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AN ACT

1
2 RELATING TO CERTAIN EDUCATIONAL RECORDS AND DATA; AMENDING SECTION 9-340C,
3 IDAHO CODE, TO PROVIDE THAT CERTAIN EDUCATIONAL RECORDS ARE EXEMPT
4 FROM DISCLOSURE; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A
5 NEW CHAPTER 58, TITLE 33, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE THE
6 TYPES OF DATA THAT MAY BE COLLECTED, TO PROVIDE FOR TRANSPARENCY OF DATA
7 SYSTEMS, TO PROVIDE LIMITATIONS ON ADOPTING OR ADMINISTERING CERTAIN
8 TYPES OF ASSESSMENTS, TO PROVIDE LIMITATIONS ON COLLECTION OF SENSI-
9 TIVE INFORMATION, TO PROVIDE LIMITATIONS ON DISCLOSURE OF PERSONALLY
10 IDENTIFIABLE INFORMATION TO THIRD PARTIES, TO PROVIDE FOR RESEARCH AND
11 STUDIES, TO PROVIDE FOR AUDITS, EVALUATIONS AND COMPLIANCE, TO PROVIDE
12 OUTSOURCING, TO PROVIDE ACTIONS REQUIRED IN CASE OF SECURITY BREACH
13 OR UNAUTHORIZED DISCLOSURE, TO PROHIBIT COMMERCIAL USE, TO PROHIBIT
14 PREDICTIVE MODELING, TO PROVIDE LIMITATIONS ON VIDEO MONITORING, TO
15 PROHIBIT INTERAGENCY DISCLOSURE, TO PROVIDE LIMITATIONS ON DISCLOSURE
16 TO THE FEDERAL GOVERNMENT, TO PROVIDE FOR DISCLOSURES TO ASSESSMENT
17 CONSORTIUM OR COMPANY, TO PROVIDE FOR DESTRUCTION OF DATA AND TO PROVIDE
18 FOR PENALTIES AND ENFORCEMENT.

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

20 SECTION 1. That Section 9-340C, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 9-340C. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PER-
23 SONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following
24 records are exempt from disclosure:

25 (1) Except as provided in this subsection, all personnel records of
26 a current or former public official other than the public official's pub-
27 lic service or employment history, classification, pay grade and step,
28 longevity, gross salary and salary history, status, workplace and employing
29 agency. All other personnel information relating to a public employee or ap-
30 plicant including, but not limited to, information regarding sex, race, mar-
31 ital status, birth date, home address and telephone number, applications,
32 testing and scoring materials, grievances, correspondence and performance
33 evaluations, shall not be disclosed to the public without the employee's or
34 applicant's written consent. Names of applicants to classified or merit
35 system positions shall not be disclosed to the public without the appli-
36 cant's written consent. Disclosure of names as part of a background check
37 is permitted. Names of the five (5) final applicants to all other positions
38 shall be available to the public. If such group is less than five (5) final-
39 ists, then the entire list of applicants shall be available to the public. A
40 public official or authorized representative may inspect and copy his per-
41 sonnel records, except for material used to screen and test for employment.

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1 (2) Retired employees' and retired public officials' home addresses,
2 home telephone numbers and other financial and nonfinancial membership
3 records; active and inactive member financial and membership records and
4 mortgage portfolio loan documents maintained by the public employee retire-
5 ment system. Financial statements prepared by retirement system staff,
6 funding agents and custodians concerning the investment of assets of the
7 public employee retirement system of Idaho are not considered confidential
8 under this chapter.

9 (3) Information and records submitted to the Idaho state lottery for
10 the performance of background investigations of employees, lottery retail-
11 ers and major procurement contractors; audit records of lottery retailers,
12 vendors and major procurement contractors submitted to or performed by the
13 Idaho state lottery; validation and security tests of the state lottery for
14 lottery games; business records and information submitted pursuant to sec-
15 tions 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such docu-
16 ments and information obtained and held for the purposes of lottery security
17 and investigative action as determined by lottery rules unless the public
18 interest in disclosure substantially outweighs the private need for protec-
19 tion from public disclosure.

20 (4) Records of a personal nature as follows:

21 (a) Records of personal debt filed with a public agency or independent
22 public body corporate and politic pursuant to law;

23 (b) Personal bank records compiled by a public depositor for the pur-
24 pose of public funds transactions conducted pursuant to law;

25 (c) Records of ownership of financial obligations and instruments of a
26 public agency or independent public body corporate and politic, such as
27 bonds, compiled by the public agency or independent public body corpo-
28 rate and politic pursuant to law;

29 (d) Records, with regard to the ownership of, or security interests in,
30 registered public obligations;

31 (e) Vital statistics records; and

32 (f) Military records as described in and pursuant to section 65-301,
33 Idaho Code.

34 (5) Information in an income or other tax return measured by items of
35 income or sales, which is gathered by a public agency for the purpose of ad-
36 ministering the tax, except such information to the extent disclosed in a
37 written decision of the tax commission pursuant to a taxpayer protest of a
38 deficiency determination by the tax commission, under the provisions of sec-
39 tion 63-3045B, Idaho Code.

40 (6) Records of a personal nature related directly or indirectly to the
41 application for and provision of statutory services rendered to persons
42 applying for public care for people who are elderly, indigent or have mental
43 or physical disabilities, or participation in an environmental or a public
44 health study, provided the provisions of this subsection making records
45 exempt from disclosure shall not apply to the extent that such records or
46 information contained in those records are necessary for a background check
47 on an individual that is required by federal law regulating the sale of
48 firearms, guns or ammunition.

