

IN THE SENATE

SENATE BILL NO. 1296

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO EDUCATION; TO PROVIDE A SHORT TITLE; TO PROVIDE LEGISLATIVE  
2 INTENT; AMENDING CHAPTER 1, TITLE 33, IDAHO CODE, BY THE ADDITION OF  
3 A NEW SECTION 33-133, IDAHO CODE, TO PROVIDE DEFINITIONS, TO PROVIDE  
4 FOR A RESPONSIBLE ENTITY, TO ESTABLISH PROVISIONS RELATING TO A DATA  
5 INVENTORY AND DICTIONARY OR INDEX, TO ESTABLISH PROVISIONS RELATING TO  
6 CERTAIN POLICIES AND PROCEDURES, TO ESTABLISH PROVISIONS RELATING TO  
7 THE STATE BOARD OF EDUCATION AND THE STATE DEPARTMENT OF EDUCATION EN-  
8 SURING THAT CERTAIN VENDORS SHALL COMPLY WITH THE LAW, TO PROVIDE FOR A  
9 CIVIL ENFORCEMENT ACTION, TO PROVIDE FOR A COURT ACTION, TO PROVIDE FOR  
10 A PENALTY, TO ESTABLISH PROVISIONS RELATING TO DATA DEEMED CONFIDEN-  
11 TIAL, TO PROVIDE FOR EXCEPTIONS, TO PROVIDE FOR A DATA SECURITY PLAN, TO  
12 ESTABLISH PROVISIONS RELATING TO COMPLIANCE WITH CERTAIN POLICIES AND  
13 LAWS, TO ESTABLISH PROVISIONS RELATING TO CERTAIN CONTRACTS, TO PRO-  
14 VIDE FOR NOTIFICATION TO THE GOVERNOR AND THE LEGISLATURE, TO PROVIDE  
15 FOR RULES, TO ESTABLISH PROVISIONS RELATING TO EXISTING COLLECTION OF  
16 STUDENT DATA, TO ESTABLISH PROVISIONS RELATING TO A PARENT OR GUARDIAN  
17 REQUEST FOR THEIR CHILD'S STUDENT RECORD, TO PROVIDE FOR A MODEL POLICY  
18 AND TO PROVIDE FOR PENALTIES; AND DECLARING AN EMERGENCY.  
19

20 Be It Enacted by the Legislature of the State of Idaho:

21 SECTION 1. SHORT TITLE. This act shall be known as the "Student Data Ac-  
22 cessibility, Transparency and Accountability Act of 2014."

23 SECTION 2. LEGISLATIVE INTENT. It is the intent of the Legislature to  
24 help ensure that student information is safeguarded and that privacy is hon-  
25 ored, respected and protected. The Legislature also acknowledges that stu-  
26 dent information is a vital resource for teachers and school staff in plan-  
27 ning responsive education programs and services, scheduling students into  
28 appropriate classes and completing reports for educational agencies. Stu-  
29 dent information is critical in helping educators assist students in suc-  
30 cessfully graduating from high school and being ready to enter the workforce  
31 or postsecondary education. In emergencies, certain information should be  
32 readily available to school officials to assist students and their families.  
33 A limited amount of this information makes up a student's permanent record  
34 or transcript. The Legislature firmly believes that while student informa-  
35 tion is important for educational purposes, it is also critically important  
36 to ensure that student information is protected, safeguarded and kept pri-  
37 vate and used only by appropriate educational authorities and then, only to  
38 serve the best interests of the student. To that end, this act will help en-  
39 sure that student information is protected and expectations of privacy are  
40 honored.

1 SECTION 3. That Chapter 1, Title 33, Idaho Code, be, and the same is  
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
3 ignated as Section 33-133, Idaho Code, and to read as follows:

4 33-133. DEFINITIONS -- STUDENT DATA -- USE AND LIMITATIONS. (1) As  
5 used in this act, the following terms shall have the following meanings:

6 (a) "Agency" means each state board, commission, department, office or  
7 institution, educational or otherwise, of the state of Idaho. State  
8 agency shall also mean any city, county, district or other political  
9 subdivision of the state.

