

IN THE SENATE

SENATE BILL NO. 1372, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

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

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

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

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

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

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

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

11 (b) "Aggregate data" means data collected and/or reported at the group,  
12 cohort or institutional level. Aggregate data shall not include per-  
13 sonally identifiable information. The minimum number of students shall  
14 be determined by the state board of education.

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

16 (d) "Data system" means the state's elementary, secondary and postsec-  
17 ondary longitudinal data systems.

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

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

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

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

36 (i) "Provisional student data" means new student data proposed for in-  
37 clusion in the data system.

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

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

1 information; (8) discipline reports limited to objective infor-  
2 mation sufficient to produce the federal annual incident reports,  
3 children with disabilities disciplinary reports and discipline  
4 reports including students involved with firearms; (9) remedi-  
5 ation; (10) special education data; (11) demographic data and  
6 program participation information; and (12) files, documents,  
7 images or data containing a student's educational record that are  
8 stored in or transmitted through a cloud computing service.

9 (ii) A student's educational record shall not include: (1) juve-  
10 nile delinquency records and criminal records unless required in  
11 paragraph (k) of this subsection; (2) medical and health records;  
12 (3) student social security number; (4) student biometric infor-  
13 mation; (5) gun ownership records; (6) sexual orientation; (7) re-  
14 ligious affiliation; (8) except for special needs and exceptional  
15 students, any data collected pursuant to a statewide assessment  
16 via affective computing, including analysis of facial expres-  
17 sions, EEG brain wave patterns, skin conductance, galvanic skin  
18 response, heart rate variability, pulse, blood volume, posture  
19 and eye tracking, any data that measures psychological resources,  
20 mind sets, effortful control, attributes, dispositions, social  
21 skills, attitudes or intrapersonal resources.

22 (k) "Student educational record" means all information directly re-  
23 lated to a student and recorded and kept in the data system as that term  
24 is defined in this section. Provided however, that the following shall  
25 not be kept as part of a student's permanent educational record: daily  
26 assignments, homework, reports, chapter tests or similar assessments  
27 or other schoolwork that may be considered daily or weekly work. A  
28 student educational record may include information considered to be  
29 personally identifiable.

30 (l) "Student education unique identification number" means the unique  
31 student identifier assigned by the state to each student that shall not  
32 be or include the social security number of a student in whole or in  
33 part.

34 (m) "Violation" means an act contrary to the provisions of this section  
35 that materially compromises the security, confidentiality or integrity  
36 of personally identifiable data of one (1) or more students and that re-  
37 sults in the unauthorized release or disclosure of such data.

38 (2) Unless otherwise provided for in this act, the executive office of  
39 the state board of education shall be the entity responsible for implement-  
40 ing the provisions of this act. All decisions relating to the collection and  
41 safeguarding of student data shall be the responsibility of the executive  
42 office of the state board of education.

43 (3) The state board of education shall:

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

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

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

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

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

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

13 (i) Access to student data in the student data system shall be re-  
14 stricted to: (1) the authorized staff of the state board of educa-  
15 tion and the state department of education and the board's and the  
16 department's vendors who require such access to perform their as-  
17 signed duties; (2) the district and the district's private vendors  
18 who require access to perform their assigned duties and public  
19 postsecondary staff who require such access to perform their as-  
20 signed duties; (3) students and their parents or legal guardians;  
21 and (4) the authorized staff of other state agencies in this state  
22 as required by law and/or defined by interagency data-sharing  
23 agreements. All such data-sharing agreements shall be summarized  
24 in a report compiled by the state board of education and submitted  
25 no later than January 15 of each year to the senate education com-  
26 mittee and the house of representatives education committee;

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

30 (iii) Develop criteria for the approval of research and data re-  
31 quests from state and local agencies, the state legislature,  
32 researchers and the public: (1) unless otherwise approved by the  
33 state board of education, student data maintained shall remain  
34 confidential; (2) unless otherwise approved by the state board of  
35 education, released student data in response to research and data  
36 requests may include only aggregate data; and (3) any approval of  
37 the board to release personally identifiable student data shall  
38 be subject to legislative approval prior to the release of such  
39 information;

40 (iv) Ensure that any contract entered into by the state board of  
41 education or the state department of education includes provi-  
42 sions requiring and governing data destruction dates and specific  
43 restrictions on the use of data;

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

46 (vi) Ensure that all school districts, primary schools, secondary  
47 schools and other similar institutions entering into contracts  
48 that govern databases, online services, assessments, special  
49 education or instructional supports with private vendors shall  
50 include in each such contract a provision that private vendors

1 are permitted to use aggregated data; or an individual student's  
2 data for secondary uses, but only if the vendor discloses in clear  
3 detail the secondary uses and receives written permission from the  
4 student's parent or legal guardian. The contract shall also in-  
5 clude either of the following: (1) a prohibition on any secondary  
6 uses of student data by the private vendor including, but not  
7 limited to, sales, marketing or advertising, but permitting the  
8 private vendor to process or monitor such data solely to provide  
9 and maintain the integrity of the service; or (2) a requirement  
10 that the private vendor disclose in detail any secondary uses of  
11 student data including, but not limited to, sales, marketing or  
12 advertising, and the board shall obtain express parental consent  
13 for those secondary uses prior to deployment of the private ven-  
14 dor's services under the contract.