49 (7) Employment security information, except that a person may agree,
50 through written, informed consent, to waive the exemption so that a third

1 party may obtain information pertaining to the person, unless access to
2 the information by the person is restricted by subsection (3) (a), (3) (b)
3 or (3) (d) of section 9-342, Idaho Code. Notwithstanding the provisions of
4 section 9-342, Idaho Code, a person may not review identifying information
5 concerning an informant who reported to the department of labor a suspected
6 violation by the person of the employment security law, chapter 13, title 72,
7 Idaho Code, under an assurance of confidentiality. As used in this section
8 and in chapter 13, title 72, Idaho Code, "employment security information"
9 means any information descriptive of an identifiable person or persons that
10 is received by, recorded by, prepared by, furnished to or collected by the
11 department of labor or the industrial commission in the administration of
12 the employment security law.

13 (8) Any personal records, other than names, business addresses and
14 business phone numbers, such as parentage, race, religion, sex, height,
15 weight, tax identification and social security numbers, financial worth or
16 medical condition submitted to any public agency or independent public body
17 corporate and politic pursuant to a statutory requirement for licensing,
18 certification, permit or bonding.

19 (9) Unless otherwise provided by agency rule, information obtained as
20 part of an inquiry into a person's fitness to be granted or retain a license,
21 certificate, permit, privilege, commission or position, private associa-
22 tion peer review committee records authorized in title 54, Idaho Code. Any
23 agency which has records exempt from disclosure under the provisions of this
24 subsection shall annually make available a statistical summary of the number
25 and types of matters considered and their disposition.

26 (10) The records, findings, determinations and decisions of any prelit-
27 igation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

28 (11) Complaints received by the board of medicine and investigations
29 and informal proceedings, including informal proceedings of any committee
30 of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and
31 rules adopted thereunder.

32 (12) Records of the department of health and welfare or a public health
33 district that identify a person infected with a reportable disease.

34 (13) Records of hospital care, medical records, including prescrip-
35 tions, drug orders, records or any other prescription information that
36 specifically identifies an individual patient, prescription records main-
37 tained by the board of pharmacy under sections 37-2726 and 37-2730A, Idaho
38 Code, records of psychiatric care or treatment and professional counseling
39 records relating to an individual's condition, diagnosis, care or treat-
40 ment, provided the provisions of this subsection making records exempt from
41 disclosure shall not apply to the extent that such records or information
42 contained in those records are necessary for a background check on an indi-
43 vidual that is required by federal law regulating the sale of firearms, guns
44 or ammunition.

45 (14) Information collected pursuant to the directory of new hires act,
46 chapter 16, title 72, Idaho Code.

47 (15) Personal information contained in motor vehicle and driver records
48 that is exempt from disclosure under the provisions of chapter 2, title 49,
49 Idaho Code.

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1 (16) Records of the financial status of prisoners pursuant to subsec-
2 tion (2) of section 20-607, Idaho Code.

3 (17) Records of the Idaho state police or department of correction re-
4 ceived or maintained pursuant to section 19-5514, Idaho Code, relating to
5 DNA databases and databanks.

6 (18) Records of the department of health and welfare relating to a sur-
7 vey, resurvey or complaint investigation of a licensed nursing facility
8 shall be exempt from disclosure. Such records shall, however, be subject to
9 disclosure as public records as soon as the facility in question has received
10 the report, and no later than the fourteenth day following the date that
11 department of health and welfare representatives officially exit the facil-
12 ity pursuant to federal regulations. Provided however, that for purposes
13 of confidentiality, no record shall be released under this section which
14 specifically identifies any nursing facility resident.

15 (19) Records and information contained in the registry of immunizations
16 against childhood diseases maintained in the department of health and wel-
17 fare, including information disseminated to others from the registry by the
18 department of health and welfare.

19 (20) Records of the Idaho housing and finance association (IHFA) relat-
20 ing to the following:

21 (a) Records containing personal financial, family, health or similar
22 personal information submitted to or otherwise obtained by the IHFA;

23 (b) Records submitted to or otherwise obtained by the IHFA with regard
24 to obtaining and servicing mortgage loans and all records relating to
25 the review, approval or rejection by the IHFA of said loans;

26 (c) Mortgage portfolio loan documents;

27 (d) Records of a current or former employee other than the employee's
28 duration of employment with the association, position held and loca-
29 tion of employment. This exemption from disclosure does not include the
30 contracts of employment or any remuneration, including reimbursement
31 of expenses, of the executive director, executive officers or commis-
32 sioners of the association. All other personnel information relating
33 to an association employee or applicant including, but not limited to,
34 information regarding sex, race, marital status, birth date, home ad-
35 dress and telephone number, applications, testing and scoring materi-
36 als, grievances, correspondence, retirement plan information and per-
37 formance evaluations, shall not be disclosed to the public without the
38 employee's or applicant's written consent. An employee or authorized
39 representative may inspect and copy that employee's personnel records,
40 except for material used to screen and test for employment or material
41 not subject to disclosure elsewhere in the Idaho public records act.

42 (21) Records of the department of health and welfare related to child
43 support services in cases in which there is reasonable evidence of domestic
44 violence, as defined in chapter 63, title 39, Idaho Code, that can be used
45 to locate any individuals in the child support case except in response to a
46 court order.

