1   **STUDENT DATA PROTECTION AMENDMENTS**

2   2018 GENERAL SESSION

3   STATE OF UTAH

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

5   House Sponsor: _____

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7 **LONG TITLE**

8 **General Description:**

9   This bill amends provisions related to student data protection.

10 **Highlighted Provisions:**

11   This bill:

12   ▸   defines terms;

13   ▸   updates provisions of Title 53E, Chapter 9, Part 3, Student Data Protection, to:

14   •   coordinate with federal law; and

15   •   provide clarification;

16   ▸   grants certain rulemaking authority to the State Board of Education; and

17   ▸   makes technical and conforming corrections.

18 **Money Appropriated in this Bill:**

19   None

20 **Other Special Clauses:**

21   None

22 **Utah Code Sections Affected:**

23 AMENDS:

24   **53E-9-301**, as renumbered and amended by Laws of Utah 2018, Chapter 1

25   **53E-9-302**, as renumbered and amended by Laws of Utah 2018, Chapter 1

26   **53E-9-304**, as renumbered and amended by Laws of Utah 2018, Chapter 1

27   **53E-9-305**, as renumbered and amended by Laws of Utah 2018, Chapter 1

28   **53E-9-306**, as renumbered and amended by Laws of Utah 2018, Chapter 1
29   **53E-9-308**, as renumbered and amended by Laws of Utah 2018, Chapter 1
30   **53E-9-309**, as renumbered and amended by Laws of Utah 2018, Chapter 1
31   **53E-9-310**, as renumbered and amended by Laws of Utah 2018, Chapter 1
32 ═══
33   *Be it enacted by the Legislature of the state of Utah:*
34   Section 1. Section **53E-9-301** is amended to read:
35   **53E-9-301.   Definitions.**
36   As used in this part:
37   (1) "Adult student" means a student who:
38   (a) is at least 18 years old;
39   (b) is an emancipated student; or
40   (c) qualifies under the McKinney-Vento Homeless Education Assistance
41 Improvements Act of 2001, 42 U.S.C. Sec. 11431 et seq.
42   (2) "Aggregate data" means data that:
43   (a) are totaled and reported at the group, cohort, school, school district, region, or state
44 level with at least 10 individuals in the level;
45   (b) do not reveal personally identifiable student data; and
46   (c) are collected in accordance with board rule.
47   (3) (a) "Biometric identifier" means a:
48   (i) retina or iris scan;
49   (ii) fingerprint;
50   (iii) human biological sample used for valid scientific testing or screening; or
51   (iv) scan of hand or face geometry.
52   (b) "Biometric identifier" does not include:
53   (i) a writing sample;
54   (ii) a written signature;
55   (iii) a voiceprint;
56   (iv) a photograph;
57   (v) demographic data; or
58   (vi) a physical description, such as height, weight, hair color, or eye color.

59   (4) "Biometric information" means information, regardless of how the information is

60   collected, converted, stored, or shared:

61   (a) based on an individual's biometric identifier; and

62   (b) used to identify the individual.

63   (5) "Board" means the State Board of Education.

64   [(6) "Cumulative disciplinary record" means disciplinary student data that is part of a

65   cumulative record.]

66   [(7) "Cumulative record" means physical or electronic information that the education

67   entity intends:]

68   [(a) to store in a centralized location for 12 months or more; and]

69   [(b) for the information to follow the student through the public education system.]

70   [(8) "Data authorization" means written authorization to collect or share a student's

71   student data, from:]

72   [(a) the student's parent, if the student is not an adult student; or]

73   [(b) the student, if the student is an adult student.]

74   (6) "Data breach" means an unauthorized release of or unauthorized access to

75   personally identifiable student data that is maintained by an education entity.

76   [(9)] (7) "Data governance plan" means an education entity's comprehensive plan for

77   managing education data that:

78   (a) incorporates reasonable data industry best practices to maintain and protect student

79   data and other education-related data;

80   (b) describes the role, responsibility, and authority of an education entity data

81   governance staff member;

82   [(b)] (c) provides for necessary technical assistance, training, support, and auditing;

83   [(c)] (d) describes the process for sharing student data between an education entity and

84   another person;

85   [(d)] (e) describes the education entity's data expungement process [for an adult student

86   or parent to request that data be expunged; and], including how to respond to requests for

87   expungement;

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

89   [(e)] (g) is published annually and available on the education entity's website.