15 The state board of education and the state department of education shall  
16 ensure that any and all private vendors employed or otherwise engaged  
17 by the board or the department shall comply with the provisions of this  
18 section. Any person determined, in either a civil enforcement action  
19 initiated by the board or initiated by the department or in a court ac-  
20 tion initiated by an injured party, to have violated a provision of this  
21 section or any rule promulgated pursuant to this section shall be liable  
22 for a civil penalty not to exceed fifty thousand dollars (\$50,000) per  
23 violation. In the case of an unauthorized release of student data, the  
24 state board of education or the state department of education shall no-  
25 tify the parent or student of the unauthorized release of student data  
26 that includes personally identifiable information in a manner consis-  
27 tent with the provisions of section 28-51-105, Idaho Code.

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

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

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

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

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

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

49 (vi) A student is classified as "migrant" for reporting purposes  
50 as required by the federal government in order to assure link-

- 1           age between the various states of migrant students educational  
2           records;
- 3       (d) Develop a detailed data security plan that includes:
- 4           (i) Guidelines for authorizing access to the student data system  
5           and to individual student data including guidelines for authenti-  
6           cation of authorized access;
- 7           (ii) Guidelines relating to administrative safeguards providing  
8           for the security of electronic and physical data; such guidelines  
9           should include provisions relating to data encryption as well as  
10          staff training to better ensure the safety and security of data;
- 11          (iii) Privacy compliance standards;
- 12          (iv) Privacy and security audits;
- 13          (v) Breach planning, notification and procedures; and
- 14          (vi) Data retention and disposition policies;
- 15       (e) Ensure routine and ongoing compliance with FERPA, other relevant  
16       privacy laws and policies, and the privacy and security policies and  
17       procedures developed under the authority of this act, including the  
18       performance of compliance audits;
- 19       (f) Ensure that any contracts that govern databases, online services,  
20       assessments or instructional supports that include student data and are  
21       outsourced to private vendors, include express provisions that safe-  
22       guard privacy and security, contain the restrictions on secondary uses  
23       of student data described in subsection (3) (b) (vi) of this section,  
24       provides for data destruction, including a time frame for data destruc-  
25       tion, and includes penalties for noncompliance with this paragraph; and
- 26       (g) Notify the governor and the legislature annually of the following:
- 27           (i) New student data proposed for inclusion in the state student  
28           data system: (1) any new student data collection proposed by the  
29           state board of education becomes a provisional requirement to al-  
30           low districts and their local data system vendors the opportunity  
31           to meet the new requirement; and (2) the state board of educa-  
32           tion must submit any new provisional student data collection to  
33           the governor and the legislature for their approval within one (1)  
34           year in order to make the new student data a permanent requirement  
35           through the administrative rules process. Any provisional stu-  
36           dent data collection not approved by the governor and the legisla-  
37           ture by the end of the next legislative session expires and must be  
38           deleted and no longer collected;
- 39           (ii) Changes to existing data collections required for any rea-  
40           son, including changes to federal reporting requirements made by  
41           the U.S. department of education;
- 42           (iii) An explanation of any exceptions granted by the state  
43           board of education in the past year regarding the release or  
44           out-of-state transfer of student data;
- 45           (iv) The results of any and all privacy compliance and security  
46           audits completed in the past year. Notifications regarding pri-  
47           vacy compliance and security audits shall not include any informa-  
48           tion that would pose a security threat to the state or local stu-  
49           dent information systems or to the secure transmission of data be-  
50           tween state and local systems by exposing vulnerabilities; and

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

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

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

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

12 (7) The state board of education shall develop a model policy for school  
13 districts and public charter schools that will govern data collection, ac-  
14 cess, security and use of such data. The model policy shall be consistent  
15 with the provisions of this act. In order to assure that student educa-  
16 tional information is treated safely and securely and in a consistent manner  
17 throughout the state, each district and public charter school shall adopt  
18 and implement the model policy. The state department of education shall  
19 provide outreach and training to the districts and public charter schools  
20 to help implement the policy. A current copy of such policy shall be posted  
21 to the school district's website. Any district or public charter school  
22 that fails to adopt, implement and post the policy where any inappropriate  
23 release of data occurs shall be liable for a civil penalty not to exceed fifty  
24 thousand dollars (\$50,000). Such civil penalty may be imposed per viola-  
25 tion. The method of recovery of the penalty shall be by a civil enforcement  
26 action brought by the state board of education, with the assistance of the  
27 office of the state attorney general, in the district court in and for the  
28 county where the violation occurred. All civil penalties collected under  
29 this section shall be paid into the general fund of the state.

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