

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 411

BY EDUCATION COMMITTEE

AN ACT

RELATING TO EDUCATION DATA; AMENDING SECTION 33-133, IDAHO CODE, TO REVISE PROVISIONS REGARDING EDUCATION DATA AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 33-133, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

(b) "Aggregate data" means data collected and/or reported at the group, cohort or institutional level. Aggregate data shall not include personally identifiable information. ~~The minimum number of students aggregation levels necessary for assuring data privacy shall be determined by the state board of education.~~

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

(d) "Data system" means the state's elementary, secondary and postsecondary longitudinal data systems.

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

(f) "District" or "school district" means ~~an~~ Idaho public school ~~district and shall also include~~ districts, including chartered school districts, Idaho public charter schools, the Idaho digital learning academy, and the Idaho school for the deaf and the blind.

(g) "Education unique identification number" means the unique identifier assigned by the state to each student or staff member that shall not be or include the student or staff member's social security number.

~~(g)~~ (h) "Parent" means parent, parents, legal guardian or legal guardians.

~~(h)~~ (i) "Personally identifiable data," "personally identifiable student data" or "personally identifiable information" includes, but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, ~~student~~ education unique identification number or biometric record; other indirect identifiers, such as the student's date of birth, place of birth and mother's maiden name; and other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not

1 have personal knowledge of the relevant circumstances, to identify the
 2 student with reasonable certainty or information requested by a person
 3 who the educational agency or institution reasonably believes knows the
 4 identity of the student to whom the education record relates.

5 ~~(i)~~ (j) "Provisional student data" means new student data proposed for
 6 inclusion in the data system.

7 ~~(j)~~ (k) "Student data" means data collected and/or reported at the in-
 8 dividual student level ~~included~~ in a student's educational record-

9 ~~(i)~~ "Student data" and includes:—(1) but is not limited to:
 10 state and national assessment results, including information on
 11 untested public school students; ~~(2)~~ course taking and comple-
 12 tion, credits earned and other transcript information; ~~(3)~~ course
 13 grades and grade point average; ~~(4)~~ date of birth, grade level and
 14 expected graduation ~~date/~~ date or graduation cohort; ~~(5)~~ degree,
 15 diploma, credential attainment and other school exit information
 16 such as general educational development and drop-out data; ~~(6)~~ at-
 17 tendance and mobility; ~~(7)~~ data required to calculate the federal
 18 ~~four (4) year~~ adjusted secondary cohort graduation rate, includ-
 19 ing sufficient exit information; ~~(8)~~ discipline reports limited
 20 to objective information sufficient to produce the federal annual
 21 incident reports, children with disabilities disciplinary
 22 reports and discipline reports, including students involved with
 23 firearms; ~~(9)~~ remediation; ~~(10)~~ special education data; ~~(11)~~ de-
 24 mographic data and program participation information; and ~~(12)~~
 25 files, documents, images or data containing a student's educa-
 26 tional record that are stored in or transmitted through a cloud
 27 computing service.

28 ~~(ii)~~ A student's educational record shall not include: ~~(1) juve-~~
 29 ~~nile delinquency records and criminal records unless required in~~
 30 ~~paragraph (k) of this subsection; (2) medical and health records;~~
 31 ~~(3) student social security number; (4) student biometric infor-~~
 32 ~~mation; (5) gun ownership records; (6) sexual orientation; (7) re-~~
 33 ~~ligious affiliation; (8) except for special needs and exceptional~~
 34 ~~students, any data collected pursuant to a statewide assessment~~
 35 ~~via affective computing, including analysis of facial expres-~~
 36 ~~sions, EEG brain wave patterns, skin conductance, galvanic skin~~
 37 ~~response, heart rate variability, pulse, blood volume, posture~~
 38 ~~and eye tracking, any data that measures psychological resources,~~
 39 ~~mind sets, effortful control, attributes, dispositions, social~~
 40 ~~skills, attitudes or intrapersonal resources.~~

41 ~~(k)~~ (l) "Student educational record" means all information directly
 42 related to a student and recorded and kept in the data system as that
 43 term is defined in this section. Provided however, that the following
 44 shall not be kept as part of a student's permanent educational record:
 45 daily assignments, homework, reports, chapter tests or similar assess-
 46 ments or other schoolwork that may be considered daily or weekly work.
 47 A student educational record may include information considered to
 48 be personally identifiable juvenile delinquency records and criminal
 49 records unless required in paragraph (k) of this subsection; medical
 50 and health records; student social security number; student biometric

1 information; gun ownership records; sexual orientation; religious af-
 2 filiation; except for special needs and exceptional students, any data
 3 collected pursuant to a statewide assessment via affective computing,
 4 including analysis of facial expressions, EEG brain wave patterns,
 5 skin conductance, galvanic skin response, heart rate variability,
 6 pulse, blood volume, posture and eye tracking, any data that measures
 7 psychological resources, mindsets, effortful control, attributes,
 8 dispositions, social skills, attitudes, or intrapersonal resources.

