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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Joel Coleman
Interim Chief Executive Officer

DATE: October 10, 2014

ACTION: R277-487 *Public School Data Confidentiality and Disclosure* (Amendment and Continuation)

Background:

1. On September 3, 2014, David Thomas, Board Vice Chair, and Aaron Brough, USOE Data and Statistics Section, attended the Student Data Privacy Policymaker Summit hosted by the Data Quality Campaign (DQC) to discuss student data transparency, governance, and protection procedures. As a result of the information provided at the conference, Vice Chair Thomas requested a rule regarding the security of student data. R277-487 *Public School Data Confidentiality and Disclosure* is amended to address those issues; furthermore, the rule addresses local needs and contexts and the evolving use of technology in schools.
2. In addition to the amendments, R277-487 is continued consistent with Board policy for continuation of rules and the Utah Administrative Rulemaking Act.

Key Points:

1. The amendments provide procedures for data governance structures and process as well as publicly available student data privacy provisions. The rule also provides high-quality practices and support to safeguard student data by focusing on three key areas: transparency, governance, and data protection procedures.
2. R277-487 continues to be necessary because it provides for appropriate review, disclosure, protection, and maintenance of student and education employee information data.

Anticipated Action:

1. It is proposed that the Standards and Assessment Committee consider approving R277-487 on first reading and, if approved by the Committee, the Board consider approving R277-487 on second reading.
2. It is proposed that the Committee consider approving R277-487 for continuation on first reading and, if approve by the Committee, the Board consider approving R277-487 for continuation on second reading.

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Aaron Brough, 801-538-7922

1 **R277. Education, Administration.**

2 **R277-487. Public School Data Confidentiality and Disclosure.**

3 **R277-487-1. Definitions.**

4 A. "Board" means the Utah State Board of Education.

5 B. "Chief Privacy Officer" means a USOE employee
6 designated by the Board as primarily responsible to oversee
7 and direct the DGPB to carry out the responsibilities of this
8 rule, direct the development of materials and training about
9 student and public education employee privacy and security
10 standards, including FERPA, for the USOE and LEAs.

11 ~~[B]~~C. "Classroom-level assessment data" means student
12 scores on state-required tests, aggregated in groups of more
13 than 10 students at the classroom level or, if appropriate, at
14 the course level, without individual student identifiers of
15 any kind.

16 ~~[C]~~D. "Comprehensive Administration of Credentials for
17 Teachers in Utah Schools (CACTUS)" means the electronic file
18 maintained and owned by the USOE on all licensed Utah
19 educators. The file includes information such as:

- 20 (1) personal directory information;
21 (2) educational background;
22 (3) endorsements;
23 (4) employment history; and
24 (5) a record of disciplinary action taken against the
25 educator.

26 E. "Data Governance/Policy Board (DGPB)" means a board
27 composed of USOE and LEA employees, as directed by the Board,
28 whose purpose is to resolve public education data and process
29 issues, make policy decisions, review all research requests
30 for public education data, and fill only those requests that
31 are appropriate and comply with the standards in this rule.

32 F. "Data security protections" means protections
33 developed and initiated by the Chief Privacy Officer and the
34 DGPB that protect, monitor and secure student, public educator
35 and public education employee data as outlined and identified

36 in FERPA and Sections 63G-2-302 through 63G-2-305.

37 [D]G. "Disciplinary action" means any lesser action taken
38 by UPPAC which does not materially affect a licensed
39 educator's license and licensing action taken by the Board for
40 suspension or revocation.

41 [E]H. "FERPA" means the Family Educational Rights and
42 Privacy Act of 1974, 20 U.S.C. 1232g, a federal law designed
43 to protect the privacy of students' education records. The law
44 is hereby incorporated by reference.

45 [F]I. "LEA" means local education agency, including local
46 school boards/public school districts, charter schools, and,
47 for purposes of this rule, the Utah Schools for the Deaf and
48 the Blind.

