

# STUDENT DATA PRIVACY REVISIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: Jefferson Moss

**LONG TITLE**

**General Description:**

This bill enacts provisions related to higher education student data protection.

**Highlighted Provisions:**

This bill:

- ▶ provides for higher education student data protection at the state and institution of higher education (institution) levels;
- ▶ requires the state privacy officer to establish a privacy advisory group;
- ▶ enacts requirements for data protection and maintenance for the Utah Board of Higher Education, institutions, and third-party contractors;
- ▶ creates penalties for a third-party contractor that permits unauthorized collecting, sharing, or use of student data; and
- ▶ defines terms.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**53B-28-501**, Utah Code Annotated 1953

**53B-28-502**, Utah Code Annotated 1953

S.B. 226



- 28 [53B-28-503](#), Utah Code Annotated 1953
- 29 [53B-28-504](#), Utah Code Annotated 1953
- 30 [53B-28-505](#), Utah Code Annotated 1953
- 31 [53B-28-506](#), Utah Code Annotated 1953

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

34 Section 1. Section **53B-28-501** is enacted to read:

35 **Part 5. Higher Education Student Data Protection**

36 **53B-28-501. Definitions.**

37 As used in this part:

38 (1) "Advisory group" means the institution of higher education privacy advisory group  
39 established by the state privacy officer under Section [53B-28-502](#).

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

41 (a) are totaled and reported at the group, cohort, class, course, institution, region, or  
42 state level, with at least 10 individuals in the level; and

43 (b) do not reveal personally identifiable student data.

44 (3) "Data breach" means an unauthorized release of or unauthorized access to  
45 personally identifiable student data that an education entity maintains.

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

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

50 (b) describes the role, responsibility, and authority of the board or an institution privacy  
51 officer;

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

53 (d) describes the process for sharing student data between the education entity and  
54 another person;

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

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

58 (g) is published annually and available on the institution's website or the Utah System

59 of Higher Education's website.

60 (5) "Education entity" means the Utah Board of Higher Education or an institution.

61 (6) "Institution" means an institution of higher education described in Section  
62 53B-1-102.

63 (7) "Institution privacy officer means" a privacy officer that an institution designates  
64 under Section 53B-28-503.

65 (8) "Minor" means a person younger than 18 years old.

66 (9) (a) "Personally identifiable student data" means student data that identifies or is  
67 used by the holder to identify a student.

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

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

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

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

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

73 (v) a student's telephone number;

74 (vi) a student's social security number;

75 (vii) a student's biometric identifier;

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

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

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

79 (xi) if associated with personally identifiable student data, the student's persistent  
80 identifier, including:

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

82 (B) a processor serial number;

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

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

87 (xiv) information that, alone or in combination, is linked or linkable to a specific  
88 student that would allow a reasonable person in the school community, who does not have  
89 personal knowledge of the relevant circumstances, to identify the student with reasonable

90 certainty.

91 (10) "State privacy officer" means the state privacy officer described in Section  
92 67-3-13.

93 (11) "Student" means an individual enrolled in an institution.

94 (12) (a) "Student data" means information about a student at the individual student  
95 level.

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

97 (13) "Third-party contractor" means a person who:

98 (a) is not an institution or an employee of an institution; and

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

103 Section 2. Section **53B-28-502** is enacted to read:

104 **53B-28-502. State student data protection governance.**

105 (1) The state privacy officer shall establish an institution of higher education privacy  
106 advisory group to advise institution boards of trustees on student data protection.

107 (2) The advisory group shall consist of;

108 (a) the state privacy officer; and

109 (b) the following members, appointed by the commissioner of higher education:

110 (i) at least one institution privacy officer;

111 (ii) at least one state system of higher education employee; and

112 (iii) at least one representative of the Utah Board of Higher Education.

113 (3) The advisory group shall:

114 (a) discuss and make recommendations to the board and institutions regarding:

115 (i) existing and proposed:

116 (A) board rules; or

117 (B) board policies of the Utah Board of Higher Education or institutions; and

118 (ii) training on protecting student data privacy; and

119 (b) perform other tasks related to student data protection as designated by the Utah  
120 Board of Higher Education.

- 121 (4) The state privacy officer shall:
- 122 (a) provide training and support to institution boards and employees; and
- 123 (b) produce:
- 124 (i) resource materials;
- 125 (ii) model data governance plans;
- 126 (iii) model forms for institution student data protection governance; and
- 127 (iv) a model data collection notice.
- 128 (5) The board shall:
- 129 (a) create and maintain a data governance plan; and
- 130 (b) annually publish the data governance plan on the Utah System of Higher Education
- 131 website.

132 Section 3. Section **53B-28-503** is enacted to read:

133 **53B-28-503. Institution student data protection governance.**

134 (1) (a) An institution shall adopt policies to protect student data in accordance with this  
135 part and board rule.

136 (b) The policies described in Subsection (1)(a) shall take into account the specific  
137 needs and priorities of the institution.

138 (2) An institution shall designate an institution privacy officer.