9 ~~(l) "Student education unique identification number" means the unique~~
 10 ~~student identifier assigned by the state to each student that shall not~~
 11 ~~be or include the social security number of a student in whole or in~~
 12 ~~part.~~

13 (m) "Violation" means an act contrary to the provisions of this section
 14 that materially compromises the security, confidentiality or integrity
 15 of personally identifiable data of one (1) or more students or staff and
 16 that results in the unauthorized release or disclosure of such data.

17 (2) Unless otherwise provided for in this ~~act~~ section, the executive
 18 office of the ~~state~~ board of education shall be the entity responsible for
 19 implementing the provisions of this ~~act~~ section. All decisions relating to
 20 the collection and safeguarding of student data shall be the responsibility
 21 of the executive office of the ~~state~~ board of education.

22 (3) The ~~state board of education~~ shall:

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

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

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

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

33 No less frequently than annually, the ~~state board of education~~ shall up-
 34 date the data inventory and index of data elements provided for in this
 35 subsection.

36 (b) Develop, publish and make publicly available policies and proce-
 37 dures to comply with the federal family educational rights and privacy
 38 act (FERPA) and other relevant privacy laws and policies, including,
 39 but not limited to the following:

40 (i) Access to student data in the ~~student~~ data system shall be re-
 41 stricted to: (1) the authorized staff of the ~~state board of educa-~~
 42 ~~tion~~ and the state department of education and the board's and the
 43 department's vendors who require such access to perform their as-
 44 signed duties; (2) the district and the district's private vendors
 45 who require access to perform their assigned duties and public
 46 postsecondary staff who require such access to perform their as-
 47 signed duties; (3) students and their parents or legal guardians;
 48 and (4) the authorized staff of other state agencies in this state
 49 as required by law and/or defined by interagency data-sharing
 50 agreements. All such data-sharing agreements shall be summarized

1 in a report compiled by the ~~state board of education~~ and submitted
2 no later than January 15 of each year to the senate education com-
3 mittee and the house of representatives education committee;

4 (ii) Provide that public reports or responses to record requests
5 shall include aggregate data only as that term is defined in sub-
6 section (1) of this section;

7 (iii) Develop criteria for the approval of research and data re-
8 quests from state and local agencies, the state legislature,
9 researchers and the public: (1) unless otherwise approved by the
10 state board of education, student data maintained shall remain
11 confidential; (2) unless otherwise approved by the ~~state board of~~
12 ~~education~~, released student data in response to research and data
13 requests may include only aggregate data; and (3) any approval of
14 the board to release personally identifiable student data shall
15 be subject to legislative approval prior to the release of such
16 information;

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

21 (v) Provide for notification to students and parents regarding
22 their rights under federal and state law; and

23 (vi) Ensure that all school districts, primary schools, secondary
24 schools and other similar institutions entering into contracts
25 that govern databases, online services, assessments, special
26 education or instructional supports with private vendors shall
27 include in each such contract a provision that private vendors
28 are permitted to use aggregated data~~r~~ or an individual student's
29 data for secondary uses, but only if the vendor discloses in clear
30 detail the secondary uses and receives written permission from the
31 student's parent or legal guardian. The contract shall also in-
32 clude either of the following: (1) a prohibition on any secondary
33 uses of student data by the private vendor, including~~r~~ but not
34 limited to~~r~~ sales, marketing or advertising, but permitting the
35 private vendor to process or monitor such data solely to provide
36 and maintain the integrity of the service; or (2) a requirement
37 that the private vendor disclose in detail any secondary uses of
38 student data, including~~r~~ but not limited to~~r~~ sales, marketing or
39 advertising, and the board shall obtain express parental consent
40 for those secondary uses prior to deployment of the private ven-
41 dor's services under the contract.

42 The ~~state board of education~~ and the state department of education shall
43 ensure that any and all private vendors employed or otherwise engaged
44 by the board or the department shall comply with the provisions of this
45 section. Any ~~person~~ vendor determined, in either a civil enforce-
46 ment action initiated by the board or ~~initiated by the department~~ its
47 designee or in a court action initiated by an injured party, to have
48 violated a provision of this section or any rule promulgated pursuant
49 to this section shall be liable for a civil penalty not to exceed fifty
50 thousand dollars (\$50,000) per violation. In the case of an unautho-

1 rized release of student data, ~~the state board of education or the state~~
 2 ~~department of education~~ the vendor shall notify the board or the de-
 3 ~~partment as applicable to the contract of any data breach,~~ and the board
 4 ~~or its designee~~ shall notify the parent or student of the unauthorized
 5 release of student data that includes personally identifiable informa-
 6 tion in a manner consistent with the provisions of section 28-51-105,
 7 Idaho Code.