49 J. "Personally identifiable student information" means
50 the student's name; a personal identifier, such as the
51 student's social security number or student number; other
52 indirect identifiers such as the student's date of birth or
53 place of birth; other information that, alone or in
54 combination, is linked or linkable to a specific student and
55 enables a person in the school community, who does not have
56 personal knowledge of the relevant circumstances, to identify
57 the student with reasonable certainty; or information
58 requested by a person who the educational agency or
59 institution reasonably knows is entitled to the requested
60 information.

61 [G]K. "Student information" means materials, information,
62 records and knowledge that an LEA possesses or maintains, or
63 both, about individual students. Student information is
64 broader than student records and personally identifiable
65 student information may include information or knowledge that
66 school employees possess or learn in the course of their
67 duties.

68 [~~H.~~ "~~Student record~~" means a record in any form,
69 including handwriting, print, computer media, video or audio
70 tape, film, microfilm, and microfiche, that is directly

71 ~~related to a student and maintained by an educational agency~~
72 ~~or institution or by a party acting for an agency or~~
73 ~~institution. Student records shall be maintained by LEAs~~
74 ~~consistent with 20 U.S.C. Section 1232g.]~~

75 L. "Student performance data" means data relating to
76 student performance, including data on state, local and
77 national assessments, course-taking and completion,
78 grade-point average, remediation, retention, degree, diploma,
79 or credential attainment, enrollment, and demographic data.

80 M. "USOE" means the Utah State Office of Education.

81 **R277-487-2. Authority and Purpose.**

82 A. This rule is authorized under Utah Constitution
83 Article X, Section 3 which vests general control and
84 supervision over public education in the Board, by Section
85 53A-1-401(3) which allows the Board to make rules in
86 accordance with its responsibilities; by Section 53A-13-301(3)
87 regarding confidentiality and required or appropriate
88 disclosure of [~~student records data~~]personally identifiable
89 student information; by Section 53A-1-607(2) regarding
90 disclosure of student performance data to LEAs for assessment
91 and accountability purposes; by Section 53A-8a-410(4) to
92 ensure the privacy and protection of individual educator
93 evaluation data; by Section 53A-3-602.5 regarding a school
94 performance report requiring criterion-referenced or online
95 computer adaptive tests to be aggregated for all students by
96 class; by Section 53A-1-411 which directs the Board to
97 establish procedures for administering or making available
98 online surveys to obtain information about public education
99 issues; and by Section 53A-6-104 which authorizes the Board to
100 issue licenses to educators and maintain licensing
101 information.

102 B. The purpose of this rule is to:

103 (1) provide for appropriate review and disclosure of
104 student [~~assessment~~]performance data on state

105 ~~[mandated]~~administered assessments as required by law;
106 (2) provide for adequate and appropriate review of
107 student ~~[assessment]~~performance data on state
108 ~~[mandated]~~administered assessments to professional education
109 staff and parents of students;
110 (3) ensure the privacy of student ~~[records]~~performance
111 data and personally identifiable student information, as
112 directed by law;
113 (4) provide an online education survey conducted with
114 public funds for Board review and approval; and
115 (5) provide for appropriate protection and maintenance of
116 educator licensing data.

117 **R277-487-3. ~~[Confidentiality of Student]~~Data Privacy and**
118 **Security Policies.**

119 A. Board Responsibilities:

120 (1) The Board shall develop resource materials for LEAs
121 to train employees, aids, and volunteers of an LEA regarding
122 confidentiality of personally identifiable student information
123 and student ~~[records]~~performance data, as defined in FERPA.

124 (2) The Board shall make the materials available to each
125 LEA.

126 B. LEA Responsibilities:

127 (1) LEAs shall establish policies and provide appropriate
128 training for employees regarding the confidentiality of
129 student ~~[records]~~performance data and personally identifiable
130 student information, including an overview of all, state, and
131 local laws that pertain to the privacy of students, their
132 parents, and their families. The policy should address the
133 specific needs or priorities of the LEA.

134 (2) LEAs shall require password protection for all
135 student ~~[records]~~performance data and personally identifiable
136 student information maintained electronically.

