

1                                   **EDUCATION DATA PRIVACY AMENDMENTS**

2   2023 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Jacob L. Anderegg**

5                                   House Sponsor: Jon Hawkins

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7 **LONG TITLE**

8 **General Description:**

9           This bill amends provisions regarding the sharing of student data.

10 **Highlighted Provisions:**

11           This bill:

- 12           ▶ prohibits the sharing of certain student data;
- 13           ▶ extends a deadline for the state board regarding data integration with a local
- 14 education agency (LEA);
- 15           ▶ prohibits an education entity from sharing student data with a federal agency, except
- 16 as required by federal law; and
- 17           ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19           None

20 **Other Special Clauses:**

21           This bill provides a special effective date.

22 **Utah Code Sections Affected:**

23 AMENDS:

- 24           **53B-28-505**, as enacted by Laws of Utah 2022, Chapter 461
- 25           **53B-28-506 (Effective 01/01/24)**, as enacted by Laws of Utah 2022, Chapter 461
- 26           **53E-3-511**, as last amended by Laws of Utah 2019, Chapter 186
- 27           **53E-9-302**, as last amended by Laws of Utah 2020, Chapter 408
- 28           **53E-9-308**, as last amended by Laws of Utah 2022, Chapter 335

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

Section 1. Section **53B-28-505** is amended to read:

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

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

(2) When contracting with a third-party contractor on or after January 1, 2024, an education entity, or a government agency contracting on behalf of an education entity, shall:

(a) ensure that the contract terms comply with the standards the board establishes under Subsection **53B-28-502(5)**; and

(b) require the following provisions in the contract:

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

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

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

(iv) 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 the third-party contractor; and

(v) 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.

56 (4) A third-party contractor may:

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

58 (b) market an educational application or product to a student if the third-party

59 contractor does not use student data, shared by or collected on behalf of an education entity, to

60 market the educational application or product;

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

62 (i) content that relates to learning or employment, within the third-party contractor's

63 application, if the recommendation is not motivated by payment or other consideration from

64 another party; or

65 (ii) services that relate to learning or employment, within the third-party contractor's

66 application, if the recommendation is not motivated by payment or other consideration from

67 another party;

68 (d) respond to a student request for information or feedback, if the content of the

69 response is not motivated by payment or other consideration from another party;

70 (e) use student data to allow or improve operability and functionality of the third-party

71 contractor's application; or

72 (f) identify for a student nonprofit institutions of higher education or scholarship

73 providers that are seeking students who meet specific criteria:

74 (i) regardless of whether the identified nonprofit institutions of higher education or

75 scholarship providers provide payment or other consideration to the third-party contractor; and

76 (ii) only if the third-party contractor obtains authorization in writing from:

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

78 (B) the student.

79 (5) At the completion of a contract with an education entity, if the contract has not

80 been renewed, a third-party contractor shall return or delete upon the education entity's request

81 all personally identifiable student data under the control of the education entity unless a student

82 or a minor student's parent consents to the maintenance of the personally identifiable student

83 data.

84 (6) (a) A third-party contractor may not:

85 (i) except as provided in Subsection (6)(b), sell student data;

86 (ii) collect, use, or share student data, if the collection, use, or sharing of the student  
87 data is inconsistent with the third-party contractor's contract with the education entity; or

88 (iii) use student data for targeted advertising.

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

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

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

95 (b) apply if the student data is shared in accordance with the education entity's  
96 directory information policy, as described in 34 C.F.R. Sec. 99.37;

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

98 (d) impose a duty on a provider of an interactive computer service, as defined in 47  
99 U.S.C. Sec. 230, to review or enforce compliance with this section.

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

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

104 (b) the student.

105 Section 2. Section **53B-28-506 (Effective 01/01/24)** is amended to read:

106 **53B-28-506 (Effective 01/01/24). Penalties.**

107 (1) [~~(a) An institution that contracts with a third-party contractor that~~] A third-party  
108 contractor that knowingly or recklessly permits unauthorized collecting, sharing, or use of  
109 student data under this part:

110           ~~[(i)]~~ (a) except as provided in Subsection ~~[(1)(b);]~~ (1)(d), may not enter into a future  
111 contract with ~~[the third-party contractor]~~ an institution; and

112           ~~[(ii)]~~ (b) may be required by the board to pay a civil penalty of up to \$25,000.

113           (c) may be required to pay:

114           (i) an institution's cost of notifying parents and students of the unauthorized sharing or  
115 use of student data; and

116           (ii) any expense incurred by the institution as result of the unauthorized sharing or use  
117 of student data.

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

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

122           (ii) the third-party contractor demonstrates:

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

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

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

128           ~~[(d)]~~ (e) The board may bring an action in the district court of the county in which the  
129 office of the education entity is located, if necessary, to enforce payment of the civil penalty  
130 described in Subsection ~~[(1)(a)(ii);]~~ (1)(b).