47 (22) Records of the Idaho state bar lawyer assistance program pursuant
48 to chapter 49, title 54, Idaho Code, unless a participant in the program au-
49 thORIZES the release pursuant to subsection (4) of section 54-4901, Idaho
50 Code.

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1 (23) Records and information contained in the trauma registry created
2 by chapter 20, title 57, Idaho Code, together with any reports, analyses and
3 compilations created from such information and records.

4 (24) Records contained in the court files, or other records prepared as
5 part of proceedings for judicial authorization of sterilization procedures
6 pursuant to chapter 39, title 39, Idaho Code.

7 (25) The physical voter registration card on file in the county clerk's
8 office; however, a redacted copy of said card shall be made available consis-
9 tent with the requirements of this section. Information from the voter reg-
10 istration card maintained in the statewide voter registration database, in-
11 cluding age, will be made available except for the voter's driver's license
12 number, date of birth and, upon a showing that the voter comes within the pro-
13 visions of subsection (30) of this section or upon showing of good cause by
14 the voter to the county clerk in consultation with the county prosecuting
15 attorney, the physical residence address of the voter. For the purposes of
16 this subsection good cause shall include the protection of life and property
17 and protection of victims of domestic violence and similar crimes.

18 (26) File numbers, passwords and information in the files of the health
19 care directive registry maintained by the secretary of state under section
20 39-4515, Idaho Code, are confidential and shall not be disclosed to any per-
21 son other than to the person who executed the health care directive or the re-
22 vocation thereof and that person's legal representatives, to the person who
23 registered the health care directive or revocation thereof, and to physi-
24 cians, hospitals, medical personnel, nursing homes, and other persons who
25 have been granted file number and password access to the documents within
26 that specific file.

27 (27) Records in an address confidentiality program participant's file
28 as provided for in chapter 57, title 19, Idaho Code, other than the address
29 designated by the secretary of state, except under the following circum-
30 stances:

31 (a) If requested by a law enforcement agency, to the law enforcement
32 agency; or

33 (b) If directed by a court order, to a person identified in the order.

34 (28) Except as otherwise provided by law relating to the release of in-
35 formation to a governmental entity or law enforcement agency, any personal
36 information including, but not limited to, names, personal and business ad-
37 dresses and phone numbers, sex, height, weight, date of birth, social secu-
38 rity and driver's license numbers, or any other identifying numbers and/or
39 information related to any Idaho fish and game licenses, permits and tags un-
40 less written consent is obtained from the affected person.

41 (29) Documents and records related to continuing education and record-
42 keeping violations that are maintained by the Idaho board of veterinary
43 medicine under the provisions of section 54-2118(1)(b), Idaho Code, pro-
44 vided the requirements set forth therein are met.

45 (30) The Idaho residential street address and telephone number of an
46 eligible law enforcement officer and such officer's residing household mem-
47 ber(s) as provided for in chapter 58, title 19, Idaho Code, except under the
48 following circumstances:

49 (a) If directed by a court order, to a person identified in the court
50 order;

- 1 (b) If requested by a law enforcement agency, to the law enforcement
- 2 agency;
- 3 (c) If requested by a financial institution or title company for busi-
- 4 ness purposes, to the requesting financial institution or title com-
- 5 pany; or
- 6 (d) If the law enforcement officer provides written permission for dis-
- 7 closure of such information.
- 8 (31) All information exchanged between the Idaho transportation de-
- 9 partment and insurance companies, any database created, all information
- 10 contained in the verification system and all reports, responses or other
- 11 information generated for the purposes of the verification system, pursuant
- 12 to section 49-1234, Idaho Code.
- 13 (32) Nothing in this section shall prohibit the release of information
- 14 to the state controller as the state social security administrator as pro-
- 15 vided in section 59-1101A, Idaho Code.
- 16 (~~33~~32) Personal information including, but not limited to, property
- 17 values, personal and business addresses, phone numbers, dates of birth, so-
- 18 cial security and driver's license numbers or any other identifying numbers
- 19 or information maintained by the administrator of the unclaimed property law
- 20 set forth in chapter 5, title 14, Idaho Code. Nothing in this subsection
- 21 shall prohibit the release of names, last known city of residence, property
- 22 value ranges and general property information by the administrator for the
- 23 purpose of reuniting unclaimed property with its owner.
- 24 (34) All records contained in chapter 58, title 33, Idaho Code.

25 SECTION 2. That Title 33, Idaho Code, be, and the same is hereby amended
26 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
27 ter 58, Title 33, Idaho Code, and to read as follows:

28 CHAPTER 58
29 CERTAIN EDUCATIONAL DATA

- 30 33-5801. DEFINITIONS. As used in this chapter:
- 31 (1) The term "student database" shall mean the Statewide longitudinal
 - 32 data system in the state of Idaho. Including ISEE, School Net, and the P-20
 - 33 workforce system.[state SLDS - be specific and comprehensive with possible
 - 34 names], as well as any other data warehouse containing Idaho [state] student
 - 35 information, including regional, interstate, or federal data warehouse or-
 - 36 ganizations under contract to or with a memorandum of understanding with the
 - 37 [state]Idaho State Department of Education;
 - 38 (2) The terms "disclosure," "education records," "eligible student,"
 - 39 "parent," "party," "personally identifiable information," "record," and
 - 40 "student" shall have the same meaning as those terms are defined in the
 - 41 regulations (34 C.F.R. Part 99.3) promulgated under the Family Educational
 - 42 Rights and Privacy Act;
 - 43 (3) The term "biometric record" shall mean a record of one or more mea-
 - 44 surable biological or behavioral characteristics that can be used for auto-
 - 45 mated recognition of an individual, including fingerprints, retina and iris
 - 46 patterns, voiceprints, DNA sequence (including newborn screening informa-
 - 47 tion), facial characteristics, and handwriting;

