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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Brad C. Smith
Chief Executive Officer

DATE: May 7-8, 2015

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

Background:

During the April meeting of the Law and Licensing Committee, there was a discussion regarding repealing emergency rule R277-419-9 and amending rules to codify portions of R277-419-9. R277-487 is amended to incorporate student privacy issues currently in R277-419-9 *Pupil Accounting - Provisions for Maintaining Student Membership and Enrollment Documentation and Documentation of Student Education Services Provided by Third Party Vendors* into this rule. The amendments also include numerous technical, stylistic and terminology changes.

Key Points:

The amendments in R277-487-12 *Application to Third Party Vendors and Contractors*, require an LEA to ensure that a third party provider working with the LEA complies with certain student privacy and data security requirements. Technical, stylistic and terminology changes are also made throughout the rule.

Anticipated Action:

It is proposed that the Law and Licensing 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. "Enrollment verification data" includes:

42 (1) a student's birth certificate or other verification
43 of age;

44 (2) verification of immunization or exemption from
45 immunization form;

46 (3) proof of Utah public school residency;

47 (4) family income verification; and

48 (5) special education program information, including:

49 (a) an individualized education program;

50 (b) a Section 504 accommodation plan; and

51 (c) an English learner plan.

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

56 [I]J. "LEA" ~~[means]~~ or "local education agency" ~~[7~~
57 ~~including local school boards/public]~~ means a school
58 ~~district[st], charter school[s7]~~ and, for purposes of this
59 rule, the Utah Schools for the Deaf and the Blind.

60 [J]K. "Personally identifiable student information" means
61 the student's name; a personal identifier, such as the
62 student's social security number or student number; other
63 indirect identifiers such as the student's date of birth or
64 place of birth; other information that, alone or in
65 combination, is linked or linkable to a specific student and
66 enables a person in the school community, who does not have
67 personal knowledge of the relevant circumstances, to identify
68 the student with reasonable certainty; or information
69 requested by a person who the educational agency or
70 institution reasonably knows is entitled to the requested

71 information.

72 [K]L. "Student information" means materials, information,
73 records and knowledge that an LEA possesses or maintains, or
74 both, about individual students. Student information is
75 broader than student records and personally identifiable
76 student information may include information or knowledge that
77 school employees possess or learn in the course of their
78 duties.

79 [H]M. "Student performance data" means data relating to
80 student performance, including data on state, local and
81 national assessments, course-taking and completion,
82 grade-point average, remediation, retention, degree, diploma,
83 or credential attainment, enrollment, and demographic data.

84 N. "Superintendent" means the State Superintendent of
85 Public Instruction or the Superintendent's designee.

86 O. "Third party provider" means a third party who
87 provides educational services on behalf of an LEA.

88 [[M]P. "USOE" means the Utah State Office of Education.

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

90 A. This rule is authorized under Utah Constitution
91 Article X, Section 3 which vests general control and
92 supervision over public education in the Board, by Section
93 53A-1-401(3) which allows the Board to make rules in
94 accordance with its responsibilities; by Section 53A-13-301(3)
95 regarding confidentiality and required or appropriate
96 disclosure of personally identifiable student information; by
97 Section 53A-1-607(2) regarding disclosure of student
98 performance data to LEAs for assessment and accountability
99 purposes; by Section 53A-8a-410(4) to ensure the privacy and
100 protection of individual educator evaluation data; by Section
101 53A-3-602.5 regarding a school performance report requiring
102 criterion-referenced or online computer adaptive tests to be
103 aggregated for all students by class; by Section 53A-1-411
104 which directs the Board to establish procedures for

105 administering or making available online surveys to obtain
106 information about public education issues; and by Section
107 53A-6-104 which authorizes the Board to issue licenses to
108 educators and maintain licensing information.

109 B. The purpose of this rule is to:

110 (1) provide for appropriate review and disclosure of
111 student performance data on state administered assessments as
112 required by law;

113 (2) provide for adequate and appropriate review of
114 student performance data on state administered assessments to
115 professional education staff and parents of students;

116 (3) ensure the privacy of student performance data and
117 personally identifiable student information, as directed by
118 law;

119 (4) provide an online education survey conducted with
120 public funds for Board review and approval; and

121 (5) provide for appropriate protection and maintenance of
122 educator licensing data.