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

133           (2) (a) A student or a minor student's parent may bring an action against ~~[an institution]~~  
134 a third-party contractor in a court of competent jurisdiction for damages caused by a knowing  
135 or reckless violation of Section 53B-28-505 by a third-party contractor ~~[that the institution~~  
136 ~~contracts with under 53B-28-505].~~

137 (b) If the court finds that a third-party contractor has violated Section [53B-28-505](#), the  
138 court may [~~order the institution to pay~~] award to the parent or student:

139 (i) damages; and

140 (ii) costs.

141 Section 3. Section **53E-3-511** is amended to read:

142 **53E-3-511. Student Achievement Backpack -- Utah Student Record Store.**

143 (1) As used in this section:

144 (a) "Authorized LEA user" means a teacher or other person who is:

145 (i) employed by an LEA that provides instruction to a student; and

146 (ii) authorized to access data in a Student Achievement Backpack through the Utah  
147 Student Record Store.

148 (b) "Statewide assessment" means the same as that term is defined in Section  
149 [53E-4-301](#).

150 (c) "Student Achievement Backpack" means, for a student from kindergarten through  
151 grade 12, a complete learner profile that:

152 (i) is in electronic format;

153 (ii) follows the student from grade to grade and school to school; and

154 (iii) is accessible by the student's parent or an authorized LEA user.

155 (d) "Utah Student Record Store" means a repository of student data collected from  
156 LEAs as part of the state's longitudinal data system that is:

157 (i) managed by the state board;

158 (ii) cloud-based; and

159 (iii) accessible via a web browser to authorized LEA users.

160 (2) (a) The state board shall use the state board's robust, comprehensive data collection  
161 system, which collects longitudinal student transcript data from LEAs and the unique student  
162 identifiers as described in Section [53E-4-308](#), to allow the following to access a student's  
163 Student Achievement Backpack:

- 164 (i) the student's parent; and  
165 (ii) each LEA that provides instruction to the student.
- 166 (b) The state board shall ensure that a Student Achievement Backpack:  
167 (i) provides a uniform, transparent reporting mechanism for individual student  
168 progress;  
169 (ii) provides a complete learner history for postsecondary planning;  
170 (iii) provides a teacher with visibility into a student's complete learner profile to better  
171 inform instruction and personalize education;  
172 (iv) assists a teacher or administrator in diagnosing a student's learning needs through  
173 the use of data already collected by the state board;  
174 (v) facilitates a student's parent taking an active role in the student's education by  
175 simplifying access to the student's complete learner profile; and  
176 (vi) serves as additional disaster mitigation for LEAs by using a cloud-based data  
177 storage and collection system.
- 178 (3) Using existing information collected and stored in the state board's data warehouse,  
179 the state board shall create the Utah Student Record Store where an authorized LEA user may:  
180 (a) access data in a Student Achievement Backpack relevant to the user's LEA or  
181 school; or  
182 (b) request student records to be transferred from one LEA to another.
- 183 (4) The state board shall implement security measures to ensure that:  
184 (a) student data stored or transmitted to or from the Utah Student Record Store is  
185 secure and confidential pursuant to the requirements of the Family Educational Rights and  
186 Privacy Act, 20 U.S.C. Sec. 1232g; ~~and~~  
187 (b) an authorized LEA user may only access student data that is relevant to the user's  
188 LEA or school[-]; and  
189 (c) except as provided in Section 53E-9-308, an authorized LEA user shares only  
190 aggregate or de-identified data.

191 (5) A student's parent may request the student's Student Achievement Backpack from  
192 the LEA or the school in which the student is enrolled.

193 (6) An authorized LEA user may access student data in a Student Achievement  
194 Backpack, which shall include the following data, or request that the data be transferred from  
195 one LEA to another:

- 196 (a) student demographics;
- 197 (b) course grades;
- 198 (c) course history; and
- 199 (d) results of a statewide assessment.

200 (7) An authorized LEA user may access student data in a Student Achievement  
201 Backpack, which shall include the data listed in Subsections (6)(a) through (d) and the  
202 following data, or request that the data be transferred from one LEA to another:

- 203 (a) section attendance;
- 204 (b) the name of a student's teacher for classes or courses the student takes;
- 205 (c) teacher qualifications for a student's teacher, including years of experience, degree,  
206 license, and endorsement;
- 207 (d) results of statewide assessments;
- 208 (e) a student's writing sample that is written for a writing assessment administered  
209 pursuant to Section [53E-4-303](#);
- 210 (f) student growth scores on a statewide assessment, as applicable;
- 211 (g) a school's grade assigned pursuant to Chapter 5, Part 2, School Accountability  
212 System;
- 213 (h) results of benchmark assessments of reading administered pursuant to Section  
214 [53E-4-307](#); and
- 215 (i) a student's reading level at the end of grade 3.