90   [(10)] (8) "Education entity" means:

91   (a) the board;

92   (b) a local school board;

93   (c) a charter school governing board;

94   (d) a school district;

95   (e) a charter school;

96   (f) the Utah Schools for the Deaf and the Blind; or

97   (g) for purposes of implementing the School Readiness Initiative described in Title

98   53F, Chapter 6, Part 3, School Readiness Initiative, the School Readiness Board created in

99   Section 53F-6-302.

100   [(11)] (9) "Expunge" means to seal or permanently delete data, as described in board

101 rule made under Section 53E-9-306.

102   [(12) "External application" means a general audience:]

103   [(a) application;]

104   [(b) piece of software;]

105   [(c) website; or]

106   [(d) service.]

107   (10) "General audience application" means an Internet website, online service, online

108 application, mobile application, or software program that:

109   (a) is not specifically intended for use by an audience member that attends kindergarten

110 or a grade from 1 to 12, although an audience member may attend kindergarten or a grade from

111 1 to 12; and

112   (b) is not subject to a contract between an education entity and a third-party contractor.

113   [(13)] (11) "Individualized education program" or "IEP" means a written statement:

114   (a) for a student with a disability; and

115   (b) that is developed, reviewed, and revised in accordance with the Individuals with

116 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

117   [(14) "Internal application" means an Internet website, online service, online

118 application, mobile application, or software, if the Internet website, online service, online

119 application, mobile application, or software is subject to a third-party contractor's contract with

120 an education entity.]

121   [(15)] (12) "Local education agency" or "LEA" means:

122   (a) a school district;

123   (b) a charter school;

124   (c) the Utah Schools for the Deaf and the Blind; or

125   (d) for purposes of implementing the School Readiness Initiative described in Title

126   53F, Chapter 6, Part 3, School Readiness Initiative, the School Readiness Board created in

127   Section 53F-6-302.

128   [(16) "Metadata dictionary" means a complete list of an education entity's student data

129   elements and other education-related data elements, that:]

130   [(a) defines and discloses all data collected, used, stored, and shared by the education

131   entity, including:]

132   [(i) who uses a data element within an education entity and how a data element is used

133   within an education entity;]

134   [(ii) if a data element is shared externally, who uses the data element externally and

135   how a data element is shared externally;]

136   [(iii) restrictions on the use of a data element; and]

137   [(iv) parent and student rights to a data element;]

138   [(b) designates student data elements as:]

139   [(i) necessary student data; or]

140   [(ii) optional student data;]

141   [(c) designates student data elements as required by state or federal law; and]

142   [(d) without disclosing student data or security information, is displayed on the

143   education entity's website.]

144   (13) "Metadata dictionary" means a record that:

145   (a) defines and discloses all personally identifiable student data collected and shared by

146   the education entity;

147   (b) comprehensively lists all recipients with whom the education entity has shared

148   personally identifiable student data, including:

149   (i) the purpose for sharing the data with the recipient;

150   (ii) the justification for sharing the data, including whether sharing the data was

151   required by federal law, state law, or a local directive; and

152   (iii) how sharing the data is permitted under federal or state law; and

153   (c) without disclosing personally identifiable student data, is displayed on the

154 education entity's website.

155   [(17)] (14) "Necessary student data" means data required by state statute or federal law

156 to conduct the regular activities of an education entity, including:

157   (a) name;

158   (b) date of birth;

159   (c) sex;

160   (d) parent contact information;

161   (e) custodial parent information;

162   (f) contact information;

163   (g) a student identification number;

164   (h) local, state, and national assessment results or an exception from taking a local,

165 state, or national assessment;

166   (i) courses taken and completed, credits earned, and other transcript information;

167   (j) course grades and grade point average;

168   (k) grade level and expected graduation date or graduation cohort;

169   (l) degree, diploma, credential attainment, and other school exit information;

170   (m) attendance and mobility;

171   (n) drop-out data;

172   (o) immunization record or an exception from an immunization record;

173   (p) race;

174   (q) ethnicity;

175   (r) tribal affiliation;

176   (s) remediation efforts;

177   (t) an exception from a vision screening required under Section 53G-9-404 or

178 information collected from a vision screening required under Section 53G-9-404;

179   (u) information related to the Utah Registry of Autism and Developmental Disabilities,

180 described in Section 26-7-4;

181   (v) student injury information;

182   (w) a [cumulative] disciplinary record created and maintained as described in Section

183   53E-9-306;

184   (x) juvenile delinquency records;

185   (y) English language learner status; and

186   (z) child find and special education evaluation data related to initiation of an IEP.