10 (b) "Aggregate data" means data collected and/or reported at the group,  
11 cohort or institutional level. The minimum number of students shall be  
12 determined by the state board of education.

13 (c) "Board" means the state board of education.

14 (d) "Data system" means the state department of education's Idaho sys-  
15 tem for educational excellence (ISEE) and also the state postsecondary  
16 longitudinal data system.

17 (e) "Department" means the state department of education.

18 (f) "District" or "school district" means an Idaho public school dis-  
19 trict and shall also include Idaho public charter schools.

20 (g) "Personally identifiable data," "personally identifiable student  
21 data" or "personally identifiable information" includes, but is not  
22 limited to: the student's name; the name of the student's parent or  
23 other family members; the address of the student or student's family;  
24 a personal identifier, such as the student's social security number,  
25 student education unique identification number or biometric record;  
26 other indirect identifiers, such as the student's date of birth, place  
27 of birth and mother's maiden name; and other information that, alone  
28 or in combination, is linked or linkable to a specific student that  
29 would allow a reasonable person in the school community, who does not  
30 have personal knowledge of the relevant circumstances, to identify the  
31 student with reasonable certainty or information requested by a person  
32 who the educational agency or institution reasonably believes knows the  
33 identity of the student to whom the education record relates.

34 (h) "Provisional student data" means new student data proposed for in-  
35 clusion in the data system.

36 (i) "Student data" means data collected and/or reported at the individ-  
37 ual student level included in a student's educational record.

38 (i) "Student data" includes: (1) state and national assess-  
39 ment results, including information on untested public school  
40 students; (2) course taking and completion, credits earned and  
41 other transcript information; (3) course grades and grade point  
42 average; (4) date of birth, grade level and expected graduation  
43 date/graduation cohort; (5) degree, diploma, credential attain-  
44 ment and other school exit information such as general educational  
45 development and drop-out data; (6) attendance and mobility; (7)  
46 data required to calculate the federal four (4) year adjusted  
47 cohort graduation rate, including sufficient exit and drop-out  
48 information; (8) discipline reports limited to objective infor-  
49 mation sufficient to produce the federal annual incident reports,

1 children with disabilities disciplinary reports and discipline  
2 reports including students involved with firearms; (9) remedi-  
3 ation; (10) special education data; (11) demographic data and  
4 program participation information; and (12) files, documents,  
5 images or data that are stored in or transmitted through a cloud  
6 computing service.

7 (ii) Unless included in a student's educational record, "student  
8 data" shall not include: (1) juvenile delinquency records; (2)  
9 criminal records; (3) medical and health records; (4) student so-  
10 cial security number; (5) student biometric information; (6) gun  
11 ownership records; (7) sexual orientation; and (8) religious af-  
12 filiation.

13 (j) "Student educational record" means all information directly re-  
14 lated to a student and recorded and kept in the data system as that term  
15 is defined in this section. A student educational record may include  
16 information considered to be personally identifiable.

17 (k) "Student education unique identification number" means the unique  
18 student identifier assigned by the state to each student that shall not  
19 be or include the social security number of a student in whole or in  
20 part.

21 (2) Unless otherwise provided for in this act, the executive office of  
22 the state board of education shall be the entity responsible for implement-  
23 ing the provisions of this act. All decisions relating to the collection and  
24 safeguarding of student data shall be the responsibility of the executive  
25 office of the state board of education.

26 (3) The state board of education shall:

27 (a) Create, publish and make publicly available a data inventory and  
28 dictionary or index of data elements with definitions of individual  
29 student data fields currently in the student data system including:

30 (i) Any individual student data required to be reported by state  
31 and federal education mandates;

32 (ii) Any individual student data that has been proposed for inclu-  
33 sion in the student data system with a statement regarding the pur-  
34 pose or reason for the proposed collection; and

35 (iii) Any individual student data collected or maintained with no  
36 current purpose or reason.

37 No less frequently than annually, the state board of education shall up-  
38 date the data inventory and index of data elements provided for in this  
39 subsection.