216 (8) No later than ~~[June 30, 2017]~~ July 1, 2024, the state board shall ensure that data  
217 collected in the Utah Student Record Store for a Student Achievement Backpack is integrated



218 into each LEA's student information system and is made available to a student's parent and an  
219 authorized LEA user in an easily accessible viewing format.

220 Section 4. Section **53E-9-302** is amended to read:

221 **53E-9-302. State student data protection governance.**

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

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

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

228 (a) a statewide data governance plan; and

229 (b) a state-level metadata dictionary.

230 (3) As described in this Subsection (3), the state board shall establish advisory groups  
231 to oversee student data protection in the state and make recommendations to the state board  
232 regarding student data protection[;] including:

233 (a) [~~The state board shall establish~~] a student data policy advisory group:

234 (i) that is composed of members from:

235 (A) the Legislature;

236 (B) the state board and state board employees; and

237 (C) one or more LEAs;

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

239 (A) enacted or proposed legislation; and

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

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

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

244 (b) [~~The state board shall establish~~] a student data governance advisory group:

- 245 (i) that is composed of the state student data officer and other state board employees;  
246 and
- 247 (ii) that performs duties related to state and local student data protection, including:  
248 (A) overseeing data collection and usage by state board program offices; and  
249 (B) preparing and maintaining the state board's student data governance plan under the  
250 direction of the student data policy advisory group.
- 251 (c) [~~The state board shall establish~~] a student data users advisory group:  
252 (i) that is composed of members who use student data at the local level; and  
253 (ii) that provides feedback and suggestions on the practicality of actions proposed by  
254 the student data policy advisory group and the student data governance advisory group.
- 255 (4) (a) The state board shall designate a state student data officer.  
256 (b) The state student data officer shall:  
257 (i) act as the primary point of contact for state student data protection administration in  
258 assisting the state board to administer this part;  
259 (ii) ensure compliance with student privacy laws throughout the public education  
260 system, including:  
261 (A) providing training and support to applicable state board and LEA employees; and  
262 (B) producing resource materials, model plans, and model forms for local student data  
263 protection governance, including a model student data collection notice;  
264 (iii) investigate complaints of alleged violations of this part;  
265 (iv) report violations of this part to:  
266 (A) the state board;  
267 (B) an applicable education entity; and  
268 (C) the student data policy advisory group; and  
269 (v) act as a state level student data manager.
- 270 (5) The state board shall designate:  
271 (a) at least one support manager to assist the state student data officer; and

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

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

275 Section 5. 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:

280 (i) share personally identifiable student data without written consent[-]; or

281 (ii) share student data with a federal agency.

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~~] Department of  
298 Health and Human Services if:

- 299 (a) the [~~Department of Human Services~~] Department of Health and Human Services is:  
300 (i) legally responsible for the care and protection of the student, including the  
301 responsibility to investigate a report of educational neglect, as provided in Subsection  
302 80-2-701(5); or  
303 (ii) providing services to the student;
- 304 (b) the student's personally identifiable student data is not shared with a person who is  
305 not authorized:  
306 (i) to address the student's education needs; or  
307 (ii) by the [~~Department of Human Services~~] Department of Health and Human Services  
308 to receive the student's personally identifiable student data; and
- 309 (c) the [~~Department of Human Services~~] Department of Health and Human Services  
310 maintains and protects the student's personally identifiable student data.
- 311 (4) The [~~Department of Human Services~~] Department of Health and Human Services, a  
312 school official, or the Utah Juvenile Court may share personally identifiable student data to  
313 improve education outcomes for youth:  
314 (a) in the custody of, or under the guardianship of, the [~~Department of Human~~  
315 ~~Services~~] Department of Health and Human Services;
- 316 (b) receiving services from the Division of Juvenile Justice Services;  
317 (c) in the custody of the Division of Child and Family Services;  
318 (d) receiving services from the Division of Services for People with Disabilities; or  
319 (e) under the jurisdiction of the Utah Juvenile Court.
- 320 (5) (a) A student data manager may share personally identifiable student data in  
321 response to a subpoena issued by a court.  
322 (b) A person who receives personally identifiable student data under Subsection (5)(a)  
323 may not use the personally identifiable student data outside of the use described in the  
324 subpoena.
- 325 (6) (a) A student data manager may share student data, including personally

326 identifiable student data, in response to a request to share student data for the purpose of  
327 research or evaluation, if the student data manager:

- 328 (i) verifies that the request meets the requirements of 34 C.F.R. Sec. 99.31(a)(6);
- 329 (ii) submits the request to the education entity's research review process; and
- 330 (iii) fulfills the instructions that result from the review process.

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

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

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

341 (iii) A person who receives student data under Subsection (6)(b)(i):

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

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

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

346 Section 6. **Effective date.**

347 (1) Except as provided in Subsection (2), this bill takes effect on July 1, 2023.

348 (2) The actions affecting Section 53B-28-506 (Effective 01/01/24) take effect on  
349 January 1, 2024.