187   [(18)] (15) (a) "Optional student data" means student data that is not:

188   (i) necessary student data; or

189   (ii) student data that an education entity may not collect under Section 53E-9-305.

190   (b) "Optional student data" includes:

191   (i) information that is:

192   (A) related to an IEP or needed to provide special needs services; and

193   (B) not necessary student data;

194   (ii) biometric information; and

195   (iii) information that is not necessary student data and that is required for a student to

196   participate in a federal or other program.

197   [(19)] (16) "Parent" means [a student's parent or legal guardian.]:

198   (a) a student's parent;

199   (b) a student's legal guardian; or

200   (c) an individual who has written authorization from a student's parent or legal

201   guardian to act as a parent or legal guardian on behalf of the student.

202   [(20)] (17) (a) "Personally identifiable student data" means student data that identifies

203   or is used by the holder to identify a student.

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

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

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

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

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

209   (v) a student's telephone number;

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

211   (vii) a student's biometric identifier;

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

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

214   (x) a student's social media user name and password or alias;
215   (xi) if associated with personally identifiable student data, the student's persistent
216   identifier, including:
217   (A) a customer number held in a cookie; or
218   (B) a processor serial number;
219   (xii) a combination of a student's last name or photograph with other information that
220   together permits a person to contact the student online;
221   (xiii) information about a student or a student's family that a person collects online and
222   combines with other personally identifiable student data to identify the student; and
223   (xiv) [other information that is linked to a specific student that would allow a
224   reasonable person in the school community, who does not have first-hand knowledge of the
225   student, to identify the student with reasonable certainty.] information that, alone or in
226   combination, is linked or linkable to a specific student that would allow a reasonable person in
227   the school community, who does not have personal knowledge of the relevant circumstances,
228   to identify the student with reasonable certainty.
229   [(21)] (18) "School official" means an employee or agent of an education entity, if the
230   education entity has authorized the employee or agent to request or receive student data on
231   behalf of the education entity.
232   [(22)] (19) (a) "Student data" means information about a student at the individual
233   student level.
234   (b) "Student data" does not include aggregate or de-identified data.
235   [(23) "Student data disclosure statement" means a student data disclosure statement
236   described in Section 53E-9-305.]
237   [(24)] (20) "Student data manager" means:
238   (a) the state student data officer; or
239   (b) an individual designated as a student data manager by an education entity under
240   Section 53E-9-303[.], who fulfills the duties described in Section 53E-9-308.
241   [(25)] (21) (a) "Targeted advertising" means presenting advertisements to a student
242   where the advertisement is selected based on information obtained or inferred over time from
243   that student's online behavior, usage of applications, or student data.
244   (b) "Targeted advertising" does not include advertising to a student:

245   (i) at an online location based upon that student's current visit to that location; or

246   (ii) in response to that student's request for information or feedback, without retention

247   of that student's online activities or requests over time for the purpose of targeting subsequent

248   ads.

249   [(26)] (22) "Third-party contractor" means a person who:

250   (a) is not an education entity; and

251   (b) pursuant to a contract with an education entity, collects or receives student data in

252   order to provide a product or service, as described in the contract, if the product or service is

253   not related to school photography, yearbooks, graduation announcements, or a similar product

254   or service.

255   (23) "Written consent" means written authorization to collect or share a student's

256   student data, from:

257   (a) the student's parent, if the student is not an adult student; or

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

259   Section 2. Section 53E-9-302 is amended to read:

260   53E-9-302. State student data protection governance.

261   (1) (a) An education entity or a third-party contractor who collects, uses, stores, shares,

262   or deletes student data shall protect student data as described in this part.

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

264   board shall make rules to administer this part, including student data protection standards for

265   public education employees, student aides, and volunteers.

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

267   (a) a statewide data governance plan; and

268   (b) a state-level metadata dictionary.

269   (3) As described in this Subsection (3), the board shall establish advisory groups to

270   oversee student data protection in the state and make recommendations to the board regarding

271   student data protection.

