

STUDENT DATA PRIVACY AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to student data privacy.

Highlighted Provisions:

This bill:

- ▶ requires law enforcement to provide and validate information necessary for the state board to complete a required report on incidents that occur on school grounds;
- ▶ clarifies requirements regarding the content of privacy notices;
- ▶ exempts schools from certain contractual provisions related to sharing directory information if the directory information is shared in accordance with federal law;
- ▶ binds other government agencies that contract on behalf of education entities to the same requirements as education entities;
- ▶ clarifies that education entities may obtain written authorization to waive a provision of a contract with a third-party contractor related to a student's student data; and
- ▶ requires information related to suspension or expulsion to appear in a student's cumulative folder.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



Utah Code Sections Affected:

AMENDS:

53E-1-203, as enacted by Laws of Utah 2019, Chapter 324

53E-3-516, as last amended by Laws of Utah 2019, Chapters 186 and 324

53E-9-305, as last amended by Laws of Utah 2019, Chapters 136, 175, and 186

53E-9-309, as last amended by Laws of Utah 2019, Chapter 186

53G-8-208, as last amended by Laws of Utah 2019, Chapter 293

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

Section 1. Section **53E-1-203** is amended to read:

53E-1-203. State Superintendent's Annual Report.

(1) The state board shall prepare and submit to the governor, the Education Interim Committee, and the Public Education Appropriations Subcommittee, by January 15 of each year, an annual written report known as the State Superintendent's Annual Report that includes:

- (a) the operations, activities, programs, and services of the state board;
- (b) subject to Subsection (4)(b), all reports listed in Subsection (4)(a); and
- (c) data on the general condition of the schools with recommendations considered desirable for specific programs, including:
 - (i) a complete statement of fund balances;
 - (ii) a complete statement of revenues by fund and source;
 - (iii) a complete statement of adjusted expenditures by fund, the status of bonded indebtedness, the cost of new school plants, and school levies;
 - (iv) a complete statement of state funds allocated to each school district and charter school by source, including supplemental appropriations, and a complete statement of expenditures by each school district and charter school, including supplemental appropriations, by function and object as outlined in the United States Department of Education publication "Financial Accounting for Local and State School Systems";

(v) a statement that includes data on:

- (A) fall enrollments;
- (B) average membership;
- (C) high school graduates;

(D) licensed and classified employees, including data reported by school districts on educator ratings described in Section 53G-11-511;

(E) pupil-teacher ratios;

(F) average class sizes;

(G) average salaries;

(H) applicable private school data; and

(I) data from statewide assessments described in Section 53E-4-301 for each school and school district;

(vi) statistical information regarding incidents of delinquent activity in the schools or at school-related activities; and

(vii) other statistical and financial information about the school system that the state superintendent considers pertinent.

(2) (a) For the purposes of Subsection (1)(c)(v):

(i) the pupil-teacher ratio for a school shall be calculated by dividing the number of students enrolled in a school by the number of full-time equivalent teachers assigned to the school, including regular classroom teachers, school-based specialists, and special education teachers;

(ii) the pupil-teacher ratio for a school district shall be the median pupil-teacher ratio of the schools within a school district;

(iii) the pupil-teacher ratio for charter schools aggregated shall be the median pupil-teacher ratio of charter schools in the state; and

(iv) the pupil-teacher ratio for the state's public schools aggregated shall be the median pupil-teacher ratio of public schools in the state.

(b) The report shall:

(i) include the pupil-teacher ratio for:

(A) each school district;

(B) the charter schools aggregated; and

(C) the state's public schools aggregated; and

(ii) identify a website where pupil-teacher ratios for each school in the state may be accessed.

(3) For each operation, activity, program, or service provided by the state board, the

annual report shall include:

(a) a description of the operation, activity, program, or service;

(b) data and metrics:

(i) selected and used by the state board to measure progress, performance, effectiveness, and scope of the operation, activity, program, or service, including summary data; and

(ii) that are consistent and comparable for each state operation, activity, program, or service;

(c) budget data, including the amount and source of funding, expenses, and allocation of full-time employees for the operation, activity, program, or service;

(d) historical data from previous years for comparison with data reported under Subsections (3)(b) and (c);

(e) goals, challenges, and achievements related to the operation, activity, program, or service;

(f) relevant federal and state statutory references and requirements;

(g) contact information of officials knowledgeable and responsible for each operation, activity, program, or service; and

(h) other information determined by the state board that:

(i) may be needed, useful, or of historical significance; or

(ii) promotes accountability and transparency for each operation, activity, program, or service with the public and elected officials.