- 1 (4) The term "teacher records" shall apply to teachers, paraprofes-
2 sionals, principals, and other administrators and shall mean the following:
3 (i) Social Security number; (ii) Employee ID number other than Social Secu-
4 rity number; (iii) name; (iv) address; (v) birthdate; (vi) email address and
5 telephone number; (vii) compensation information; (viii) health benefits
6 information; (ix) resume information; (x) performance evaluations; and (xi)
7 other information that, alone or in combination, is linked or linkable to a
8 specific staff member that would allow a reasonable person in the school com-
9 munity, who does not have personal knowledge of the relevant circumstances,
10 to identify the staff member with reasonable certainty;
- 11 (5) The term "education program" shall mean a program of instruction
12 administered by an education agency or education institution within the
13 state;
- 14 (6) The term "department" shall mean the [state] Department of Educa-
15 tion;
- 16 (7) The term "state agencies" shall mean all state education agencies
17 listed in this chapter, or any other state education entity;
- 18 (8) The term "district" shall refer to any school district including
19 specially chartered district or local school district office;
- 20 (9) The term "education institution" or "institution" shall mean any
21 public, charter or private elementary or secondary school or institution of
22 higher education;
- 23 (10) The term "written consent" shall mean written consent given, in-
24 cluding by electronic signature, within six months before the data-collec-
25 tion or -disclosure consented to, specifically referencing that data-col-
26 lection or -disclosure, and dated and signed on the same day;
- 27 (11) The term "workforce information" shall mean information related
28 to Unemployment Insurance (UI), wage records, UI benefit claims, or em-
29 ployment and earnings data from workforce data sources, such as state wage
30 records, Wage Record Interchange System (WRIS), or the Federal Employment
31 Data Exchange System (FEDES);
- 32 (12) The term "cloud computing service" shall mean a service that en-
33 ables on-demand network access to a shared pool of configurable computing
34 resources (e.g., networks, servers, storage, applications, and services) to
35 provide a student, teacher, or staff member account-based productivity ap-
36 plications such as email, document storage and document editing that can be
37 rapidly provisioned and released with minimal management effort, or cloud-
38 computing service-provider interaction. A cloud computing service has the
39 characteristics of on-demand self-service, broad network access, resource
40 pooling, rapid elasticity, and measured service;
- 41 (13) The term "cloud computing service provider" shall mean an entity,
42 other than an education institution, that operates a cloud computing ser-
43 vice;
- 44 (14) The term "process" or "processing" shall mean to use, access, ma-
45 nipulate, scan, modify, transform, disclose, store, transmit, transfer, re-
46 tain, aggregate, or dispose of student or teacher data;
- 47 (15) The term "affective computing" shall mean systems and devices that
48 can or attempt to recognize, interpret, process, or simulate aspects of hu-
49 man feelings or emotions;

1 (16) The term "psychological resources" shall mean noncognitive, emo-
2 tional characteristics, attributes, and skills, including mindsets, learn-
3 ing strategies, and effortful control, used by an individual to address or
4 manage various life situations;

5 (17) The term "intrapersonal resources" or "intrapersonal skills"
6 shall mean noncognitive emotional and psychological characteristics and
7 attributes used to manage emotions and attitudes within an individual;

8 (18) the term "interpersonal resources" or "interpersonal skills"
9 shall mean noncognitive, emotional, and psychological characteristics and
10 attributes and skills used to manage relationships and interactions among
11 between or among individuals;

12 (19) The term "track" shall mean to collect and maintain records of a
13 student's activities once he exits the K-12 educational system, including
14 but not limited to his entrance into and progression through the workforce or
15 the military; and

16 (20) The term "predictive modeling" shall mean use of educational data-
17 mining methods to make predictions about future behaviors or performance.

18 33-5802. TYPES OF DATA THAT MAY BE COLLECTED. The following types of
19 data may be collected:

20 (1) Student data collected by any state agency, district, or educa-
21 tion institution without the written consent of parents or eligible students
22 shall be limited to the following:

23 (a) Names, addresses, email addresses, and telephone numbers of the
24 student and his/her parents or guardians;

25 (b) State and national assessment results;

26 (c) Courses taken, courses completed,, and credits earned;

27 (d) Course grades and grade point average;

28 (e) Date of birth, grade level, and expected graduation date/gradua-
29 tion cohort;

30 (f) Degree, diploma, or credential attainment;

31 (g) Enrollment in the education institution;

32 (h) Attendance and transfers;

33 (i) Medical, health, and mental-health records limited to immuniza-
34 tion records required by state law, records needed or created by a
35 school-based health professional for administering prescription drugs
36 or otherwise treating a student at school, records needed or created
37 by a school-based counselor when a student seeks counseling while at
38 school, or records required by the Individuals with Disabilities Educa-
39 tion Act, 20 USC Section 1400 et seq.;

40 (j) Discipline reports limited to objective information about disci-
41 plinary incidents and actions or, for institutions of higher education,
42 objective information sufficient to produce the Title IV Annual Inci-
43 dent Report pursuant to the Clery Act, 20 USC Section 1092 (f) ;