40 (b) Develop, publish and make publicly available policies and proce-  
41 dures to comply with the federal family educational rights and privacy  
42 act (FERPA) and other relevant privacy laws and policies including, but  
43 not limited to:

44 (i) Access to student data in the student data system shall be re-  
45 stricted to: (1) the authorized staff of the state board of educa-  
46 tion and the state department of education and the board's and the  
47 department's vendors who require such access to perform their as-  
48 signed duties; (2) district and public postsecondary staff who re-  
49 quire such access to perform their assigned duties; (3) students  
50 and their parents or legal guardians; and (4) the authorized staff

1 of other state agencies in this state as required by law and/or de-  
2 fined by interagency data-sharing agreements;

3 (ii) Public reports or responses to record requests shall include  
4 aggregate data only as that term is defined in subsection (1) of  
5 this section;

6 (iii) The state board of education shall develop criteria for the  
7 approval of research and data requests from state and local agen-  
8 cies, the state legislature, researchers and the public: (1) un-  
9 less otherwise approved by the state board of education, student  
10 data maintained shall remain confidential; (2) unless otherwise  
11 approved by the state board of education, released student data  
12 in response to research and data requests may only include aggre-  
13 gate data; and (3) any approval of the board to release person-  
14 ally identifiable student data shall be subject to legislative ap-  
15 proval prior to the release of such information;

16 (iv) Ensuring that any contract entered into by the state board  
17 of education or the state department of education includes provi-  
18 sions requiring and governing data destruction dates and specific  
19 restrictions on the use of data;

20 (v) Notification to students and parents regarding their rights  
21 under federal and state law; and

22 (vi) Ensuring that all school districts, primary schools, sec-  
23 ondary schools and other similar institutions entering into  
24 contracts that govern databases, online services, assessments,  
25 special education or instructional supports with private vendors  
26 shall include in each such contract either: (1) a prohibition  
27 on any secondary uses of student data by the private vendor in-  
28 cluding, but not limited to, sales, marketing or advertising,  
29 but permitting the private vendor to process or monitor such data  
30 solely to provide and maintain the integrity of the service; or (2)  
31 a requirement that the private vendor disclose in detail any sec-  
32 ondary uses of student data including, but not limited to, sales,  
33 marketing or advertising, and the board shall obtain express  
34 parental consent for those secondary uses prior to deployment of  
35 the private vendor's services under the contract.

36 The state board of education and the state department of education shall  
37 ensure that any and all private vendors employed or otherwise engaged  
38 by the board or the department shall comply with the provisions of this  
39 section. Any person determined, in either a civil enforcement action  
40 initiated by the board or initiated by the department or in a court ac-  
41 tion initiated by an injured party, to have violated any provision of  
42 this section or any rule promulgated pursuant to this section, shall  
43 be liable for a civil penalty not to exceed fifty thousand dollars  
44 (\$50,000) per violation. In the case of an unauthorized release of stu-  
45 dent data, the state board of education or the state department of edu-  
46 cation shall notify the parent or student of the unauthorized release  
47 of student data that includes personally identifiable information in a  
48 manner consistent with the provisions of section 28-51-105, Idaho Code.

49 (c) Unless otherwise approved by the state board of education, any data  
50 deemed confidential pursuant to this act shall not be transferred to any

1 federal, state or local agency or other organization or entity outside  
2 of the state of Idaho, with the following exceptions:

3 (i) A student transfers out of state or a school or district seeks  
4 help with locating an out-of-state transfer;

5 (ii) A student leaves the state to attend an out-of-state institu-  
6 tion of higher education or training program;

7 (iii) A student voluntarily participates in a program for which  
8 such a data transfer is a condition or requirement of participa-  
9 tion;

10 (iv) The state board of education or the state department of ed-  
11 ucation may share such data with a vendor to the extent it is nec-  
12 essary as part of a contract that governs databases, online ser-  
13 vices, assessments, special education or instructional supports  
14 with a vendor;

15 (v) Pursuant to a written agreement between the two (2) school  
16 districts, where a student transfers from an Idaho district abut-  
17 ting upon another state to the nearest appropriate district in  
18 such neighboring state in accordance with the provisions of sec-  
19 tion 33-1403, Idaho Code; or

20 (vi) A student is classified as "migrant" for federal reporting  
21 purposes;

