

EDUCATION DATA PRIVACY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions regarding the sharing of student data.

Highlighted Provisions:

This bill:

- ▶ prohibits the sharing of certain student data;
- ▶ extends a deadline for the state board regarding data integration with a local education agency (LEA);
- ▶ allows an LEA to request from the State Board of Education the name and address of a student who is not enrolled in the LEA;
- ▶ prohibits an education entity from sharing student data with a federal agency, except as required by federal law; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53B-28-505, as enacted by Laws of Utah 2022, Chapter 461

53B-28-506 (Effective 01/01/24), as enacted by Laws of Utah 2022, Chapter 461



28 **53E-3-511**, as last amended by Laws of Utah 2019, Chapter 186

29 **53E-9-204**, as last amended by Laws of Utah 2019, Chapter 186

30 **53E-9-302**, as last amended by Laws of Utah 2020, Chapter 408

31 **53E-9-308**, as last amended by Laws of Utah 2022, Chapter 335



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

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

35 **53B-28-505. Third-party contractors.**

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

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

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

43 (b) require the following provisions in the contract:

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

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

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

51 (iv) except as provided in Subsection (4) and if required by the education entity,
52 provisions that prohibit the secondary use of personally identifiable student data by the
53 third-party contractor; and

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

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

- 59 (4) A third-party contractor may:
- 60 (a) use student data for adaptive learning or customized student learning purposes;
- 61 (b) market an educational application or product to a student if the third-party
- 62 contractor does not use student data, shared by or collected on behalf of an education entity, to
- 63 market the educational application or product;
- 64 (c) use a recommendation engine to recommend to a student:
- 65 (i) content that relates 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; or
- 68 (ii) services that relate to learning or employment, within the third-party contractor's
- 69 application, if the recommendation is not motivated by payment or other consideration from
- 70 another party;
- 71 (d) respond to a student request for information or feedback, if the content of the
- 72 response is not motivated by payment or other consideration from another party;
- 73 (e) use student data to allow or improve operability and functionality of the third-party
- 74 contractor's application; or
- 75 (f) identify for a student nonprofit institutions of higher education or scholarship
- 76 providers that are seeking students who meet specific criteria:
- 77 (i) regardless of whether the identified nonprofit institutions of higher education or
- 78 scholarship providers provide payment or other consideration to the third-party contractor; and
- 79 (ii) only if the third-party contractor obtains authorization in writing from:
- 80 (A) the student's parent, if the student is a minor; or
- 81 (B) the student.
- 82 (5) At the completion of a contract with an education entity, if the contract has not
- 83 been renewed, a third-party contractor shall return or delete upon the education entity's request
- 84 all personally identifiable student data under the control of the education entity unless a student
- 85 or a minor student's parent consents to the maintenance of the personally identifiable student
- 86 data.
- 87 (6) (a) A third-party contractor may not:
- 88 (i) except as provided in Subsection (6)(b), sell student data;
- 89 (ii) collect, use, or share student data, if the collection, use, or sharing of the student

90 data is inconsistent with the third-party contractor's contract with the education entity; or

91 (iii) use student data for targeted advertising.

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

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

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

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

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

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

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

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

107 (b) the student.

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

109 **53B-28-506 (Effective 01/01/24). Penalties.**

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

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

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

116 (c) may be required to pay:

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

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

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

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

125 (ii) the third-party contractor demonstrates:

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

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

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

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

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

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

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

142 (i) damages; and

143 (ii) costs.

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

145 **53E-3-511. Student Achievement Backpack -- Utah Student Record Store.**

146 (1) As used in this section:

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

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

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

151 (b) "Statewide assessment" means the same as that term is defined in Section

152 53E-4-301.

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

- 155 (i) is in electronic format;
- 156 (ii) follows the student from grade to grade and school to school; and
- 157 (iii) is accessible by the student's parent or an authorized LEA user.