(4) (a) Except as provided in Subsection (4)(b), the annual report shall also include:

(i) the report described in Section 53E-3-507 by the state board on career and technical education needs and program access;

(ii) through October 1, 2022, the report described in Section 53E-3-515 by the state board on the Hospitality and Tourism Management Career and Technical Education Pilot Program;

(iii) beginning on July 1, ~~2020~~ 2023, the report described in Section 53E-3-516 by the state board on certain incidents that occur on school grounds;

(iv) the report described in Section 53E-4-202 by the state board on the development and implementation of the core standards for Utah public schools;

(v) the report described in Section 53E-5-310 by the state board on school turnaround and leadership development;

(vi) the report described in Section 53E-10-308 by the state board and State Board of Regents on student participation in the concurrent enrollment program;

(vii) the report described in Section 53F-2-503 by the state board on early literacy;

(viii) the report described in Section 53F-5-506 by the state board on information related to competency-based education;

(ix) the report described in Section 53G-9-802 by the state board on dropout prevention and recovery services; and

(x) the report described in Section 53G-10-204 by the state board on methods used, and the results being achieved, to instruct and prepare students to become informed and responsible citizens.

(b) The Education Interim Committee or the Public Education Appropriations Subcommittee may request a report described in Subsection (4)(a) to be reported separately from the State Superintendent's Annual Report.

(5) The annual report shall be designed to provide clear, accurate, and accessible information to the public, the governor, and the Legislature.

(6) The state board shall:

(a) submit the annual report in accordance with Section 68-3-14; and

(b) make the annual report, and previous annual reports, accessible to the public by placing a link to the reports on the state board's website.

(7) (a) Upon request of the Education Interim Committee or Public Education Appropriations Subcommittee, the state board shall present the State Superintendent's Annual Report to either committee.

(b) After submitting the State Superintendent's Annual Report in accordance with this section, the state board may supplement the report at a later time with updated data, information, or other materials as necessary or upon request by the governor, the Education Interim Committee, or the Public Education Appropriations Subcommittee.

Section 2. Section 53E-3-516 is amended to read:

53E-3-516. School disciplinary and law enforcement action report -- Rulemaking authority.

(1) As used in this section:

(a) "Disciplinary action" means an action by a public school meant to formally discipline a student of that public school that includes a suspension or expulsion.

(b) "Law enforcement agency" means the same as that term is defined in Section 77-7a-103.

(c) "Minor" means the same as that term is defined in Section 53G-6-201.

(d) "Other law enforcement activity" means a significant law enforcement interaction with a minor that does not result in an arrest, including:

(i) a search and seizure by an SRO;

(ii) issuance of a criminal citation;

(iii) issuance of a ticket or summons;

(iv) filing a delinquency petition; or

(v) referral to a probation officer.

(e) "School is in session" means the hours of a day during which a public school conducts instruction for which student attendance is counted toward calculating average daily membership.

(f) (i) "School-sponsored activity" means an activity, fundraising event, club, camp, clinic, or other event or activity that is authorized by a specific public school, according to LEA governing board policy, and satisfies at least one of the following conditions:

(A) the activity is managed or supervised by a school district, public school, or public school employee;

(B) the activity uses the school district or public school facilities, equipment, or other school resources; or

(C) the activity is supported or subsidized, more than inconsequential, by public funds, including the public school's activity funds or Minimum School Program dollars.

(ii) "School-sponsored activity" includes preparation for and involvement in a public performance, contest, athletic competition, demonstration, display, or club activity.

(g) "Student resource officer" or "SRO" means the same as that term is defined in Section 53G-8-701.

(2) Beginning on July 1, ~~[2020]~~ 2023, the state board~~[- in collaboration with school districts, charter schools, and law enforcement agencies,]~~ shall develop an annual report

regarding the following incidents that occur on school grounds while school is in session or during a school-sponsored activity:

- (a) arrests of a minor;
- (b) other law enforcement activities; and
- (c) disciplinary actions.

(3) Pursuant to state and federal law, law enforcement agencies shall collaborate with the state board and LEAs to provide and validate data and information necessary to complete the report described in Subsection (2), as requested by an LEA or the state board.

~~[(3)]~~ (4) The report described in Subsection (2) shall include the following information ~~[by school district and charter school]~~ listed separately for each LEA:

- (a) the number of arrests of a minor, including the reason why the minor was arrested;
- (b) the number of other law enforcement activities, including the following information for each incident:

- (i) the reason for the other law enforcement activity; and
- (ii) the type of other law enforcement activity used;
- (c) the number of disciplinary actions imposed, including:
 - (i) the reason for the disciplinary action; and
 - (ii) the type of disciplinary action; and
- (d) the number of SROs employed.