44 (k) Juvenile delinquency or other criminal or correctional records
45 if necessary to meet the educational needs of the student or to ensure
46 staff or student safety, provided that an institution of higher educa-
47 tion may collect records sufficient to produce the Title IV Annual In-
48 cident Report pursuant to the Clery Act, 20 USC Section 1092 (f) , and may
49 collect law enforcement unit records in accordance with 34 C.F.R. 99.8;

- 1 (l) Remediation data;
- 2 (m) Special-education data, limited to data required by the Individu-
- 3 als with Disabilities Education Act, 20 USC Section 1400 et seq.;
- 4 (n) Demographic and other descriptive data limited to that required
- 5 by the Elementary and Secondary Education Act (race, gender, ethnicity
- 6 status, economic status, disability status, English proficiency sta-
- 7 tus, country of birth/immigration information, migrant status);
- 8 (o) Student workforce information, limited to information related to
- 9 work-study, technical, or industry-certificate programs participated
- 10 in for academic credit;
- 11 (p) Student or family Social Security numbers only if needed to deter-
- 12 mine eligibility for, to facilitate participation in, or to receive
- 13 financial assistance under a scholarship, free-or-reduced-lunch, or
- 14 other financial-assistance program, or by an institution of higher edu-
- 15 cation to comply with state or federal law;
- 16 (q) Student or family income data, limited to data required by law to
- 17 determine eligibility for, to facilitate participation in, or to to
- 18 participate in or receive financial assistance under a scholarship,
- 19 free-or-reduced-lunch, or other financial-assistance program; and
- 20 (r) Information about extracurricular activities, limited to activi-
- 21 ties that are school-sponsored or engaged in for academic credit.
- 22 (2) Unless explicitly mandated by federal statute, a state agency, dis-
- 23 trict, or education institution must obtain written consent from parents or
- 24 eligible students before collecting any data points other than those listed
- 25 in subsection (1) of this section, including but not limited to the follow-
- 26 ing:
 - 27 (a) Medical, health (including height, weight, and body mass index),
 - 28 and mental health records, except as otherwise provided in this section
 - 29 (b) Student or family workforce information, except as otherwise pro-
 - 30 vided in this section;
 - 31 (c) Student biometric records;
 - 32 (d) Any data collected via affective computing, including analysis
 - 33 of facial expressions, EEG brain wave patterns, skin conductance, galvanic
 - 34 skin response, heart-rate variability, pulse, blood volume, posture, and
 - 35 eye-tracking;
 - 36 (e) Any data (including any resulting from state or national as-
 - 37 sessments) that measure psychological resources, mindsets, learning
 - 38 strategies, effortful control, attributes, dispositions, social
 - 39 skills, attitudes, or intrapersonal resources;
 - 40 (f) Any data collected for the purpose of predictive modeling, except
 - 41 for data used to assist with dropout-prevention programs; and
 - 42 (g) Information about student or family religious affiliation.
- 43 (3) No funds, whether from federal Race to the Top grants, Ameri-
- 44 can Reinvestment and Recovery Act funds, or elsewhere, shall be used on
- 45 construction, enhancement, or expansion of any data system that does not
- 46 comply with these limitations, or that is designed to track students beyond
- 47 their K-12 or postsecondary-education careers or compile their personal,
- 48 nonacademic information beyond what is necessary for either administrative
- 49 functions directly related to the student's education, or evaluation of aca-
- 50 demic programs and student progress.

1 (4) No state agency, district, or education institution shall pursue or
2 accept any grant, whether from the federal government or any private entity,
3 that would require collecting or reporting any types of data in violation of
4 subsection (2) of this section.

5 33-5803. TRANSPARENCY OF DATA SYSTEMS. (1) State agencies, districts,
6 and education institutions shall publicly and conspicuously disclose on
7 their websites the existence and detailed specifics about character of
8 any personally identifiable information from education records or teacher
9 records maintained by the agencies, districts, or education institutions,
10 directly or through contracts with outside parties. This disclosure shall
11 include the specific types of education records or teacher records that
12 are transferred to cloud computing service providers. Districts and edu-
13 cation institutions shall annually notify parents, eligible students, and
14 teachers of this website posting. State agencies shall also provide annual
15 electronic notification of this information to the chairs of the Senate
16 Education Committee and House Education Committee. Such disclosure and
17 electronic notifications shall include the following: the legal authority
18 that authorizes the establishment and existence of the data repository,
19 including a citation to the statute or regulation; the principal purpose or
20 purposes for which the information is intended to be used; the categories
21 of individuals on whom records are maintained in the data repository; the
22 categories of records maintained in the data repository; each expected dis-
23 closure of the records contained in the data repository, including the cate-
24 gories of recipients and the purpose of such disclosure; a log of disclosures
25 actually made, including description of data disclosed, the identities of
26 the recipient and the person(s) who prepared the data for disclosure or au-
27 thorized the disclosure, and any limitations or requirements connected with
28 the disclosure; the policies and practices of the state agency, district, or
29 education institution regarding storage, retrievability, access controls,
30 retention, and disposal of the records; the title and business address of the
31 official who is responsible for the data repository, and the name and busi-
32 ness address of any contractor or other outside party maintaining the data
33 repository for or on behalf of the state agency or education institution;
34 the procedures whereby parents or eligible students, or teachers, can be no-
35 tified at their request if the data repository contains a record pertaining
36 to that student or teacher; and the procedures whereby parents or eligible
37 students, or teachers, can be notified at their request how to gain access to
38 any record pertaining to that student or teacher contained in the data repos-
39 itory, including a time limit on responding to such requests not to exceed
40 thirty (30) days, and how they can contest the record's content..