137 C. Public Education Employee and Volunteer
138 Responsibilities:

139 (1) All public education employees, aids, and volunteers
140 in public schools shall become familiar with federal, state,
141 and local laws regarding the confidentiality of student
142 ~~[information and student records]~~performance data and
143 personally identifiable student information.

144 (2) All public education employees, aids, and volunteers
145 shall maintain appropriate confidentiality pursuant to
146 federal, state, and local laws with regard to student
147 ~~[records]~~performance data and personally identifiable student
148 information.

149 (3) An employee, aid, or volunteer shall maintain student
150 ~~[records]~~performance data and personally identifiable student
151 information in a secure and appropriate place as designated by
152 LEA policies~~[of an LEA]~~.

153 (4) An employee, aid, or volunteer accessing student
154 ~~[records]~~performance data and personally identifiable student
155 information in electronic format shall comply with LEA
156 policies~~[of an LEA]~~ regarding the procedures for maintaining
157 confidentiality of electronic records.

158 (5) An employee, aid, or volunteer shall not share,
159 disclose, or disseminate passwords for electronic maintenance
160 of student ~~[records]~~performance data and personally
161 identifiable student information.

162 (6) All public education employees, aids and volunteers
163 have a responsibility to protect confidential student
164 performance data and personally identifiable student
165 information and access records only as necessary for their
166 assignment(s).

167 (7) Public education employees licensed under Section
168 53A-6-104 shall access and use student information and records
169 consistent with R277-515, Utah Educator Standards. Violations
170 may result in licensing discipline.

171 **R277-487-4. Transparency.**

172 A. The Chief Privacy Officer working with the DGPB shall

173 develop policies for the Board and model policies for LEAs
174 regarding the state's student data systems.

175 B. The Rules/policies shall address:

176 (1) accessibility to parents, students and the public of
177 the student data defined in R277-487-1;

178 (2) authorized purposes, uses and disclosures of data
179 maintained by the state and LEAs;

180 (3) the rights of parents and students regarding their
181 personally identifiable information under state and federal
182 law;

183 (4) parent, student and public access to information
184 about student data privacy and the security safeguards that
185 protect the data from unauthorized access and use; and

186 (5) contact information for parents and students to
187 request student and public school information from LEAs
188 consistent with the law.

189 **R277-487-5. Additional Responsibilities of Chief Privacy**
190 **Officer and DGPB.**

191 A. The Chief Privacy Officer may pursue legislation for
192 additional data security protections and the regulation of use
193 of the data.

194 B. The Chief Privacy Officer shall supervise regular
195 privacy and security compliance audits, following initiation
196 by the Board.

197 C. The Chief Privacy Officer and the DGPB shall have
198 responsibility for identification of threats to data security
199 protections.

200 D. The Chief Privacy Officer and the DGPB shall develop
201 and recommend policies for consistent statewide wiping or
202 destruction of devices when devices are discarded by public
203 education entities.

204 E. The Chief Privacy Officer and the DGPB shall develop
205 and train for consistent statewide response to suspected or
206 known breaches of data security protections.

207 **R277-487-6. Prohibition of Public Education Data Use for**
208 **Marketing.**

209 Data maintained by the state, school districts, schools,
210 and other public education agencies or institutions in the
211 state, including data provided by contractors, shall not be
212 sold or used for marketing purposes (except with regard to
213 authorized uses or directory information not obtained through
214 a contract with an educational agency or institution).

215 **R277-487-[6]7. Public Education Research Data.**

216 A. The USOE may provide limited or extensive data sets
217 for research and analysis purposes to qualified researchers or
218 organizations.

219 (1) A reasonable method shall be used to qualify
220 researchers or organizations to receive data, such as evidence
221 that a research proposal has been approved by a federally
222 recognized Institutional Review Board (IRB).

223 (2) Aggregate de-identified student assessment data are
224 available through the USOE website. [~~Individual student~~]
225 Personally identifiable student information is protected.