272   (a) The board shall establish a student data policy advisory group:

273   (i) composed of members from:

274   (A) the Legislature;

275   (B) the board and board employees; and

276   (C) one or more LEAs;
277   (ii) to discuss and make recommendations to the board regarding:
278   (A) enacted or proposed legislation; and
279   (B) state and local student data protection policies across the state;
280   (iii) that reviews and monitors the state student data governance plan; and
281   (iv) that performs other tasks related to student data protection as designated by the
282   board.
283   (b) The board shall establish a student data governance advisory group:
284   (i) composed of the state student data officer and other board employees; and
285   (ii) that performs duties related to state and local student data protection, including:
286   (A) overseeing data collection and usage by board program offices; and
287   (B) preparing and maintaining the board's student data governance plan under the
288   direction of the student data policy advisory group.
289   (c) The board shall establish a student data users advisory group:
290   (i) composed of members who use student data at the local level; and
291   (ii) that provides feedback and suggestions on the practicality of actions proposed by
292   the student data policy advisory group and the student data governance advisory group.
293   (4) (a) The board shall designate a state student data officer.
294   (b) The state student data officer shall:
295   (i) act as the primary point of contact for state student data protection administration in
296   assisting the board to administer this part;
297   (ii) ensure compliance with student privacy laws throughout the public education
298   system, including:
299   (A) providing training and support to applicable board and LEA employees; and
300   (B) producing resource materials, model plans, and model forms for local student data
301   protection governance, including a model student data [disclosure statement] collection notice;
302   (iii) investigate complaints of alleged violations of this part;
303   (iv) report violations of this part to:
304   (A) the board;
305   (B) an applicable education entity; and
306   (C) the student data policy advisory group; and

307   (v) act as a state level student data manager.

308   (5) The board shall designate:

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

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

311   (6) The board shall establish [an external] a research review process for a request for

312   data for the purpose of [external] research or evaluation.

313   Section 3. Section **53E-9-304** is amended to read:

314   **53E-9-304.   Student data ownership and access -- Notification in case of**

315   **significant data breach.**

316   (1) (a) A student owns the student's personally identifiable student data.

317   [(b) A student may download, export, transfer, save, or maintain the student's student

318   data, including a document.]

319   (b) The following may access a student's student data that is maintained by an

320   education entity:

321   (i) the student, if the student is an adult; or

322   (ii) (A) the student's parent;

323   (B) the student's legal guardian; or

324   (C) in accordance with the education entity's internal policy, and in the absence of a

325   parent or legal guardian, an individual acting as a parent to the student.

326   (2) (a) If [there is a release of a student's personally identifiable student data due to a

327   security breach, an] a significant data breach occurs at an education entity, the education entity

328   shall notify:

329   [(a)] (i) the student, if the student is an adult student; or

330   [(b)] (ii) the student's parent or legal guardian, if the student is not an adult student.

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

332   board shall make rules to define a significant data breach described in Subsection (2)(a).

333   Section 4. Section **53E-9-305** is amended to read:

334   **53E-9-305.   Collecting student data -- Prohibition -- Student data collection notice**

335   **-- Authorization.**

336   [(1) An education entity shall comply with this section beginning with the 2017-18

337   school year.]

338   [(2)] (1) An education entity may not collect a student's:

339   (a) social security number; or

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

341   [(3)] (2) An education entity [that collects student data into a cumulative record] shall,

342   in accordance with this section, prepare and distribute to parents and students a student data

343   [disclosure] collection notice statement that:

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

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

346   (c) states the [necessary and optional] student data that the education entity collects;

347   (d) states that the education entity will not collect the student data described in

348   Subsection [(2)] (1);

349   (e) states the student data described in Section 53E-9-308 that the education entity may

350   not share without [a data authorization] written consent;

351   [(f) describes how the education entity may collect, use, and share student data;]

352   [(g)] (f) includes the following statement:

353   "The collection, use, and sharing of student data has both benefits and risks. Parents

354   and students should learn about these benefits and risks and make choices regarding student

355   data accordingly.";

356   [(h)] (g) describes in general terms how the education entity stores and protects student

357   data; and

358   [(i)] (h) states a student's rights under this part.

359   [(4)] (3) An education entity may collect the necessary student data of a student [into a

360   cumulative record] if the education entity provides a student data [disclosure statement]

361   collection notice to:

362   (a) the student, if the student is an adult student; or

363   (b) the student's parent, if the student is not an adult student.