41 (2) Upon request, parents and eligible students shall be provided a
42 printed copy of their education records that are held in an education data-
43 base, and shall have the right to correct those education records in a manner
44 that is consistent with requirements of state and federal law.

45 (3) State agencies, districts, and education institutions shall use
46 only aggregate data in published (i.e., external and publicly viewable) re-
47 ports.

1 33-5804. LIMITATIONS ON ADOPTING OR ADMINISTERING CERTAIN TYPES OF
2 ASSESSMENTS. No classroom, institution, district, state, or national stu-
3 dent assessment shall be adopted or administered in this state that collects
4 any type of psychological data, including assessment of noncognitive skills
5 or attributes, psychological resources, mindsets, learning strategies,
6 effortful control, attitudes, dispositions, social skills, or other inter-
7 personal or intrapersonal resources.

8 33-5805. LIMITATIONS ON COLLECTION OF SENSITIVE INFORMATION. No state
9 agency, district,, or preK-12 education institution, classroom teacher,
10 or school club sponsor shall administer any student survey, assessment,
11 analysis, evaluation, or similar instrument that solicits information about
12 the student or the student's family concerning the following: political
13 affiliations or beliefs; mental or psychological problems, psychological
14 resources, mindsets, learning strategies, effortful control, attributes,
15 dispositions, social skills, attitudes, or intrapersonal resources; sexual
16 behavior or attitudes; illegal, antisocial, self-incriminating, or demean-
17 ing behavior; critical appraisals of another individual with whom a student
18 has a close family relationship; legally recognized privileged or analo-
19 gous relationships, such as those with a lawyer, physician, or clergyman;
20 except for parochial or other religious schools, religious practices, af-
21 filiations, or beliefs; personal or family gun ownership; or income or other
22 income-related information except that required by law to determine eligi-
23 bility to participate in or receive financial assistance under a program.

24 33-5806. LIMITATIONS ON DISCLOSURE OF PERSONALLY IDENTIFIABLE INFOR-
25 MATION TO THIRD PARTIES. (1) Subject to the exceptions contained in this sec-
26 tion, access to student education records in the student database shall be
27 restricted to the authorized representatives of the state agency, district,
28 or education institution who require such access to perform their assigned
29 duties. No party may be designated an "authorized representative" unless
30 that party is on the staff and under the direct control of the designating
31 state agency, district, or institution.

32 (2) Subject to the exceptions contained in this section, no personally
33 identifiable student or teacher data shall be disclosed without the written
34 consent of the parents or eligible students, or of the affected teachers.

35 (3) No student or teacher Social Security numbers may be disclosed to
36 any third party, whether governmental or private.

37 33-5807. RESEARCH AND STUDIES. (1) The Department shall develop and
38 publish criteria for the approval of research-related data requests from
39 state and local governmental agencies, the state legislature, academic re-
40 searchers, and the public.

41 (2) Personally identifiable information from an education record of a
42 student, or from teacher records, may not be released to a party conduct-
43 ing studies for or on behalf of the state agencies or education institutions
44 without the written consent of the parent or eligible student, or of the af-
45 fected teacher, except to: Develop, validate, or administer assessments; or
46 administer student financial-aid programs.

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1 (3) Any outside party conducting such a study must meet all the require-
2 ments for contractors set forth in section 33-5808, Idaho Code.

3 33-5808. AUDITS, EVALUATIONS AND COMPLIANCE. In conducting any audit
4 or evaluation of an education program, or any compliance or enforcement ac-
5 tivity in connection with legal requirements that relate to state- or dis-
6 trict-supported education programs, when such audit, evaluation, or activ-
7 ity involves access to personally identifiable student or teacher informa-
8 tion, education records and teacher records may be released only to autho-
9 rized representatives of the government auditor or the auditing agency or
10 company. state agencies, districts, or institutions. No party may be desig-
11 nated an "authorized representative" unless that party is on the staff and
12 under the direct control of the government auditor or the auditing agency or
13 company. No agency or company may be chosen to conduct such audit(s) unless
14 it certifies in writing that it will comply with the terms and conditions set
15 forth in this chapter. Results of such audit(s) shall be posted on the web-
16 site of the state agency, district, or institution administering the audited
17 program(s) .

18 33-5809. OUTSOURCING. (1) State agencies, districts, and institu-
19 tions may not disclose personally identifiable information from education
20 records or teacher records without the written consent of parents or eli-
21 gible students or of the affected teachers, to a contractor, consultant,
22 or other party to whom the state agency, district, or institution has out-
23 sourced institutional services or functions unless that outside party:
24 Performs an institutional service or function for which the state agency,
25 district , or institution would otherwise use its employees; is under the
26 direct control of the state agency, district, or institution with respect
27 to the use and maintenance of education records or teacher records; limits
28 internal access to education records or teacher records to those individuals
29 who require access to those records for completion of the contract; does not
30 use the education records or teacher records for any purposes other than
31 those explicitly authorized in the contract; does not disclose any person-
32 ally identifiable information from education records or teacher records to
33 any other party: (i) without the written consent of the parent or eligible
34 student, or the affected teacher; or (ii) unless required by statute or court
35 order and the party provides a notice of the disclosure to the state agency,
36 district, or institution that provided the information no later than the
37 time the information is disclosed, unless providing notice of the disclosure
38 is expressly prohibited by the statute or court order; maintains reasonable
39 administrative, technical, and physical safeguards to protect the security,
40 confidentiality, and integrity of the personally identifiable student or
41 teacher data in its custody; uses encryption technologies to protect data
42 while in motion or in its custody from unauthorized disclosure using a tech-
43 nology or methodology specified by the Secretary of the U.S. Department of
44 Health and Human Services in guidance issued under section 13402(H) (2) of
45 Public Law 111-5; has sufficient administrative and technical procedures
46 to monitor continuously the security of personally identifiable student or
47 teacher data in its custody; conducts a security audit annually and provides
48 the results of that audit to each state agency, district, or institution that