8 (c) Unless otherwise approved by the ~~state board of education,~~ any data
 9 deemed confidential pursuant to this act shall not be transferred to any
 10 federal, state or local agency or other organization or entity outside
 11 of the state of Idaho, with the following exceptions:

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

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

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

19 (iv) The ~~state board of education~~ or the state department of ed-
 20 ucation may share such data with a vendor to the extent it is nec-
 21 essary as part of a contract that governs databases, online ser-
 22 vices, assessments, special education or instructional supports
 23 with a vendor;

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

29 (vi) A student is classified as "migrant" for reporting purposes
 30 as required by the federal government in order to assure link-
 31 age between the various states of migrant students' educational
 32 records;

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

34 (i) Guidelines for authorizing access to the student data system
 35 and to individual student data including guidelines for authenti-
 36 cation of authorized access;

37 (ii) Guidelines relating to administrative safeguards providing
 38 for the security of electronic and physical data; such guidelines
 39 should include provisions relating to data encryption as well as
 40 staff training to better ensure the safety and security of data;

41 (iii) Privacy compliance standards;

42 (iv) Privacy and security audits;

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

44 (vi) Data retention and disposition policies;

45 (e) Ensure routine and ongoing compliance with FERPA, other relevant
 46 privacy laws and policies, and the privacy and security policies and
 47 procedures developed under the authority of this ~~act~~ section, including
 48 the performance of compliance audits;

49 (f) Ensure that any contracts that govern databases, online services,
 50 assessments or instructional supports that ~~include~~ contain student

1 data and are outsourced to private vendors, include express provi-
 2 sions that safeguard privacy and security, contain the restrictions on
 3 secondary uses of student data described in ~~subsection (3)~~ paragraph
 4 (b) (vi) of this subsection, provides for data destruction, including a
 5 time frame for data destruction, and includes penalties for noncompli-
 6 ance with this paragraph; and

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

8 (i) New student data proposed for inclusion in the ~~state student~~
 9 ~~data system: (1) any.~~ Any new student data collection proposed by
 10 the ~~state board of education~~ becomes a provisional requirement to
 11 allow districts and their local data system vendors the opportu-
 12 nity to meet the new requirement; and ~~(2) the state.~~ The board of
 13 ~~education~~ must submit any new provisional student data collection
 14 to the governor and the legislature for their approval within one
 15 (1) year in order to make the new student data a permanent require-
 16 ment through the administrative rules process. Any provisional
 17 student data collection not approved by the governor and the leg-
 18 islature by the end of the next legislative session expires and
 19 must be deleted and no longer collected;

20 (ii) Changes to existing data collections required for any rea-
 21 son, including changes to federal reporting requirements made by
 22 the ~~U.S.~~ United States department of education;

23 (iii) An explanation of any exceptions granted by the ~~state~~
 24 ~~board of education~~ in the past year regarding the release or
 25 out-of-state transfer of student data;

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

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

34 (4) ~~The state board of education shall~~ may adopt rules to implement the
 35 provisions of this act.

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

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

43 (7) ~~The state board of education~~ shall develop a model policy for school
 44 districts and public charter schools that will govern data collection, ac-
 45 cess, security and use of such data. The model policy shall be consistent
 46 with the provisions of this ~~act~~ section. In order to assure that student
 47 educational information is treated safely and securely and in a consistent
 48 manner throughout the state, each district and public charter school shall
 49 adopt and implement the model policy. The state department of education
 50 shall provide outreach and training to the districts and public charter

1 schools to help implement the policy. A current copy of such policy shall be
2 posted to the school district's website. ~~Any~~ If any inappropriate release of
3 data occurs in a district or public charter school that fails to adopt, im-
4 plement and post the policy where any inappropriate release of data occurs,
5 such district or public charter school shall be liable for a civil penalty
6 not to exceed fifty thousand dollars (\$50,000). Such civil penalty may be
7 imposed per violation. The method of recovery of the penalty shall be by a
8 civil enforcement action brought by the state board of education, with the
9 assistance of the office of the state attorney general, in the district court
10 in and for the county where the violation occurred. All civil penalties col-
11 lected under this section shall be paid into the general fund of the state.

12 SECTION 2. An emergency existing therefor, which emergency is hereby
13 declared to exist, this act shall be in full force and effect on and after
14 July 1, 2024.