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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Brad C. Smith
Chief Executive Officer

DATE: March 6, 2015

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

Background:

R277-487 is amended to provide changes as directed by the Board Finance Committee at its February 6, 2015 meeting.

Key Points:

Student record privacy language is removed from R277-419 *Pupil Accounting* and placed into R277-487. Writing and style changes are also made to R277-487.

Anticipated Action:

It is proposed that the Finance Committee consider approving R277-487, as amended, on first reading and, if approved by the Committee, the Board consider approving R277-487, as amended on second reading.

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

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

41 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 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 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 L. "Student performance data" means data relating to
69 student performance, including data on state, local and
70 national assessments, course-taking and completion,

71 grade-point average, remediation, retention, degree, diploma,
72 or credential attainment, enrollment, and demographic data.
73 M. "USOE" means the Utah State Office of Education.

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

75 A. This rule is authorized under Utah Constitution
76 Article X, Section 3 which vests general control and
77 supervision over public education in the Board, by Section
78 53A-1-401(3) which allows the Board to make rules in
79 accordance with its responsibilities; by Section 53A-13-301(3)
80 regarding confidentiality and required or appropriate
81 disclosure of personally identifiable student information; by
82 Section 53A-1-607(2) regarding disclosure of student
83 performance data to LEAs for assessment and accountability
84 purposes; by Section 53A-8a-410(4) to ensure the privacy and
85 protection of individual educator evaluation data; by Section
86 53A-3-602.5 regarding a school performance report requiring
87 criterion-referenced or online computer adaptive tests to be
88 aggregated for all students by class; by Section 53A-1-411
89 which directs the Board to establish procedures for
90 administering or making available online surveys to obtain
91 information about public education issues; and by Section
92 53A-6-104 which authorizes the Board to issue licenses to
93 educators and maintain licensing information.

94 B. The purpose of this rule is to:

- 95 (1) provide for appropriate review and disclosure of
96 student performance data on state administered assessments as
97 required by law;
- 98 (2) provide for adequate and appropriate review of
99 student performance data on state administered assessments to
100 professional education staff and parents of students;
- 101 (3) ensure the privacy of student performance data and
102 personally identifiable student information, as directed by
103 law;
- 104 (4) provide an online education survey conducted with

105 public funds for Board review and approval; and
106 (5) provide for appropriate protection and maintenance of
107 educator licensing data.

108 **R277-487-3. Data Privacy and Security Policies.**

109 A. Board Responsibilities:

110 (1) The [~~Board~~]Chief Privacy Officer and DGPPB shall
111 develop resource materials for LEAs to train employees, aides,
112 and volunteers of an LEA regarding confidentiality of
113 personally identifiable student information and student
114 performance data, as defined in FERPA.

115 (2) The [~~Board~~]Chief Privacy Officer and DGPPB shall make
116 the materials available to each LEA.

117 B. LEA Responsibilities:

118 (1) LEAs shall establish policies and provide appropriate
119 training for employees regarding the confidentiality of
120 student performance data and personally identifiable student
121 information[~~, including an overview of all, state, and local~~
122 ~~laws that pertain to the privacy of students, their parents,~~
123 ~~and their families. The policy should address the specific~~
124 ~~needs or priorities of the LEA.~~

125 ~~— (2) LEAs shall require password protection for all~~
126 ~~student performance data and personally identifiable student~~
127 ~~information maintained electronically]. Each LEA shall
128 provide these policies to parents of students affected by the
129 policies, as well as post the policies for the public on their
130 website.~~

131 C. Public Education Employee and Volunteer
132 Responsibilities:

133 (1) All public education employees, aides, and volunteers
134 in public schools shall become familiar with federal, state,
135 and local laws regarding the confidentiality of student
136 performance data and personally identifiable student
137 information.

138 (2) All public education employees, aides, and volunteers

139 shall maintain appropriate confidentiality pursuant to
140 federal, state, and local laws, and LEA policies created in
141 accordance with this section, with regard to student
142 performance data and personally identifiable student
143 information.

144 ~~[(3) An employee, aid, or volunteer shall maintain~~
145 ~~student performance data and personally identifiable student~~
146 ~~information in a secure and appropriate place as designated by~~
147 ~~LEA policies.~~

148 ~~— (4) An employee, aid, or volunteer accessing student~~
149 ~~performance data and personally identifiable student~~
150 ~~information in electronic format shall comply with LEA~~
151 ~~policies regarding the procedures for maintaining~~
152 ~~confidentiality of electronic records.]~~

153 ([5]3) An employee, aide, or volunteer shall not share,
154 disclose, or disseminate passwords for electronic maintenance
155 of student performance data and personally identifiable
156 student information.