~~[(4)]~~ (5) The report described in Subsection (2) shall include the following information, in aggregate, for each element described in Subsections ~~[(3)]~~ (4)(a) through (c):

- (a) age;
- (b) grade level;
- (c) race;
- (d) sex; and
- (e) disability status.

~~[(5)]~~ (6) Information included in the annual report described in Subsection (2) shall comply with:

- (a) Chapter 9, Part 3, Student Data Protection;
- (b) Chapter 9, Part 2, Student Privacy; and
- (c) the Family Education Rights and Privacy Act, 20 U.S.C. Secs. 1232g and 1232h.

[~~(6)~~] (7) The state board shall make rules to compile the report described in Subsection (2).

[~~(7)~~] (8) The state board shall provide the report described in Subsection (2) in accordance with Section 53E-1-203 for incidents that occurred during the previous school year.

Section 3. Section 53E-9-305 is amended to read:

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

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

(a) social security number; or

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

(2) ~~At~~ Except as provided in Subsection (3), an education entity that collects student data shall, in accordance with this section, prepare and distribute~~[-except as provided in Subsection (3);]~~ to parents and students a student data collection notice statement that:

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

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

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

(d) states that the education entity will not collect the student data described in Subsection (1);

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

(f) includes the following statement:

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

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

(h) states a student's rights under this part.

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

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

- 245 (a) the student, if the student is an adult student; or
246 (b) the student's parent, if the student is not an adult student.
- 247 (5) An education entity may collect optional student data if the education entity:
248 (a) provides, to an individual described in Subsection (4), a student data collection
249 notice that includes a description of:
250 (i) the optional student data to be collected; and
251 (ii) how the education entity will use the optional student data; and
252 (b) obtains written consent to collect the optional student data from an individual
253 described in Subsection (4).
- 254 (6) An education entity may collect a student's biometric identifier or biometric
255 information if the education entity:
256 (a) provides, to an individual described in Subsection (4), a biometric information
257 collection notice that is separate from a student data collection notice, which states:
258 (i) the biometric identifier or biometric information to be collected;
259 (ii) the purpose of collecting the biometric identifier or biometric information; and
260 (iii) how the education entity will use and store the biometric identifier or biometric
261 information; and
262 (b) obtains written consent to collect the biometric identifier or biometric information
263 from an individual described in Subsection (4).
- 264 (7) Except under the circumstances described in Subsection 53G-8-211(2), an
265 education entity may not refer a student to an evidence-based alternative intervention described
266 in Subsection 53G-8-211(3) without written consent.
- 267 (8) Nothing in this section prohibits an education entity from including additional
268 information related to student and parent privacy in the notice described in Subsection (2).
- 269 Section 4. Section 53E-9-309 is amended to read:
270 **53E-9-309. Third-party contractors.**
271 (1) A third-party contractor shall use personally identifiable student data received
272 under a contract with an education entity strictly for the purpose of providing the contracted
273 product or service within the negotiated contract terms.
- 274 (2) When contracting with a third-party contractor, an education entity, or a
275 government agency contracting on behalf of an education entity, shall require the following

provisions in the contract:

(a) 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 state board rule;

(b) 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;

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

(d) 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

(e) 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 parent of a student if the third-party contractor did 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) a student's parent through the student's school or LEA; or

(B) for an adult student, 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 the 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. 99.37;

~~[(b)]~~ (c) apply to the providing of Internet service; or

~~[(c)]~~ (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 not an adult student; or

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

Section 5. Section **53G-8-208** is amended to read:

53G-8-208. Student suspended or expelled -- Responsibility of parent --

Application for students with disabilities.

(1) If a student is suspended or expelled from a public school under this part for more than 10 school days, the parent is responsible for undertaking an alternative education plan which will ensure that the student's education continues during the period of suspension or expulsion.

(2) (a) The parent shall work with designated school officials to determine how that responsibility might best be met through private education, an alternative program offered by or through the district or charter school, or other alternative which will reasonably meet the educational needs of the student.

(b) The parent and designated school official may enlist the cooperation of the Division of Child and Family Services, the juvenile court, or other appropriate state agencies to meet the student's educational needs.

(3) Costs for educational services which are not provided by the school district or charter school are the responsibility of the student's parent.

(4) (a) Each school district or charter school shall maintain a record of all suspended or expelled students and a notation of the recorded suspension or expulsion shall be attached to the individual student's ~~transcript~~ cumulative folder.

(b) The district or charter school shall contact the parent of each suspended or expelled student under the age of 16 at least once each month to determine the student's progress.

(5) (a) This part applies to students with disabilities to the extent permissible under applicable law or regulation.

(b) If application of any requirement of this part to a student with a disability is not permissible under applicable law or regulation, the responsible school authority shall implement other actions consistent with the conflicting law or regulation which shall most closely correspond to the requirements of this part.