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

124 A. Board Responsibilities:

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

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

132 B. LEA Responsibilities:

133 (1) An LEA[s] shall establish policies and provide
134 appropriate training for employees regarding the
135 confidentiality of student performance data and personally
136 identifiable student information[~~, including an overview of~~
137 ~~all, state, and local laws that pertain to the privacy of~~
138 ~~students, their parents, and their families. The policy should~~

139 ~~address the specific needs or priorities of the LEA].~~

140 (2) ~~[LEAs shall require password protection for all~~
141 ~~student performance data and personally identifiable student~~
142 ~~information maintained electronically]~~An LEA shall provide
143 these policies to parents of students affected by the
144 policies, as well as post the policies for the public on their
145 website.

146 (3) An LEA shall ensure that school enrollment
147 verification data are collected, maintained, and transmitted:

148 (a) in a secure manner; and

149 (b) consistent with sound data collection and storage
150 procedures, established by the LEA.

151 (4) An LEA is the only entity authorized to collect and
152 store school enrollment verification data.

153 C. Public Education Employee and Volunteer
154 Responsibilities:

155 (1) All public education employees, aides, and volunteers
156 in public schools shall become familiar with federal, state,
157 and local laws regarding the confidentiality of student
158 performance data and personally identifiable student
159 information.

160 (2) All public education employees, aides, and volunteers
161 shall maintain appropriate confidentiality pursuant to
162 federal, state, ~~and~~ local laws, and LEA policies created in
163 accordance with this section, with regard to student
164 performance data and personally identifiable student
165 information.

166 ~~[(3) An employee, aid, or volunteer shall maintain~~
167 ~~student performance data and personally identifiable student~~
168 ~~information in a secure and appropriate place as designated by~~
169 ~~LEA policies.~~

170 ~~(4) An employee, aid, or volunteer accessing student~~
171 ~~performance data and personally identifiable student~~
172 ~~information in electronic format shall comply with LEA~~
173 ~~policies regarding the procedures for maintaining~~

174 ~~confidentiality of electronic records.]~~

175 ([5]3) An employee, aide, or volunteer ~~[shall]~~may not
176 share, disclose, or disseminate passwords for electronic
177 maintenance of:

178 (a) student performance data; ~~[and]~~or

179 (b) personally identifiable student information.

180 ~~[(6) All public education employees, aids and volunteers
181 have a responsibility to protect confidential student
182 performance data and personally identifiable student
183 information and access records only as necessary for their
184 assignment(s).]~~

185 ([7]4) A ~~[P]~~public education employee~~[s]~~ licensed under
186 Section 53A-6-104 ~~[shall]~~may access ~~[and]~~or use student
187 information and records if the public education employee
188 accesses the student information or records consistent with
189 R277-515, Utah Educator Standards. ~~[Violations may result in
190 licensing discipline.]~~

191 (5) A public education employee may be disciplined in
192 accordance with licensing discipline procedures if the public
193 education employee violates this R277-487.

194 **R277-487-4. Transparency.**

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

198 B. The Chief Privacy Officer shall ensure that the
199 [R]rules/policies~~[shall]~~ address:

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

202 (2) authorized purposes, uses, and disclosures of data
203 maintained by the ~~[state]~~Superintendent and LEAs;

204 (3) the rights of parents and students regarding their
205 personally identifiable information under state and federal
206 law;

207 (4) parent, student and public access to information

208 about student data privacy and the security safeguards that
209 protect the data from unauthorized access and use; and
210 (5) contact information for parents and students to
211 request student and public school information from LEAs
212 consistent with the law.

213 **R277-487-5. Additional Responsibilities of Chief Privacy**
214 **Officer and DGPB.**

215 A. The Chief Privacy Officer may [~~pursue~~]recommend
216 legislation, as approved by the Board, for additional data
217 security protections and the regulation of use of the data.

218 B. The Chief Privacy Officer shall supervise regular
219 privacy and security compliance audits, following initiation
220 by the Board.

221 C. The Chief Privacy Officer and the DGPB shall have
222 responsibility for identification of threats to data security
223 protections.

224 D. The Chief Privacy Officer and the DGPB shall develop
225 and recommend policies for [~~USOE~~]the Superintendent and model
226 policies for LEAs for consistent wiping or destruction of
227 devices when devices are discarded by public education
228 entities.