364   [(5)] (4) An education entity may collect optional student data [into a cumulative

365   record] if the education entity:

366   (a) provides, to an individual described in Subsection [(4)] (3), a student data

367   [disclosure statement] collection notice that includes a description of:

368   (i) the optional student data to be collected; and

369   (ii) how the education entity will use the optional student data; and

370   (b) obtains [a data authorization] written consent to collect the optional student data

371   from an individual described in Subsection [(4)] (3).

372   [(6)] (5) An education entity may collect a student's biometric identifier or biometric

373   information [into a cumulative record] if the education entity:

374   (a) provides, to an individual described in Subsection [(4)] (3), a biometric information

375   [disclosure statement] collection notice that is separate from a student data [disclosure

376   statement] collection notice, which states:

377   (i) the biometric identifier or biometric information to be collected;

378   (ii) the purpose of collecting the biometric identifier or biometric information; and

379   (iii) how the education entity will use and store the biometric identifier or biometric

380   information; and

381   (b) obtains [a data authorization] written consent to collect the biometric identifier or

382   biometric information from an individual described in Subsection [(4)] (3).

383   Section 5. Section **53E-9-306** is amended to read:

384   **53E-9-306.   Using and deleting student data -- Rulemaking -- Disciplinary**

385   **records.**

386   (1) In accordance with Title 63G, Chapter 2, Government Records Access and

387   Management Act, and Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board

388   shall make rules regarding using and expunging student data, including:

389   (a) a categorization of [cumulative] disciplinary records that includes the following

390   levels of maintenance:

391   (i) one year;

392   (ii) three years; and

393   (iii) [except as required in] in accordance with Subsection (3), as determined by the

394   education entity;

395   (b) the types of student data that may be expunged, including:

396   (i) medical records; and

397   (ii) behavioral test assessments; [and]

398   (c) the types of student data that may not be expunged, including:

399   (i) grades;

400   (ii) transcripts;

401   (iii) a record of the student's enrollment; and

402   (iv) assessment information[.]; and

403   (d) the timeline and process for a prior student or parent of a prior student to request

404   that an education entity expunge all of the prior student's student data.

405   (2) In accordance with board rule, an education entity may create and maintain a

406   [cumulative] disciplinary record for a student.

407   [(3) (a) An education entity shall, in accordance with board rule, expunge a student's

408   student data that is stored by the education entity if:]

409   [(i) the student is at least 23 years old; and]

410   [(ii) the student requests that the education entity expunge the student data.]

411   [(b)] (3) An education entity shall retain and dispose of records in accordance with

412   Section 63G-2-604 and board rule.

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

414   **53E-9-308. Sharing student data -- Prohibition -- Requirements for student data**

415   **manager -- Authorized student data sharing.**

416   [(1) An education entity shall comply with this section beginning with the 2017-18

417   school year.]

418   [(2) An education entity may not share a student's personally identifiable student data if

419   the personally identifiable student data is not shared in accordance with:]

420   [(a) the Family Education Rights and Privacy Act and related provisions under 20

421   U.S.C. Secs. 1232g and 1232h; and]

422   [(b) this part.]

423   (1) (a) Except as provided in Subsection (1)(b), an education entity, including a student

424   data manager, may not share personally identifiable student data without written consent.

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

426   identifiable student data:

427   (i) in accordance with the Family Education Rights and Privacy Act and related

428   provisions under 20 U.S.C. Secs. 1232g and 1232h;

429   (ii) as required by federal law; and

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

431   [(3)] (2) A student data manager shall:

432   (a) authorize and manage the sharing, outside of the student data manager's education

433   entity, of personally identifiable student data [from a cumulative record] for the education

434   entity as described in this section; [and]

435   (b) act as the primary local point of contact for the state student data officer described

436   in Section 53E-9-302[.]; and

437   (c) fulfill other responsibilities described in the data governance plan of the student

438   data manager's education entity.

439   [(4) (a) Except as provided in this section or required by federal law, a student data

440   manager may not share, outside of the education entity, personally identifiable student data

441   from a cumulative record without a data authorization.]

442   [(b) A student data manager may share the personally identifiable student data of a

443   student with the student and the student's parent.]