157 ~~[(6) All public education employees, aids and volunteers~~
158 ~~have a responsibility to protect confidential student~~
159 ~~performance data and personally identifiable student~~
160 ~~information and access records only as necessary for their~~
161 ~~assignment(s).]~~

162 ([7]4) Public education employees licensed under Section
163 53A-6-104 shall access and use student information and records
164 consistent with R277-515, Utah Educator Standards. Violations
165 may result in licensing discipline.

166 **R277-487-4. Transparency.**

167 A. The Chief Privacy Officer working with the DGPB shall
168 recommend USOE policies for Board approval and model policies
169 for LEAs regarding the state's student data systems.

170 B. The Rules/policies shall address:

171 (1) accessibility to parents, students and the public of
172 the student performance data[~~defined in R277-487-1~~];

173 (2) authorized purposes, uses, and disclosures of data
174 maintained by the [~~state~~]USOE and LEAs;

175 (3) the rights of parents and students regarding their
176 personally identifiable information under state and federal
177 law;

178 (4) parent, student and public access to information
179 about student data privacy and the security safeguards that
180 protect the data from unauthorized access and use; and

181 (5) contact information for parents and students to
182 request student and public school information from LEAs
183 consistent with the law.

184 **R277-487-5. Additional Responsibilities of Chief Privacy**
185 **Officer and DGPB.**

186 A. The Chief Privacy Officer may pursue legislation as
187 approved by the Board for additional data security protections
188 and the regulation of use of the data.

189 B. The Chief Privacy Officer shall supervise regular
190 privacy and security compliance audits, following initiation
191 by the Board.

192 C. The Chief Privacy Officer and the DGPB shall have
193 responsibility for identification of threats to data security
194 protections.

195 D. The Chief Privacy Officer and the DGPB shall develop
196 and recommend policies for USOE and model policies for LEAs
197 for consistent wiping or destruction of devices when devices
198 are discarded by public education entities.

199 E. The Chief Privacy Officer and the DGPB shall develop
200 USOE and model LEA policies for the training of staff for
201 appropriate responses to suspected or known breaches of data
202 security protections.

203 **R277-487-6. Prohibition of Public Education Data Use for**
204 **Marketing.**

205 Data maintained by the state, school districts, schools,

206 and other public education agencies or institutions in the
207 state, including data provided by contractors, shall not be
208 sold or used for marketing purposes (except with regard to
209 authorized uses or directory information not obtained through
210 a contract with an educational agency or institution).

211 **R277-487-7. Public Education Research Data.**

212 A. The USOE may provide limited or extensive data sets
213 for research and analysis purposes to qualified researchers or
214 organizations.

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

219 (2) Aggregate de-identified student assessment data
220 ~~are~~is available through the USOE website. Personally
221 identifiable student information is protected.

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

231 (4) A fee may be charged to prepare data or to deliver
232 data, particularly if the preparation requires original work.
233 The USOE shall comply with Section 63G-2-203 in assessing fees
234 for responses to GRAMA requests.

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

238 B. Student data and information: Requests for data that
239 disclose student information shall be provided in accordance

240 with the Family Educational Rights and Privacy Act (FERPA), 20
241 U.S.C. Section 1232g; such responses may include:

242 (1) student data that are de_identified, meaning that a
243 reasonable person in the school community who does not have
244 personal knowledge of the relevant circumstances could not
245 identify student(s) with reasonable certainty;

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

252 (3) release of student data, with appropriate binding
253 agreements, for state or federal accountability or for the
254 purpose of improving instruction to specific student
255 subgroups.

256 C. Licensed educator information:

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

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

265 D. Recipients of USOE research data shall sign a USOE-
266 designated confidentiality agreement, if required by the USOE.

267 E. The Board or the USOE may commission research or may
268 approve research requests.

269 **R277-487-8. Public Education Survey Data.**

270 A. The Chief Privacy Officer, working with the DGPB,
271 shall approve statewide education surveys administered with
272 public funds through the USOE or through a contract issued by
273 the USOE, as required under Section 53A-1-411.