1 provides education records or teacher records; provides the state agency,
2 district, or institution with a breach-remediation plan acceptable to the
3 state agency, district, or institution before initial receipt of education
4 records or teacher records; reports all suspected security breaches to the
5 state agency, district, or institution that provided education records or
6 teacher records, and to parents of affected students, affected eligible
7 students, and affected teachers, as soon as possible but not later than
8 forty-eight hours after a suspected breach was known or would have been known
9 by exercising reasonable diligence; reports all actual security breaches to
10 the state agency, district, or institution that provided education records
11 or teacher records, and to parents of affected students, and affected teach-
12 ers, as soon as possible but not later than twenty-four (4) hours after an
13 actual breach was known or would have been known by exercising reasonable
14 diligence; pays all costs and liabilities incurred by the state agency,
15 district, or institution related to any security breach or unauthorized dis-
16 closure, including but not limited to the costs of responding to inquiries
17 about the security breach or unauthorized disclosure, of notifying subjects
18 of personally identifiable information about the breach, of mitigating the
19 effects of the breach for the subjects of the personally identifiable in-
20 formation, and of investigating the cause or consequences of the security
21 breach or unauthorized disclosure; and destroys or returns to the state
22 agency, district, or institution all personally identifiable information in
23 its custody upon request and at the termination of the contract. Destruction
24 shall comply with the NISTPS800-88 standards of data-destruction.

25 (2) All outsourcing contracts or agreements entered into pursuant to
26 this subsection, or pursuant to subsection (h) of this section, shall be
27 posted on the website of the state agency, district, or institution that
28 entered into the contract or agreement

29 33-5810. ACTIONS REQUIRED IN CASE OF SECURITY BREACH OR UNAUTHORIZED
30 DISCLOSURE. In the event of a security breach or unauthorized disclosure of
31 personally identifiable student or teacher data, whether by a state agency,
32 district, or education institution, or by a third party given access to
33 education records or teacher records pursuant to this chapter, the state
34 agency, district, or education institution shall: Immediately notify the
35 subjects of the breach or disclosure; report the breach or disclosure to the
36 Family Policy Compliance Office of the U. S. Department of Education; and
37 investigate the causes and consequences of the breach or disclosure.

38 33-5811. COMMERCIAL USE PROHIBITED. (1) (1) Personally identifiable
39 information from education records or teacher records may not be disclosed
40 to any party for a commercial use, including but not limited to marketing
41 products or services, compilation of lists for sale or rental, development
42 of products or services, or creation of individual, household, or group pro-
43 files, employment-suitability checks, background checks, or insurance-rate
44 determination.

45 (2) A state agency, district, or institution that contracts with a
46 cloud computing service provider must enter into an agreement with such
47 provider that includes the following terms: Specification of the types of
48 data to be transferred or collected, including whether data will be col-

1 lected directly from students and whether the provider will track students'
2 use of the services; prohibition on the provider's redisclosure of informa-
3 tion from education records or teacher records, or use of such information
4 for any secondary purposes that benefit the provider or any third party,
5 including but not limited to online behavioral advertising, creating or
6 correcting an individual or household profile primarily for the provider's
7 benefit, the sale of the data for any commercial purpose, or any other
8 similar commercial for-profit activity; provided, however, that a cloud
9 computing service provider may process or monitor student data solely to
10 provide such service to the state agency, district, or institution, and to
11 maintain the integrity of such service.

12 (3) Any cloud computing service provider that enters into an agreement
13 to provide cloud computing services to a state agency, district, or institu-
14 tion shall certify in writing to that state agency, district, or institution
15 that it will comply with the terms and conditions set forth in subsection (e)
16 of this section; and that the state agency, district, or institution main-
17 tains ownership of all student and teacher data.

18 (4) Any student or teacher data stored by a cloud computing service
19 provider shall be stored within the boundaries of the United States.

20 33-5812. PREDICTIVE MODELING PROHIBITED. No student data shall be
21 used for predictive modeling for detecting behaviors, beliefs, or value
22 systems, or predicting or forecasting student outcomes, except for use in
23 dropout-prevention programs.

24 33-5813. LIMITATIONS ON VIDEO MONITORING. There shall be no video
25 monitoring of classrooms for any purpose, including for teacher evaluation,
26 without the approval of the district school board after public hearings and
27 the written consent of the teacher, of all eligible students, and of the par-
28 ents of all other students in the classroom.

29 33-5814. INTERAGENCY DISCLOSURE PROHIBITED. Personally identifiable
30 information from education records or teacher records may not be disclosed
31 to any non-education government agency, including but not limited to the
32 Idaho department of labor, and the Idaho transportation department whether
33 within or outside the state, or to any party that intends to use or disclose
34 the information or data for the purpose of workforce-development or economic
35 planning.