444   [(5) A student data manager may share a student's personally identifiable student data

445   from a cumulative record with:]

446   [(a) a school official;]

447   [(b) as described in Subsection (6), an authorized caseworker or other representative of

448   the Department of Human Services; or]

449   [(c) a person to whom the student data manager's education entity has outsourced a

450   service or function:]

451   [(i) to research the effectiveness of a program's implementation; or]

452   [(ii) that the education entity's employees would typically perform.]

453   [(6)] (3) A student data manager may share a student's personally identifiable student

454   data [from a cumulative record] with a caseworker or representative of the Department of

455   Human Services if:

456   (a) the Department of Human Services is:

457   (i) legally responsible for the care and protection of the student; or

458   (ii) providing services to the student;

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

460   not authorized:

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

462   (ii) by the Department of Human Services to receive the student's personally
463   identifiable student data; and
464   (c) the Department of Human Services maintains and protects the student's personally
465   identifiable student data.
466   [(7)] (4) The Department of Human Services, a school official, or the Utah Juvenile
467   Court may share [education information, including a student's personally identifiable student
468   data,] personally identifiable student data to improve education outcomes for youth:
469   (a) in the custody of, or under the guardianship of, the Department of Human Services;
470   (b) receiving services from the Division of Juvenile Justice Services;
471   (c) in the custody of the Division of Child and Family Services;
472   (d) receiving services from the Division of Services for People with Disabilities; or
473   (e) under the jurisdiction of the Utah Juvenile Court.
474   [(8) Subject to Subsection (9), a student data manager may share aggregate data.]
475   [(9) (a) If a student data manager receives a request to share data for the purpose of
476   external research or evaluation, the student data manager shall:]
477   [(i) submit the request to the education entity's external research review process; and]
478   [(ii) fulfill the instructions that result from the review process.]
479   [(b) A student data manager may not share personally identifiable student data for the
480   purpose of external research or evaluation.]
481   [(10) (a) A student data manager may share personally identifiable student data in
482   response to a subpoena issued by a court.]
483   [(b) A person who receives personally identifiable student data under Subsection
484   (10)(a) may not use the personally identifiable student data outside of the use described in the
485   subpoena.]
486   [(11) (a) In accordance with board rule, a student data manager may share personally
487   identifiable information that is directory information.]
488   [(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
489   the board shall make rules to:]
490   [(i) define directory information; and]
491   [(ii) determine how a student data manager may share personally identifiable
492   information that is directory information.]

493   (5) (a) A student data manager may share personally identifiable student data in

494   response to a subpoena issued by a court.

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

496   may not use the personally identifiable student data outside of the use described in the

497   subpoena.

498   (6) A student data manager may share student data, including personally identifiable

499   student data, in response to a request to share student data for the purpose of research or

500   evaluation, if the student data manager:

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

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

503   (c) fulfills the instructions that result from the review process.

504   (7) A student data manager may share aggregate data.

505   Section 7. Section **53E-9-309** is amended to read:

506   **53E-9-309.   Third-party contractors -- Use and protection of student data --**

507   **Contract requirements -- Completion of contract -- Required and allowed uses of student**

508   **data -- Restrictions on the use of student data -- Exceptions.**

509   (1) A third-party contractor shall use personally identifiable student data received

510   under a contract with an education entity strictly for the purpose of providing the contracted

511   product or service within the negotiated contract terms.

512   (2) When contracting with a third-party contractor, an education entity shall require the

513   following provisions in the contract:

514   (a) requirements and restrictions related to the collection, use, storage, or sharing of

515   student data by the third-party contractor that are necessary for the education entity to ensure

516   compliance with the provisions of this part and board rule;

517   (b) a description of a person, or type of person, including an affiliate of the third-party

518   contractor, with whom the third-party contractor may share student data;

519   (c) provisions that, at the request of the education entity, govern the deletion of the

520   student data received by the third-party contractor;

521   (d) except as provided in Subsection (4) and if required by the education entity,

522   provisions that prohibit the secondary use of personally identifiable student data by the

523   third-party contractor; and

524   (e) an agreement by the third-party contractor that, at the request of the education entity

525   that is a party to the contract, the education entity or the education entity's designee may audit

526   the third-party contractor to verify compliance with the contract.

527   (3) As authorized by law or court order, a third-party contractor shall share student data

528   as requested by law enforcement.