229 E. The Chief Privacy Officer and the DGPB shall develop
230 USOE and model LEA policies for the training of staff for
231 appropriate responses to suspected or known breaches of data
232 security protections.

233 **R277-487-6. Prohibition of Public Education Data Use for**
234 **Marketing.**

235 Data maintained by the state, school districts, schools,
236 and other public education agencies or institutions in the
237 state, including data provided by contractors, [~~shall~~]may not
238 be sold or used for marketing purposes (except with regard to
239 authorized uses or directory information not obtained through
240 a contract with an educational agency or institution).

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

242 A. The ~~[USOE]~~Superintendent may provide limited or
243 extensive data sets for research and analysis purposes to
244 qualified researchers or organizations.

245 (1) ~~[A]~~The Superintendent shall use reasonable methods
246 ~~[shall be used]~~ to qualify researchers or organizations to
247 receive data, such as evidence that a research proposal has
248 been approved by a federally recognized Institutional Review
249 Board (IRB).

250 (2) Aggregate de-identified student assessment data
251 ~~[are]~~is available through the USOE website. The Superintendent
252 shall ensure that ~~[P]~~personally identifiable student
253 information is protected.

254 (3) The ~~[USOE]~~Superintendent is not obligated to fill
255 every request for data and ~~[has]~~shall establish procedures to
256 determine which requests will be filled or to assign
257 priorities to multiple requests. The ~~[USOE/Board understands~~
258 ~~that it will]~~Superintendent shall respond in a timely manner
259 to all requests submitted under Section 63G-2-101 et seq.,
260 Government Records Access and Management Act. In filling data
261 requests, the Superintendent may give higher priority~~[may be~~
262 ~~given]~~ to requests that will help improve instruction in
263 Utah's public schools.

264 (4) ~~[A fee may be charged]~~The Superintendent may charge
265 a fee to prepare data or to deliver data, particularly if the
266 preparation requires original work. The ~~[USOE]~~Superintendent
267 shall comply with Section 63G-2-203 in assessing fees for
268 responses to GRAMA requests.

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

272 B. Student data and information: Requests for data that
273 disclose student information shall be provided in accordance
274 with the Family Educational Rights and Privacy Act (FERPA), 20

275 U.S.C. Section 1232g; such responses may include:

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

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

286 (3) release of student data, with appropriate binding
287 agreements, for state or federal accountability or for the
288 purpose of improving instruction to specific student
289 subgroups.

290 C. Licensed educator information:

291 (1) The ~~[USOE]~~Superintendent shall provide information
292 about licensed educators maintained in the CACTUS database
293 that is required under Section 63G-2-301(2).

294 (2) ~~[Additional]~~The Superintendent may release
295 information/data~~[may be released by the USOE]:~~

296 (a) consistent with the purposes of CACTUS~~[7]~~;

297 (b) if the requester accepts the confidentiality
298 protections ~~[accepted by requester(s),]~~established by the
299 Superintendent; and

300 (c) [the benefit that]if the research may provide a
301 benefit for public education in Utah, as determined by the
302 ~~[USOE]~~Superintendent.

303 D. Recipients of USOE research data shall sign a USOE-
304 designated confidentiality agreement, if required by the
305 ~~[USOE]~~Superintendent.

306 E. The Board or the ~~[USOE]~~Superintendent may commission
307 research or may approve research requests.

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

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

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

315 C. Data obtained from Board statewide surveys
316 administered with public funds shall be made available as
317 follows:

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

320 (2) The Superintendent shall ensure that [§]survey data
321 about educators [~~shall be available~~]is provided to a requester
322 in a manner that protects the privacy of individual educators
323 consistent with State law.

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

327 A. CACTUS maintains[~~public, protected and private~~]
328 information on licensed Utah educators[~~. Private or protected~~
329 ~~information includes such items as home address, date of~~
330 ~~birth, social security number, and any disciplinary action~~
331 ~~taken against an individual's license.], including information
332 classified as private, controlled, or protected under GRAMA.~~

333 B. [~~A CACTUS file shall be opened on~~]The Superintendent
334 shall open a CACTUS file for a licensed Utah educator when:

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

336 (2) the USOE receives a paraprofessional license
337 application from an LEA.

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

339 (1) Authorized USOE staff or authorized LEA staff may
340 change demographic data.

341 (2) Authorized USOE staff may update licensing data such
342 as endorsements, degrees, license areas of concentration and

343 licensed work experience.