36 33-5815. LIMITATIONS ON INTERSTATE DISCLOSURE. Subject to the provi-
37 sions of this chapter, personally identifiable information from education
38 records or teacher records may not be disclosed to any government agency or
39 other entity outside the state, except disclosure may be made in the follow-
40 ing circumstances: To an institution attended by a student who has trans-
41 ferred out of state; to an out-of-state program in which a student volun-
42 tarily participates and for which such a data transfer is a condition or re-
43 quirement of participation; or when a student is classified as a "migrant"
44 for federal reporting purposes.

1 33-5816. LIMITATIONS ON DISCLOSURE TO FEDERAL GOVERNMENT. (1) No per-
2 sonally identifiable information from education records or teacher records
3 may be disclosed to any federal agency, including the U. S. Department of Ed-
4 ucation or the U. S. Department of Labor or their representatives, unless:
5 Such disclosure is required by the U. S. Department of Education as a condi-
6 tion of receiving a federal education grant; the U. S. Department of Educa-
7 tion agrees in writing to use the information from the education records or
8 teacher records only to evaluate the program or programs funded by the grant;
9 the U. S. Department of Education agrees in writing that the information will
10 not be used for any research beyond that related to evaluation of the program
11 or programs funded by the grant, unless the parent or eligible student, or
12 any teacher, whose information or data will be used for such evaluation af-
13 firmatively consents in writing to that use; the U. S. Department of Educa-
14 tion agrees in writing to destroy the information or data upon completion of
15 the evaluation of the program or programs for which the information or data
16 were compiled; and the grant or program in connection with which the informa-
17 tion or data are required is one explicitly authorized by federal statute or
18 by federal rule properly promulgated under the federal Administrative Pro-
19 cedure Act, 5 U.S.C. Section 500 et seq.

20 (2) If the U. S. Department of Education requires, as a condition of
21 making a federal education grant, that the grant recipient disclose student
22 information or teacher data under circumstances that do not comply with
23 paragraph (1) of this subsection, the grant recipient shall obtain written
24 consent from the parents of every student, or from eligible students, whose
25 information will be disclosed, or from every teacher whose data will be dis-
26 closed.

27 (3) If the U. S. Department of Education demands personally identifi-
28 able student information, or teacher data, without the written consent of
29 the affected parents, eligible students, or teachers, the grant recipient
30 shall provide written notification to those parents, eligible students, and
31 teachers of the following: That the grant recipient has been required to
32 disclose the student's information or the teacher's data to the U. S. De-
33 partment of Education; that neither the grant recipient nor any other entity
34 within the state of Georgia Idaho will have control over use or further dis-
35 closure of that information or data; and the contact information, including
36 the name, telephone number, and email address of the U. S. Department of Edu-
37 cation official who demands the disclosure.

38 33-5817. DISCLOSURE TO ASSESSMENT CONSORTIUM OR COMPANY. State agen-
39 cies, district boards, or institutions shall not disclose student or teacher
40 information to any assessment consortium of which the state is a member, or
41 company with which the state contracts for development and/or administra-
42 tion of any assessment, unless: The information is transmitted in non-indi-
43 vidual record format; the information is limited to information directly re-
44 lated to the assessment, such as a student's grade level and test scores; and
45 no psychological information of any kind (including that listed in section 2
46 of this Code provision) is included as part of the test scores.

47 33-5818. DESTRUCTION OF DATA. An education institution shall destroy
48 and remove from the student database all education records of a student

1 within five years of the student's graduation from that institution, pro-
2 vided that the institution may retain records showing dates of attendance,
3 course transcripts, diploma or degree(s) received, and contact information.
4 If a student withdraws from an education institution before graduating, the
5 institution shall, within one year of the student's withdrawal, destroy
6 and remove from the database all education records of that student except
7 records showing dates of attendance, course transcripts, diploma or de-
8 gree(s) received, and contact information.

9 33-5819. PENALTIES AND ENFORCEMENT. (1) Each violation of any provi-
10 sion of this section by an organization or entity other than a state agency,
11 a district board of education, or an institution as defined in section 1 of
12 this subsection shall be punishable by a civil penalty of up to one thousand
13 dollars; a second violation by the same organization or entity involving the
14 education records and privacy of the same student shall be punishable by a
15 civil penalty of up to five thousand dollars; any subsequent violation by the
16 same organization or entity involving the education records and privacy of
17 the same student shall be punishable by a civil penalty of up to ten thou-
18 sand dollars; and each violation involving a different individual education
19 record or a different individual student shall be considered a separate vio-
20 lation for purposes of civil penalties.

21 (2) The attorney general shall have the authority to enforce compliance
22 with this section by investigation and subsequent commencement of a civil
23 action, to seek civil penalties for violations of this section, and to seek
24 appropriate injunctive relief, including but not limited to a prohibition on
25 obtaining personally identifiable information for an appropriate time pe-
26 riod. In carrying out such investigation and in maintaining such civil ac-
27 tion, the attorney general or any deputy or assistant attorney general is au-
28 thorized to subpoena witnesses, compel their attendance, examine them under
29 oath, and require that any books, records, documents, papers, or electronic
30 records relevant to the inquiry be turned over for inspection, examination,
31 or audit, pursuant to Idaho Rules of Civil Procedure, subpoenas issued pur-
32 suant to this paragraph may be enforced pursuant to the civil practice law
33 and rules.

34 (3) Nothing contained herein shall be construed as creating a private
35 right of action against a state agency, a district board of education, or an
36 institution as defined in this chapter.