226 (3) The USOE is not obligated to fill every request for
227 data and has procedures to determine which requests will be
228 filled or to assign priorities to multiple requests. The
229 USOE/Board understands that it will respond in a timely manner
230 to all requests submitted under Section 63G-2-101 et seq.,
231 Government Records Access and Management Act. In filling data
232 requests, higher priority may be given to requests that will
233 help improve instruction in Utah's public schools.

234 (4) A fee may be charged to prepare data or to deliver
235 data, particularly if the preparation requires original work.
236 The USOE shall comply with Section 63G-2-203 in assessing
237 fees.

238 (5) The researcher or organization shall provide a copy
239 of the report or publication produced using USOE data to the
240 USOE at least 10 business days prior to the public release.

241 B. Student data and information: Requests for data that
242 disclose student information shall be provided in accordance
243 with the Family Educational Rights and Privacy Act (FERPA), 20
244 U.S.C. Section 1232g; such responses may include:

245 (1) [~~individual~~]student data that are de[=]identified,
246 meaning [~~it is not possible to trace the data to individual~~
247 ~~students~~]that a reasonable person in the school community who
248 does not have personal knowledge of the relevant circumstances
249 could not identify student(s) with reasonable certainty;

250 (2) agreements with recipients of student data where
251 recipients agree not to report or publish data in a manner
252 that discloses students' identities. For example, reporting
253 test scores for a race subgroup that has a count, also known
254 as n-size, of less than 10 could enable someone to identify
255 the actual students and shall not be published;

256 (3) release of student data, with appropriate binding
257 agreements, for state or federal accountability or for the
258 purpose of improving instruction to specific student
259 subgroups.

260 C. Licensed educator information:

261 (1) The USOE shall provide information about licensed
262 educators maintained in the CACTUS database that is required
263 under Section 63G-2-301(2).

264 (2) Additional information/data may be released by the
265 USOE consistent with the purposes of CACTUS, the
266 confidentiality protections accepted by requester(s), and the
267 benefit that the research may provide for public education in
268 Utah, as determined by the USOE.

269 D. Recipients of USOE research data shall sign a USOE_
270 designated [~~non-disclosure~~]confidentiality agreement, if
271 required by the USOE.

272 E. The Board or the USOE may commission research or may
273 approve research requests.

274 **R277-487-[7]8. Public Education Survey Data.**

275 A. The ~~[Board]~~Chief Privacy Officer, working with the
276 DGPB, shall approve statewide education surveys administered
277 with public funds through the USOE or through a contract
278 issued by the USOE, as required under Section 53A-1-411.

279 B. Data obtained from ~~[USOE]~~Board statewide surveys
280 administered with public funds are the property of the Board.

281 C. Data obtained from ~~[USOE]~~Board statewide surveys
282 administered with public funds shall be made available as
283 follows:

284 (1) Survey data made available by the Board shall protect
285 the privacy of students in accordance with FERPA.

286 (2) Survey data about educators shall be available in a
287 manner that protects the privacy of individual educators
288 consistent with State law.

289 **R277-487-[4]9. Comprehensive Administration of Credentials**
290 **for Teachers in Utah Schools (CACTUS) Data, Confidentiality,**
291 **and Appropriate Disclosure.**

292 A. CACTUS maintains public, protected and private
293 information on licensed Utah educators. Private or protected
294 information includes such items as home address, date of
295 birth, social security number, and any disciplinary action
296 taken against an individual's license.

297 B. A CACTUS file shall be opened on a licensed Utah
298 educator when:

299 (1) the individual initiates a USOE background check, or

300 (2) the USOE receives a paraprofessional license
301 application from an LEA.

302 C. The data in CACTUS may only be changed as follows:

303 (1) Authorized USOE staff or authorized LEA staff may
304 change demographic data.

305 (2) Authorized USOE staff may update licensing data such
306 as endorsements, degrees, license areas of concentration and
307 licensed work experience.

308 (3) Authorized employing LEA staff may update data on

309 educator assignments for the current school year only.

310 D. A licensed individual may view his own personal data.
311 An individual may not change or add data except under the
312 following circumstances:

313 (1) A licensed individual may change his demographic data
314 when renewing his license.