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

346 D. A licensed individual may view his own personal data.
347 An individual may not change or add data except under the
348 following circumstances:

349 (1) A licensed individual may change his demographic data
350 when renewing his license.

351 (2) A licensed individual shall contact his employing LEA
352 for the purpose of correcting demographic or current educator
353 assignment data.

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

356 E. Individuals currently employed by public or private
357 schools under letters of authorization or as interns are
358 included in CACTUS.

359 F. Individuals working in LEAs as student teachers are
360 included in CACTUS.

361 G. Designated individuals have access to CACTUS data:

362 (1) Training shall be provided to designated individuals
363 prior to granting access.

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

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

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

373 (5) CACTUS information belongs solely to the USOE. The
374 USOE shall make the final determination of information
375 included in or deleted from CACTUS.

376 (6) CACTUS data [~~consistent with Section 63G-2-301(1)~~
377 ~~under the Government Records Access and Management Act~~ are

378 ~~public information and shall be released by the USOE]~~may only
379 be released in accordance with the provisions of GRAMA.

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

381 A. The [~~Board~~]Superintendent shall provide classroom-
382 level assessment data to administrators and teachers. School
383 administrators shall share information requested by parents
384 while ensuring the privacy of individual student information
385 and educator evaluation data.

386 B. Individual educator evaluation data shall be protected
387 at the school, LEA and state levels and, if applicable, at the
388 USOE.

389 C. LEAs shall designate employees who may have access to
390 educator evaluation records.

391 D. LEAs may not release or disclose student assessment
392 information that reveals educator evaluation information or
393 records.

394 E. LEAs shall train employees in the confidential nature
395 of employee evaluations and the importance of securing
396 evaluations and records.

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

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

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

402 **R277-487-12. Application to Third Party [~~Vendors~~]Providers and**
403 **Contractors.**

404 A. The USOE and LEAs shall [~~have~~]set policies that
405 expressly limit a third party provider or contractor's access
406 to personally identifiable student data and public school
407 enrollment verification data~~[to third party vendors and~~
408 ~~contractors]~~.

409 B. [~~Personally identifiable student information may only~~

410 ~~be released consistent with the provisions of 34 CFR Part~~
411 ~~99.31(a).~~

412 ~~C. De-identified student data and information may only be~~
413 ~~released consistent with 34 CFR Part 99.31(b)]~~An LEA may
414 release Student information and public school enrollment
415 verification data to a third party provider if the release is
416 allowed by, and released in accordance with, FERPA and its
417 implementing regulations.

418 ~~[D]~~C. CACTUS or public education employee information may
419 only be released consistent with state law, with express
420 permission of the licensed individual or employee, or with the
421 purposes for which the information was entered into CACTUS or
422 a similar employee database.

423 ~~[E]~~D. Sanctions for violations of authorized use and
424 release of student and employee data:

425 (1) All USOE contracts shall include sanctions for
426 contractors or third party ~~[vendors]~~providers who violate
427 provisions of state policies regarding unauthorized use and
428 release of student and employee data.

429 (2) The ~~[USOE]~~Superintendent shall recommend that LEA
430 policies include sanctions for contractors or third party
431 ~~[vendors]~~providers who violate provisions of federal or state
432 privacy law and LEA policies regarding unauthorized use and
433 release of student and employee data.

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

435 A. The Chief Privacy Officer~~[shall work with the DGPB,~~
436 ~~the USOE, and the Board to prepare an annual report about~~
437 ~~student data]~~, with the assistance of DGPB, shall submit to
438 the Board an annual report about student data.

439 B. The public report shall include:

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

441 (2) information about research studies begun or planned
442 using student information and data;

443 (3) ~~[the]~~ identification of significant threats to

444 student data privacy and security;
445 (4) a summary of data system audits; and
446 (5) recommendations for further improvements specific to
447 student data security and the systems that are necessary for
448 accountability in Board rules or legislation[+
449 (1) ~~Board rules;~~
450 (2) ~~legislation; or~~
451 (3) ~~both Board rules and legislation, if appropriate~~].

452 **KEY: students, records, confidentiality**

453 **Date of Enactment or Last Substantive Amendment: [~~January 7,~~**
454 **]2015**

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

456 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3;**
457 **53A-13-301(3); 53A-1-401(3); 53A-1-411**