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

- 160 (i) managed by the state board;
- 161 (ii) cloud-based; and
- 162 (iii) accessible via a web browser to authorized LEA users.

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

- 167 (i) the student's parent; and
- 168 (ii) each LEA that provides instruction to the student.
- 169 (b) The state board shall ensure that a Student Achievement Backpack:
 - 170 (i) provides a uniform, transparent reporting mechanism for individual student
171 progress;
 - 172 (ii) provides a complete learner history for postsecondary planning;
 - 173 (iii) provides a teacher with visibility into a student's complete learner profile to better
174 inform instruction and personalize education;
 - 175 (iv) assists a teacher or administrator in diagnosing a student's learning needs through
176 the use of data already collected by the state board;
 - 177 (v) facilitates a student's parent taking an active role in the student's education by
178 simplifying access to the student's complete learner profile; and
 - 179 (vi) serves as additional disaster mitigation for LEAs by using a cloud-based data
180 storage and collection system.

181 (3) Using existing information collected and stored in the state board's data warehouse,
182 the state board shall create the Utah Student Record Store where an authorized LEA user may:

183 (a) access data in a Student Achievement Backpack relevant to the user's LEA or
184 school; or

185 (b) request student records to be transferred from one LEA to another.

186 (4) The state board shall implement security measures to ensure that:

187 (a) student data stored or transmitted to or from the Utah Student Record Store is
188 secure and confidential pursuant to the requirements of the Family Educational Rights and
189 Privacy Act, 20 U.S.C. Sec. 1232g; ~~and~~

190 (b) an authorized LEA user may only access student data that is relevant to the user's
191 LEA or school[-]; ~~and~~

192 (c) except as provided in Section 53E-9-308, an authorized LEA user shares only
193 aggregate or de-identified data.

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

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

199 (a) student demographics;

200 (b) course grades;

201 (c) course history; and

202 (d) results of a statewide assessment.

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

206 (a) section attendance;

207 (b) the name of a student's teacher for classes or courses the student takes;

208 (c) teacher qualifications for a student's teacher, including years of experience, degree,
209 license, and endorsement;

210 (d) results of statewide assessments;

211 (e) a student's writing sample that is written for a writing assessment administered
212 pursuant to Section 53E-4-303;

213 (f) student growth scores on a statewide assessment, as applicable;

214 (g) a school's grade assigned pursuant to Chapter 5, Part 2, School Accountability
215 System;

216 (h) results of benchmark assessments of reading administered pursuant to Section
217 53E-4-307; and

218 (i) a student's reading level at the end of grade 3.

219 (8) No later than [~~June 30, 2017~~] July 1, 2024, the state board shall ensure that data
220 collected in the Utah Student Record Store for a Student Achievement Backpack is integrated
221 into each LEA's student information system and is made available to a student's parent and an
222 authorized LEA user in an easily accessible viewing format.

223 Section 4. Section 53E-9-204 is amended to read:

224 **53E-9-204. Access to education records -- Training requirement -- Certification.**

225 (1) As used in this section, "education record" means the same as that term is defined
226 in the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g.

227 (2) A local school board or charter school governing board shall require each public
228 school to:

229 (a) create and maintain a list that includes the name and position of each school
230 employee who the public school authorizes, in accordance with Subsection (4), to have access
231 to an education record; and

232 (b) provide the list described in Subsection (2)(a) to the school's local school board or
233 charter school governing board.

234 (3) A local school board or charter school governing board shall:

235 (a) provide training on student privacy laws; and

236 (b) require a school employee on the list described in Subsection (2) to:

237 (i) complete the training described in Subsection (3)(a); and

238 (ii) provide to the local school board or charter school governing board a certified
239 statement, signed by the school employee, that certifies that the school employee completed the
240 training described in Subsection (3)(a) and that the school employee understands student
241 privacy requirements.