139 (3) The institution privacy officer shall:

140 (a) ensure compliance with student privacy laws throughout the public education  
141 system; and

142 (b) act as the primary point of contact for the state privacy officer.

143 (4) An institution shall:

144 (a) create and maintain an institution:

145 (i) data governance plan; and

146 (ii) record of student data privacy training; and

147 (b) annually publish the institution's data governance plan on the institution's website.

148 Section 4. Section **53B-28-504** is enacted to read:

149 **53B-28-504. Notification of significant data breach.**

150 (1) If a significant data breach occurs at an institution, the Utah Board of Higher  
151 Education or institution shall notify each student whose personally-identifiable student data

152 was disclosed.

153 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
154 board shall make rules to define a significant data breach described in Subsection (1).

155 Section 5. Section **53B-28-505** is enacted to read:

156 **53B-28-505. Third-party contractors.**

157 (1) A third-party contractor shall use personally identifiable student data received  
158 under a contract with an education entity strictly for the purpose of providing the contracted  
159 product or service within the negotiated contract terms.

160 (2) When contracting with a third-party contractor, an education entity, or a  
161 government agency contracting on behalf of an education entity, shall require the following  
162 provisions in the contract:

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

166 (b) a description of a person, or type of person, including an affiliate of the third-party  
167 contractor, with whom the third-party contractor may share student data;

168 (c) provisions that, at the request of the education entity, govern the deletion of the  
169 student data received by the third-party contractor;

170 (d) except as provided in Subsection (4) and if required by the education entity,  
171 provisions that prohibit the secondary use of personally identifiable student data by the  
172 third-party contractor; and

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

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

178 (4) A third-party contractor may:

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

180 (b) market an educational application or product to a student if the third-party  
181 contractor does not use student data, shared by or collected on behalf of an education entity, to  
182 market the educational application or product;

- 183 (c) use a recommendation engine to recommend to a student:
- 184 (i) content that relates to learning or employment, within the third-party contractor's  
185 application, if the recommendation is not motivated by payment or other consideration from  
186 another party; or
- 187 (ii) services that relate to learning or employment, within the third-party contractor's  
188 application, if the recommendation is not motivated by payment or other consideration from  
189 another party;
- 190 (d) respond to a student request for information or feedback, if the content of the  
191 response is not motivated by payment or other consideration from another party;
- 192 (e) use student data to allow or improve operability and functionality of the third-party  
193 contractor's application; or
- 194 (f) identify for a student nonprofit institutions of higher education or scholarship  
195 providers that are seeking students who meet specific criteria:
- 196 (i) regardless of whether the identified nonprofit institutions of higher education or  
197 scholarship providers provide payment or other consideration to the third-party contractor; and
- 198 (ii) only if the third-party contractor obtains authorization in writing from:
- 199 (A) the student's parent, if the student is a minor; or
- 200 (B) the student.
- 201 (5) At the completion of a contract with an education entity, if the contract has not  
202 been renewed, a third-party contractor shall return or delete upon the education entity's request  
203 all personally identifiable student data under the control of the education entity unless a student  
204 or a minor student's parent consents to the maintenance of the personally identifiable student  
205 data.
- 206 (6) (a) A third-party contractor may not:
- 207 (i) except as provided in Subsection (6)(b), sell student data;
- 208 (ii) collect, use, or share student data, if the collection, use, or sharing of the student  
209 data is inconsistent with the third-party contractor's contract with the education entity; or
- 210 (iii) use student data for targeted advertising.
- 211 (b) A person may obtain student data through the purchase of, merger with, or  
212 otherwise acquiring a third-party contractor if the third-party contractor remains in compliance  
213 with this section.

214 (7) The provisions of this section do not:

215 (a) apply to the use of a general audience application, including the access of a general  
216 audience application with login credentials created by a third-party contractor's application;

217 (b) apply if the student data is shared in accordance with the education entity's

218 directory information policy, as described in 34 C.F.R. Sec. 99.37;

219 (c) apply to the providing of Internet service; or

220 (d) impose a duty on a provider of an interactive computer service, as defined in 47

221 U.S.C. Sec. 230, to review or enforce compliance with this section.

222 (8) A provision of this section that relates to a student's student data does not apply to a  
223 third-party contractor if the education entity or third-party contractor obtains authorization from  
224 the following individual, in writing, to waive that provision:

225 (a) the student's parent, if the student is a minor; or

226 (b) the student.

227 Section 6. Section **53B-28-506** is enacted to read:

228 **53B-28-506. Penalties.**

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

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

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

234 (iii) may be required to pay:

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

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

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

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

243 (ii) the third-party contractor demonstrates:

244 (A) if the third-party contractor is under contract with the education entity, current



245 compliance with this part; or

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

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

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

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

254 (2) (a) A student or a minor student's parent may bring an action in a court of  
255 competent jurisdiction for damages caused by a knowing or reckless violation of Section  
256 53B-28-505 by a third-party contractor.

257 (b) If the court finds that a third-party contractor has violated Section 53B-28-505, the  
258 court may award to the parent or student:

259 (i) damages; and

260 (ii) costs.