315 (2) A licensed individual shall contact his employing LEA
316 for the purpose of correcting demographic or current educator
317 assignment data.

318 (3) A licensed individual may petition the USOE for the
319 purpose of correcting any errors in his CACTUS file.

320 E. Individuals currently employed by public or private
321 schools under letters of authorization or as interns are
322 included in CACTUS.

323 F. Individuals working in LEAs as student teachers are
324 included in CACTUS.

325 G. Designated individuals have access to CACTUS data:

326 (1) Training shall be provided to designated individuals
327 prior to granting access.

328 (2) Authorized USOE staff may view or change CACTUS files
329 on a limited basis with specific authorization.

330 (3) For employment or assignment purposes only,
331 authorized LEA staff members may access data on individuals
332 employed by their own LEA or data on licensed individuals who
333 do not have a current assignment in CACTUS.

334 (4) Authorized LEA staff may also view specific limited
335 information on job applicants if the applicant has provided
336 the LEA with a CACTUS identification number.

337 (5) CACTUS information belongs solely to the USOE. The
338 USOE shall make the final determination of information
339 included in or deleted from CACTUS.

340 (6) CACTUS data consistent with Section 63G-2-301(1)
341 under the Government Records Access and Management Act are
342 public information and shall be released by the USOE.

343 **R277-487-[5]10. Educator Evaluation Data.**

344 A. The Board shall provide classroom-level assessment
345 data to administrators and teachers. School administrators
346 shall share information requested by parents while ensuring
347 the privacy of individual student information and educator
348 evaluation data.

349 B. Individual educator evaluation data shall be protected
350 at the school, LEA and state levels and, if applicable, at the
351 USOE.

352 C. LEAs shall designate employees who may have access to
353 educator evaluation records.

354 D. LEAs may not release or disclose student assessment
355 information that reveals educator evaluation information or
356 records.

357 E. LEAs shall train employees in the confidential nature
358 of employee evaluations and the importance of securing
359 evaluations and records.

360 **R277-487-11. Training and Technical Assistance.**

361 A. The Chief Privacy Officer and DGPB shall develop
362 training for the Board, the USOE and LEAs.

363 B. The Chief Privacy Officer and DGPB shall develop model
364 policies, as resources permit.

365 **R277-487-12. Application to Third Party Vendors and**
366 **Contractors.**

367 A. The USOE and LEAs shall have policies that expressly
368 limit access to personally identifiable student data to third
369 part vendors and contractors.

370 B. Personally identifiable student information may only
371 be released consistent with the provisions of 34 CFR Part
372 99.31(a).

373 C. De-identified student data and information may only be
374 released consistent with 34 CFR Part 99.31(b).

375 D. CACTUS or public education employee information may

376 only be released consistent with state law, with express
377 permission of the licensed individual or employee or with the
378 purposes for which the information was entered into CACTUS or
379 a similar employee database.

380 E. The state and LEA policies developed by the Chief
381 Privacy Officer and the DGPB may include sanctions for
382 contractors or third part vendors who violate provisions of
383 state/LEA policies regarding unauthorized use and release of
384 student and employee data.

385 **R277-487-13. Annual Reports by Chief Privacy Officer and DGPB.**

386 A. The Chief Privacy Officer shall work with the DGPB,
387 the USOE, and the Board to prepare an annual report about
388 student data.

389 B. The public report shall include:

390 (1) information about the implementation of this rule;

391 (2) information about research studies begun or planned
392 using student information and data;

393 (3) the identification of significant threats to student
394 data privacy and security;

395 (4) a summary of data system audits; and

396 (5) recommendations for further improvements to student
397 data security and the systems that are necessary for
398 accountability.

399 **KEY: students, records, confidentiality**

400 **Date of Enactment or Last Substantive Amendment: [~~August 7,~~**
401 **~~2013]~~2015**

402 **Notice of Continuation: [~~December 31, 2012]~~2014**

403 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3;**
404 **53A-13-301(3); 53A-1-401(3); 53A-1-411**