SB0265S02 compared with SB0265

{deleted text} shows text that was in SB0265 but was deleted in SB0265S02.

inserted text shows text that was not in SB0265 but was inserted into SB0265S02.

DISCLAIMER: **This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.**

Senator Jacob L. Anderegg proposes the following substitute bill:

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

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

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

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

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

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.

(4) A third-party contractor may:

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

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

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

(i) content that relates to learning or employment, within the third-party contractor's application, if the recommendation is not motivated by payment or other consideration from another party; or

(ii) services that relate to learning or employment, within the third-party contractor's application, if the recommendation is not motivated by payment or other consideration from another party;

(d) respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party;

(e) use student data to allow or improve operability and functionality of the third-party contractor's application; or

(f) identify for a student nonprofit institutions of higher education or scholarship providers that are seeking students who meet specific criteria:

(i) regardless of whether the identified nonprofit institutions of higher education or scholarship providers provide payment or other consideration to the third-party contractor; and

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

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

(B) the student.

(5) At the completion of a contract with an education entity, if the contract has not been renewed, a third-party contractor shall return or delete upon the education entity's request all personally identifiable student data under the control of the education entity unless a student or a minor student's parent consents to the maintenance of the personally identifiable student data.

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

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

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

(iii) use student data for targeted advertising.

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

(7) The provisions of this section do not:

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

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

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

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

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

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

(b) the student.

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

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

(i) except as provided in Subsection (1)(b), may not enter into a future contract with the third-party contractor; and

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

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

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

~~(ii) the third-party contractor demonstrates:~~

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

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

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

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

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

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

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

~~(i) damages; and~~

~~(ii) costs.~~

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

53B-28-506~~{ (Effective 01/01/24)}~~.   Penalties.

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

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

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

(c) may be required to pay:

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

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

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

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

(ii) the third-party contractor demonstrates:

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

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

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

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

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

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

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

(i) damages; and

(ii) costs.

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

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

(1) As used in this section:

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

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

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

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

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

(i) is in electronic format;

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

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

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

(i) managed by the state board;

(ii) cloud-based; and

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

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

(i) the student's parent; and

(ii) each LEA that provides instruction to the student.

(b) The state board shall ensure that a Student Achievement Backpack:

(i) provides a uniform, transparent reporting mechanism for individual student progress;

(ii) provides a complete learner history for postsecondary planning;

(iii) provides a teacher with visibility into a student's complete learner profile to better inform instruction and personalize education;

(iv) assists a teacher or administrator in diagnosing a student's learning needs through the use of data already collected by the state board;

(v) facilitates a student's parent taking an active role in the student's education by simplifying access to the student's complete learner profile; and

(vi) serves as additional disaster mitigation for LEAs by using a cloud-based data storage and collection system.

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

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

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

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

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

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

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

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

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

(a) student demographics;

(b) course grades;

(c) course history; and

(d) results of a statewide assessment.

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

(a) section attendance;

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

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

(d) results of statewide assessments;

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

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

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

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

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

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

Section 4. Section ~~{53E-9-204}~~ **53E-9-302** is amended to read:

~~{   53E-9-204.   Access to education records -- Training requirement -- Certification.~~

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

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

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

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

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

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

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

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

~~(ii) provide to the local school board or charter school governing board a certified~~

statement, signed by the school employee, that certifies that the school employee completed the training described in Subsection (3)(a) and that the school employee understands student privacy requirements.

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

(i) that school employee's name is on the list described in Subsection (2); and

(ii) federal and state privacy laws authorize the education record to be shared with that school employee.

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

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

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

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

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

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

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

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

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

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

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

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

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

state board shall make rules to administer this part, including student data protection standards for public education employees, student aides, and volunteers.

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

(a) a statewide data governance plan; and

(b) a state-level metadata dictionary.

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

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

(i) that is composed of members from:

(A) the Legislature;

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

(C) one or more LEAs;

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

(A) enacted or proposed legislation; and

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

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

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

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

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

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

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

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

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

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

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

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

(b) The state student data officer shall:

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

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

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

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

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

(iv) report violations of this part to:

(A) the state board;

(B) an applicable education entity; and

(C) the student data policy advisory group; {[}and{]}

(v) act as a state level student data manager{[}.{]}.{[; and}

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

}   (5) The state board shall designate:

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

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

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

Section {[6]}5. Section **53E-9-308** is amended to read:

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

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

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

(ii) share student data with a federal agency.

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

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

(ii) as required by federal law; and

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

(2) A student data manager shall:

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

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

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

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

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

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

(ii) providing services to the student;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section {7}6. **Effective date.**

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

(2) The actions affecting Section 53B-28-506 (Effective 01/01/24) take effect on

January 1, 2024.