242 (4) (a) Except as provided in Subsection (4)(b), a local school board, charter school
243 governing board, public school, or school employee may only share an education record with a
244 school employee if:

245 (i) that school employee's name is on the list described in Subsection (2); and
246 (ii) federal and state privacy laws authorize the education record to be shared with that
247 school employee.

248 (b) A local school board, charter school governing board, public school, or school
249 employee may share an education record with a school employee if the board, school, or
250 employee obtains written consent from:

251 (i) the parent of the student to whom the education record relates, if the student is
252 younger than 18 years old; or

253 (ii) the student to whom the education record relates, if the student is 18 years old or
254 older.

255 (5) (a) Upon request and subject to state board rule described in Subsection (5)(b), the
256 state board shall provide a student's name and address to an LEA in which the student is not
257 enrolled.

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

260 (i) limitations on an LEA's request under Subsection (5)(a), including:

261 (A) the extent to which an LEA may request the names and addresses of students from
262 different grade levels; and

263 (B) the number of requests an LEA may make per year; and

264 (ii) measures to ensure the security of student data.

265 Section 5. Section **53E-9-302** is amended to read:

266 **53E-9-302. State student data protection governance.**

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

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

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

273 (a) a statewide data governance plan; and

274 (b) a state-level metadata dictionary.

275 (3) As described in this Subsection (3), the state board shall establish advisory groups

276 to oversee student data protection in the state and make recommendations to the state board
277 regarding student data protection[-] including:

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

279 (i) that is composed of members from:

280 (A) the Legislature;

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

282 (C) one or more LEAs;

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

284 (A) enacted or proposed legislation; and

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

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

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

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

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

291 and

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

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

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

296 (c) [~~The state board shall establish~~] a student data users advisory group:

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

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

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

301 (b) The state student data officer shall:

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

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

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

307 (B) producing resource materials, model plans, and model forms for local student data
 308 protection governance, including a model student data collection notice;

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

310 (iv) report violations of this part to:

311 (A) the state board;

312 (B) an applicable education entity; and

313 (C) the student data policy advisory group; [~~and~~]

314 (v) act as a state level student data manager[-]; and

315 (vi) facilitate a request made under Subsection 53E-9-204(5).

316 (5) The state board shall designate:

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

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

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

321 Section 6. Section **53E-9-308** is amended to read:

322 **53E-9-308. Sharing student data -- Prohibition -- Requirements for student data**
 323 **manager -- Authorized student data sharing.**

324 (1) (a) Except as provided in Subsection (1)(b), an education entity, including a student
 325 data manager, may not:

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

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

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

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

332 (ii) as required by federal law; and

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

334 (2) A student data manager shall:

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

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

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

342 (3) A student data manager may share a student's personally identifiable student data
343 with a caseworker or representative of the [~~Department of Human Services~~] Department of
344 Health and Human Services if:

345 (a) the [~~Department of Human Services~~] Department of Health and Human Services is:

346 (i) legally responsible for the care and protection of the student, including the
347 responsibility to investigate a report of educational neglect, as provided in Subsection
348 80-2-701(5); or

349 (ii) providing services to the student;

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

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

353 (ii) by the [~~Department of Human Services~~] Department of Health and Human Services
354 to receive the student's personally identifiable student data; and

355 (c) the [~~Department of Human Services~~] Department of Health and Human Services
356 maintains and protects the student's personally identifiable student data.

357 (4) The [~~Department of Human Services~~] Department of Health and Human Services, a
358 school official, or the Utah Juvenile Court may share personally identifiable student data to
359 improve education outcomes for youth:

360 (a) in the custody of, or under the guardianship of, the [~~Department of Human~~
361 ~~Services~~] Department of Health and Human Services;

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

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

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

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

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

368 (b) A person who receives personally identifiable student data under Subsection (5)(a)

369 may not use the personally identifiable student data outside of the use described in the
370 subpoena.

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

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

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

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

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

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

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

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

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

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

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

392 Section 7. **Effective date.**

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

394 (2) The actions affecting Section 53B-28-506 take effect on January 1, 2024.