274 B. Data obtained from Board statewide surveys
275 administered with public funds are the property of the Board.

276 C. Data obtained from Board statewide surveys
277 administered with public funds shall be made available as
278 follows:

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

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

284 **R277-487-9. Comprehensive Administration of Credentials for**
285 **Teachers in Utah Schools (CACTUS) Data, Confidentiality, and**
286 **Appropriate Disclosure.**

287 A. CACTUS maintains[~~public, protected and private~~]
288 information on licensed Utah educators[~~. Private or protected~~
289 ~~information includes such items as home address, date of~~
290 ~~birth, social security number, and any disciplinary action~~
291 ~~taken against an individual's license.], including information
292 classified as private, controlled, or protected under GRAMA.~~

293 B. A CACTUS file shall be opened on a licensed Utah
294 educator when:

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

296 (2) the USOE receives a paraprofessional license
297 application from an LEA.

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

299 (1) Authorized USOE staff or authorized LEA staff may
300 change demographic data.

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

304 (3) Authorized employing LEA staff may update data on
305 educator assignments for the current school year only.

306 D. A licensed individual may view his own personal data.

307 An individual may not change or add data except under the

308 following circumstances:

309 (1) A licensed individual may change his demographic data
310 when renewing his license.

311 (2) A licensed individual shall contact his employing LEA
312 for the purpose of correcting demographic or current educator
313 assignment data.

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

316 E. Individuals currently employed by public or private
317 schools under letters of authorization or as interns are
318 included in CACTUS.

319 F. Individuals working in LEAs as student teachers are
320 included in CACTUS.

321 G. Designated individuals have access to CACTUS data:

322 (1) Training shall be provided to designated individuals
323 prior to granting access.

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

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

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

333 (5) CACTUS information belongs solely to the USOE. The
334 USOE shall make the final determination of information
335 included in or deleted from CACTUS.

336 (6) CACTUS data [~~consistent with Section 63G-2-301(1)~~
337 ~~under the Government Records Access and Management Act are~~
338 ~~public information and shall be released by the USOE~~] may only
339 be released in accordance with the provisions of GRAMA.

340 **R277-487-10. Educator Evaluation Data.**

341 A. The [Board]USOE shall provide classroom-level

342 assessment data to administrators and teachers. School
343 administrators shall share information requested by parents
344 while ensuring the privacy of individual student information
345 and educator evaluation data.

346 B. Individual educator evaluation data shall be protected
347 at the school, LEA and state levels and, if applicable, at the
348 USOE.

349 C. LEAs shall designate employees who may have access to
350 educator evaluation records.

351 D. LEAs may not release or disclose student assessment
352 information that reveals educator evaluation information or
353 records.

354 E. LEAs shall train employees in the confidential nature
355 of employee evaluations and the importance of securing
356 evaluations and records.

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

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

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

362 **R277-487-12. Application to Third Party Vendors and**
363 **Contractors.**

364 A. The USOE and LEAs shall have policies that expressly
365 limit access to personally identifiable student data and
366 public school enrollment verification data to third party
367 vendors and contractors.

368 B. [~~Personally identifiable student information may only~~
369 ~~be released consistent with the provisions of 34 CFR Part~~
370 ~~99.31(a).~~

371 ~~— C. De-identified student data and information may only be~~
372 ~~released consistent with 34 CFR Part 99.31(b)]Student
373 information and public school enrollment verification data may
374 only be released to third party vendors in accordance with~~

375 FERPA and its implementing regulations.

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

381 [E]D. Sanctions for violations of authorized use and
382 release of student and employee data:

383 (1) All USOE contracts shall include sanctions for
384 contractors or third party vendors who violate provisions of
385 state policies regarding unauthorized use and release of
386 student and employee data.

387 (2) The USOE shall recommend that LEA policies include
388 sanctions for contractors or third party vendors who violate
389 provisions of federal or state privacy law and LEA policies
390 regarding unauthorized use and release of student and employee
391 data.

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

393 A. The Chief Privacy Officer~~[shall work with the DGPB,~~
394 ~~the USOE, and the Board to prepare an annual report about~~
395 ~~student data]~~, with the assistance of DGPB, shall submit to
396 the Board an annual report about student data.

397 B. The public report shall include:

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

399 (2) information about research studies begun or planned
400 using student information and data;

401 (3) ~~[the]~~ identification of significant threats to
402 student data privacy and security;

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

404 (5) recommendations for further improvements specific to
405 student data security and the systems that are necessary for
406 accountability in Board rules or legislation[+]

407 ~~—(1) Board rules;~~

408 ~~—(2) legislation; or~~

409 ~~(3) both Board rules and legislation, if appropriate].~~

410 **KEY: students, records, confidentiality**

411 **Date of Enactment or Last Substantive Amendment: [~~January 7,~~**
412 **]2015**

413 **Notice of Continuation: November 14, 2014**

414 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3;**
415 **53A-13-301(3); 53A-1-401(3); 53A-1-411**