22 (d) Develop a detailed data security plan that includes:

23 (i) Guidelines for authorizing access to the student data system  
24 and to individual student data including guidelines for authenti-  
25 cation of authorized access;

26 (ii) Guidelines relating to administrative safeguards providing  
27 for the security of electronic and physical data; such guidelines  
28 should include provisions relating to data encryption as well as  
29 staff training to better ensure the safety and security of data;

30 (iii) Privacy compliance standards;

31 (iv) Privacy and security audits;

32 (v) Breach planning, notification and procedures; and

33 (vi) Data retention and disposition policies;

34 (e) Ensure routine and ongoing compliance with FERPA, other relevant  
35 privacy laws and policies, and the privacy and security policies and  
36 procedures developed under the authority of this act, including the  
37 performance of compliance audits;

38 (f) Ensure that any contracts that govern databases, online services,  
39 assessments or instructional supports that include student data and are  
40 outsourced to private vendors, include express provisions that safe-  
41 guard privacy and security, contain the restrictions on secondary uses  
42 of student data described in subsection (3) (b) (vi) of this section,  
43 provides for data destruction and includes penalties for noncompliance  
44 with this paragraph; and

45 (g) Notify the governor and the legislature annually of the following:

46 (i) New student data proposed for inclusion in the state student  
47 data system: (1) any new student data collection proposed by the  
48 state board of education becomes a provisional requirement to al-  
49 low districts and their local data system vendors the opportunity  
50 to meet the new requirement; and (2) the state board of educa-

1           tion must submit any new provisional student data collection to  
2           the governor and the legislature for their approval within one (1)  
3           year in order to make the new student data a permanent requirement  
4           through the administrative rules process. Any provisional stu-  
5           dent data collection not approved by the governor and the legisla-  
6           ture by the end of the next legislative session expires and must be  
7           deleted and no longer collected;

8           (ii) Changes to existing data collections required for any rea-  
9           son, including changes to federal reporting requirements made by  
10          the U.S. department of education;

11          (iii) An explanation of any exceptions granted by the state  
12          board of education in the past year regarding the release or  
13          out-of-state transfer of student data;

14          (iv) The results of any and all privacy compliance and security  
15          audits completed in the past year. Notifications regarding pri-  
16          vacy compliance and security audits shall not include any informa-  
17          tion that would pose a security threat to the state or local stu-  
18          dent information systems or to the secure transmission of data be-  
19          tween state and local systems by exposing vulnerabilities; and

20          (v) Data collected specific to a grant program where such data is  
21          not otherwise included in student data.

22          (4) The state board of education shall adopt rules to implement the pro-  
23          visions of this act.

24          (5) Upon the effective date of this act, any existing collection of stu-  
25          dent data in the data system shall not be considered a new student data col-  
26          lection in accordance with this section.

27          (6) Unless otherwise prohibited by law or court order, school districts  
28          must provide parents or guardians with copies of all of their child's educa-  
29          tional records, upon request, if such child has not attained the age of eigh-  
30          teen (18) years.

31          (7) The state board of education shall develop a model policy for school  
32          districts and public charter schools that will govern data collection, ac-  
33          cess, security and use of such data. The model policy shall be consistent  
34          with the provisions of this act. In order to assure that student educa-  
35          tional information is treated safely and securely and in a consistent manner  
36          throughout the state, each district and public charter school shall adopt  
37          and implement the model policy. The state department of education shall  
38          provide outreach and training to the districts and public charter schools  
39          to help implement the policy. A current copy of such policy shall be posted  
40          to the school district's website. Any district or public charter school  
41          that fails to adopt, implement and post the policy where any inappropriate  
42          release of data occurs shall be liable for a civil penalty not to exceed fifty  
43          thousand dollars (\$50,000). The method of recovery of the penalty shall be  
44          by a civil enforcement action brought by the state board of education, with  
45          the assistance of the office of the state attorney general, in the district  
46          court in and for the county where the violation occurred. All civil penal-  
47          ties collected under this section shall be paid into the general fund of the  
48          state.

1           SECTION 4. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after its  
3 passage and approval.