529   (4) A third-party contractor may:

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

531   (b) market an educational application or product to a parent [or legal guardian] of a

532   student if the third-party contractor did not use student data, shared by or collected on behalf of

533   an education entity, to market the educational application or product;

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

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

536   [internal] application, if the recommendation is not motivated by payment or other

537   consideration from another party; or

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

539   [internal] application, if the recommendation is not motivated by payment or other

540   consideration from another party;

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

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

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

544   contractor's [internal] application; or

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

546   providers that are seeking students who meet specific criteria:

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

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

549   (ii) except as provided in Subsection (5), only if the third-party contractor obtains

550   [written consent] authorization in writing from:

551   (A) [of] a student's parent [or legal guardian] through the student's school or LEA; or

552   (B) for a student who is age 18 or older or an emancipated minor, [from] the student.

553   (5) A third-party contractor is not required to obtain [written consent] authorization in

554   writing under Subsection (4)(f)(ii) if the third-party contractor:

555   (a) is a national assessment provider; and

556   (b) (i) secures [the express written consent of] express authorization in writing from

557   the student or the student's parent; and

558   (ii) the express [written consent] authorization in writing is given in response to clear

559   and conspicuous notice that the national assessment provider requests consent solely to provide

560   access to information on employment, educational scholarships, financial aid, or postsecondary

561   educational opportunities.

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

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

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

565   or the student's parent consents to the maintenance of the personally identifiable student data.

566   (7) (a) A third-party contractor may not:

567   (i) except as provided in Subsections (5) and (7)(b), sell student data;

568   (ii) collect, use, or share student data, if the collection, use, or sharing of the student

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

570   (iii) use student data for targeted advertising.

571   (b) A person may obtain student data through the purchase of, merger with, or

572   otherwise acquiring a third-party contractor if the third-party contractor remains in compliance

573   with this section.

574   [(8) A provider of an electronic store, gateway, marketplace, or other means of

575   purchasing an external application is not required to ensure that the external application

576   obtained through the provider complies with this section.]

577   [(9)] (8) The provisions of this section do not:

578   (a) apply to the use of [an external] a general audience application, including the access

579   of [an external] a general audience application with login credentials created by a third-party

580   contractor's [internal] application;

581   (b) apply to the providing of Internet service; or

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

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

584   (9) A provision of this section that relates to a student's student data does not apply to a

585   third-party contractor if the third-party contractor obtains authorization from the following

586   individual, in writing, to waive that provision:

587   (a) the student's parent, if the student is not an adult student; or

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

589   Section 8. Section **53E-9-310** is amended to read:

590   **53E-9-310.   Penalties.**

591   (1) (a) A third-party contractor that knowingly or recklessly permits unauthorized

592   collecting, sharing, or use of student data under this part:

593   (i) except as provided in Subsection (1)(b), may not enter into a future contract with an

594   education entity;

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

596   (iii) may be required to pay:

597   (A) the education entity's cost of notifying parents and students of the unauthorized

598   sharing or use of student data; and

599   (B) expenses incurred by the education entity as a result of the unauthorized sharing or

600   use of student data.

601   (b) An education entity may enter into a contract with a third-party contractor that

602   knowingly or recklessly permitted unauthorized collecting, sharing, or use of student data if:

603   (i) the board or education entity determines that the third-party contractor has corrected

604   the errors that caused the unauthorized collecting, sharing, or use of student data; and

605   (ii) the third-party contractor demonstrates:

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

607   compliance with this part; or

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

609   (c) The board may assess the civil penalty described in Subsection (1)(a)(ii) in

610   accordance with Title 63G, Chapter 4, Administrative Procedures Act.

611   (d) The board may bring an action in the district court of the county in which the office

612   of the board is located, if necessary, to enforce payment of the civil penalty described in

613   Subsection (1)(a)(ii).

614   (e) An individual who knowingly or intentionally permits unauthorized collecting,

615   sharing, or use of student data may be found guilty of a class A misdemeanor.

616   (2) (a) A parent or adult student may bring an action in a court of competent

617   jurisdiction for damages caused by a knowing or reckless violation of Section 53E-9-309 by a

618   third-party contractor.

619   (b) If the court finds that a third-party contractor has violated Section 53E-9-309, the

620   court may award to the parent or student:

621   (i) damages; and

622   (ii) costs.

Legislative Review Note
Office of Legislative Research and General Counsel