student.
  - 172 (b) "Personally identifiable student data" includes:
    - 173 (i) a student's first and last name;
    - 174 (ii) the first and last name of a student's family member;
    - 175 (iii) a student's or a student's family's home or physical address;
    - 176 (iv) a student's email address or other online contact information;
    - 177 (v) a student's telephone number;
    - 178 (vi) a student's social security number;
    - 179 (vii) a student's biometric identifier;
    - 180 (viii) a student's health or disability data;

- 181 (ix) a student's education entity student identification number;
- 182 (x) a student's social media user name and password or alias;
- 183 (xi) if associated with personally identifiable student data, the student's persistent  
184 identifier, including:
- 185 (A) a customer number held in a cookie; or
- 186 (B) a processor serial number;
- 187 (xii) a combination of a student's last name or photograph with other information that  
188 together permits a person to contact the student online;
- 189 (xiii) information about a student or a student's family that a person collects online and  
190 combines with other personally identifiable student data to identify the student; and
- 191 (xiv) information that, alone or in combination, is linked or linkable to a specific  
192 student that would allow a reasonable person in the school community, who does not have  
193 personal knowledge of the relevant circumstances, to identify the student with reasonable  
194 certainty.
- 195 ~~[(19)]~~ (18) "School official" means an employee or agent of an education entity, if the  
196 education entity has authorized the employee or agent to request or receive student data on  
197 behalf of the education entity.
- 198 ~~[(20)]~~ (19) (a) "Student data" means information about a student at the individual  
199 student level.
- 200 (b) "Student data" does not include aggregate or de-identified data.
- 201 ~~[(21)]~~ (20) "Student data manager" means:
- 202 (a) the state student data officer; or
- 203 (b) an individual designated as a student data manager by an education entity under  
204 Section [53E-9-303](#), who fulfills the duties described in Section [53E-9-308](#).
- 205 ~~[(22)]~~ (21) (a) "Targeted advertising" means presenting advertisements to a student  
206 where the advertisement is selected based on information obtained or inferred over time from  
207 that student's online behavior, usage of applications, or student data.
- 208 (b) "Targeted advertising" does not include advertising to a student:
- 209 (i) at an online location based upon that student's current visit to that location; or
- 210 (ii) in response to that student's request for information or feedback, without retention  
211 of that student's online activities or requests over time for the purpose of targeting subsequent

212 ads.

213 [~~(23)~~] (22) "Third-party contractor" means a person who:

214 (a) is not an education entity; and

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

219 [~~(24)~~] (23) "Written consent" means written authorization to collect or share a student's  
220 student data, from:

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

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

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

224 **53E-9-305. Collecting student data -- Prohibition -- Student data collection notice**  
225 **-- Written consent.**

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

227 (a) social security number; or

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

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

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

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

234 (c) states the student data that the education entity collects;

235 (d) states that the education entity will not collect the student data described in

236 Subsection (1);

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

239 (f) includes the following statement:

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



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

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

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

249 (3) The board may publicly post the board's collection notice described in Subsection  
250 (2).

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

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

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

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

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

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

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

260 (b) obtains written consent to collect the optional student data from an individual  
261 described in Subsection (4).

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

264 (a) provides, to an individual described in Subsection (4), a biometric information  
265 collection notice that is separate from a student data collection notice, which states:

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

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

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

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

272 (7) Except under the circumstances described in Subsection 53G-8-211(2), an  
273 education entity may not refer a student to an alternative evidence-based intervention described

274 in Subsection 53G-8-211(3) without written consent.

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

276 **53E-9-308. Sharing student data -- Prohibition -- Requirements for student data**  
277 **manager -- Authorized student data sharing.**

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

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

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

284 (ii) as required by federal law; and

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

286 (2) A student data manager shall:

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

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

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

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

296 (a) the Department of Human Services is:

297 (i) legally responsible for the care and protection of the student, including the  
298 responsibility to investigate a report of educational neglect, as provided in Subsection  
299 62A-4a-409(5); or

300 (ii) providing services to the student;

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

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

304 (ii) by the Department of Human Services to receive the student's personally

305 identifiable student data; and

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

308 (4) The Department of Human Services, a school official, or the Utah Juvenile Court  
309 may share personally identifiable student data to improve education outcomes for youth:

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

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

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

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

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

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

317 (b) A person who receives personally identifiable student data under Subsection (5)(a)  
318 may not use the personally identifiable student data outside of the use described in the  
319 subpoena.

320 (6) (a) A student data manager may share student data, including personally  
321 identifiable student data, in response to a request to share student data for the purpose of  
322 research or evaluation, if the student data manager:

323 (i) verifies that the request meets the requirements of 34 C.F.R. Sec. 99.31(a)(6);

324 (ii) submits the request to the education entity's research review process; and

325 (iii) fulfills the instructions that result from the review process.

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

329 (ii) A person who receives student data under Subsection (6)(b)(i):

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

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

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

334 ~~[(c) The board shall enter into an agreement with the State Board of Regents,~~  
335 ~~established in Section 53B-1-103, to share higher education outreach student data, for students~~

336 ~~in grades 9 through 12 who have obtained written consent under Subsection 53E-9-305(2)(i), to~~  
337 ~~be used strictly for the purpose of:]~~

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

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