

IN THE SENATE

SENATE BILL NO. 1372

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 that are stored in or transmitted through a cloud  
8 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; and (7)  
14 religious affiliation.

15 (k) "Student educational record" means all information directly re-  
16 lated to a student and recorded and kept in the data system as that term  
17 is defined in this section. A student educational record may include  
18 information considered to be personally identifiable.

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

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

27 (2) Unless otherwise provided for in this act, the executive office of  
28 the state board of education shall be the entity responsible for implement-  
29 ing the provisions of this act. All decisions relating to the collection and  
30 safeguarding of student data shall be the responsibility of the executive  
31 office of the state board of education.

32 (3) The state board of education shall:

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

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

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

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

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

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

1 (i) Access to student data in the student data system shall be  
2 restricted to: (1) the authorized staff of the state board of  
3 education and the state department of education and the board's  
4 and the department's vendors who require such access to perform  
5 their assigned duties; (2) the district and the district's pri-  
6 vate vendors who require access to perform their assigned duties  
7 and public postsecondary staff who require such access to perform  
8 their assigned duties; (3) students and their parents or legal  
9 guardians; and (4) the authorized staff of other state agencies  
10 in this state as required by law and/or defined by interagency  
11 data-sharing agreements;

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

15 (iii) Develop criteria for the approval of research and data re-  
16 quests from state and local agencies, the state legislature,  
17 researchers and the public: (1) unless otherwise approved by the  
18 state board of education, student data maintained shall remain  
19 confidential; (2) unless otherwise approved by the state board of  
20 education, released student data in response to research and data  
21 requests may include only aggregate data; and (3) any approval of  
22 the board to release personally identifiable student data shall  
23 be subject to legislative approval prior to the release of such  
24 information;

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

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

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

49 The state board of education and the state department of education shall  
50 ensure that any and all private vendors employed or otherwise engaged

1 by the board or the department shall comply with the provisions of this  
2 section. Any person determined, in either a civil enforcement action  
3 initiated by the board or initiated by the department or in a court ac-  
4 tion initiated by an injured party, to have violated a provision of this  
5 section or any rule promulgated pursuant to this section shall be liable  
6 for a civil penalty not to exceed fifty thousand dollars (\$50,000) per  
7 violation. In the case of an unauthorized release of student data, the  
8 state board of education or the state department of education shall no-  
9 tify the parent or student of the unauthorized release of student data  
10 that includes personally identifiable information in a manner consis-  
11 tent with the provisions of section 28-51-105, Idaho Code.

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

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

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

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

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

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

33 (vi) A student is classified as "migrant" for reporting purposes  
34 as required by the federal government in order to assure link-  
35 age between the various states of migrant students educational  
36 records;

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

38 (i) Guidelines for authorizing access to the student data system  
39 and to individual student data including guidelines for authenti-  
40 cation of authorized access;

41 (ii) Guidelines relating to administrative safeguards providing  
42 for the security of electronic and physical data; such guidelines  
43 should include provisions relating to data encryption as well as  
44 staff training to better ensure the safety and security of data;

45 (iii) Privacy compliance standards;

46 (iv) Privacy and security audits;

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

48 (vi) Data retention and disposition policies;

49 (e) Ensure routine and ongoing compliance with FERPA, other relevant  
50 privacy laws and policies, and the privacy and security policies and

1 procedures developed under the authority of this act, including the  
2 performance of compliance audits;

3 (f) Ensure that any contracts that govern databases, online services,  
4 assessments or instructional supports that include student data and are  
5 outsourced to private vendors, include express provisions that safe-  
6 guard privacy and security, contain the restrictions on secondary uses  
7 of student data described in subsection (3) (b) (vi) of this section,  
8 provides for data destruction, including a time frame for data destruc-  
9 tion, and includes penalties for noncompliance with this paragraph; and

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

11 (i) New student data proposed for inclusion in the state student  
12 data system: (1) any new student data collection proposed by the  
13 state board of education becomes a provisional requirement to al-  
14 low districts and their local data system vendors the opportunity  
15 to meet the new requirement; and (2) the state board of educa-  
16 tion must submit any new provisional student data collection to  
17 the governor and the legislature for their approval within one (1)  
18 year in order to make the new student data a permanent requirement  
19 through the administrative rules process. Any provisional stu-  
20 dent data collection not approved by the governor and the legisla-  
21 ture by the end of the next legislative session expires and must be  
22 deleted and no longer collected;

23 (ii) Changes to existing data collections required for any rea-  
24 son, including changes to federal reporting requirements made by  
25 the U.S. department of education;

26 (iii) An explanation of any exceptions granted by the state  
27 board of education in the past year regarding the release or  
28 out-of-state transfer of student data;

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

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

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

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

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

46 (7) The state board of education shall develop a model policy for school  
47 districts and public charter schools that will govern data collection, ac-  
48 cess, security and use of such data. The model policy shall be consistent  
49 with the provisions of this act. In order to assure that student educa-  
50 tional information is treated safely and securely and in a consistent manner

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

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