

IN THE SENATE

SENATE BILL NO. 1385

BY JUDICIARY AND RULES COMMITTEE

AN ACT

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

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

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

9-340C. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PERSONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following records are exempt from disclosure:

(1) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. Names of applicants to classified or merit system positions shall not be disclosed to the public without the applicant's written consent. Disclosure of names as part of a background check is permitted. Names of the five (5) final applicants to all other positions shall be available to the public. If such group is less than five (5) finalists, then the entire list of applicants shall be available to the public. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

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.

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.

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;

(b) If requested by a law enforcement agency, to the law enforcement agency;

(c) If requested by a financial institution or title company for business purposes, to the requesting financial institution or title company; or

(d) If the law enforcement officer provides written permission for disclosure of such information.

(31) All information exchanged between the Idaho transportation department and insurance companies, any database created, all information contained in the verification system and all reports, responses or other information generated for the purposes of the verification system, pursuant to section 49-1234, Idaho Code.

(32) Nothing in this section shall prohibit the release of information to the state controller as the state social security administrator as provided in section 59-1101A, Idaho Code.

(323) Personal information including, but not limited to, property values, personal and business addresses, phone numbers, dates of birth, social security and driver's license numbers or any other identifying numbers or information maintained by the administrator of the unclaimed property law set forth in chapter 5, title 14, Idaho Code. Nothing in this subsection shall prohibit the release of names, last known city of residence, property value ranges and general property information by the administrator for the purpose of reuniting unclaimed property with its owner.

(34) All records contained in chapter 58, title 33, Idaho Code.

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

CHAPTER 58 CERTAIN EDUCATIONAL DATA

33-5801. DEFINITIONS. As used in this chapter:

(1) "Student database" means the statewide longitudinal data system (SLDS) in the state of Idaho, including ISEE, "School Net," and the P-20 workforce system, as well as any other data warehouse containing Idaho student information, to include regional, interstate or federal data warehouse organizations under contract to or with a memorandum of understanding with the department of education;

(2) "Disclosure," "education records," "eligible student," "parent," "party," "personally identifiable information," "record" and "student" shall have the same meaning as those terms are defined in the regulations promulgated under the family educational rights and privacy act, 34 CFR Part 99.3;

(3) "Biometric record" means a record of one (1) or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual, including fingerprints, retina and iris patterns, voiceprints, DNA sequence, including newborn screening information, facial characteristics, and handwriting;

(4) "Teacher records" shall apply to teachers, paraprofessionals, principals, and other administrators and shall mean the following:

1 (i) Social security number;
2 (ii) Employee ID number other than social security number;
3 (iii) Name;
4 (iv) Address;
5 (v) Birthdays;
6 (vi) Email address and telephone number;
7 (vii) Compensation information;
8 (viii) Health benefits information;
9 (ix) Resume information;
10 (x) Performance evaluations; and
11 (xi) Other information that, alone or in combination, is linked or link-
12 able to a specific staff member that would allow a reasonable person in
13 the school community, who does not have personal knowledge of the rel-
14 evant circumstances, to identify the staff member with reasonable cer-
15 tainty;
16 (5) "Education program" means a program of instruction administered by
17 an education agency or education institution within the state;
18 (6) "Department" means the state department of education;
19 (7) "State agencies" means all state education agencies listed in this
20 chapter, or any other state education entity;
21 (8) "District" shall refer to any school district including specially
22 chartered district or local school district office;
23 (9) "Education institution" or "institution" means any public, char-
24 ter or private elementary or secondary school or institution of higher edu-
25 cation;
26 (10) "Written consent" means written consent given, including by elec-
27 tronic signature, within six (6) months before the data-collection or data-
28 disclosure consented to, specifically referencing that data-collection or
29 data-disclosure, and dated and signed on the same day;
30 (11) "Workforce information" means information related to unemploy-
31 ment insurance (UI), wage records, UI benefit claims or employment and
32 earnings data from workforce data sources, such as state wage records, wage
33 record interchange system (WRIS) or the federal employment data exchange
34 system (FEDES);
35 (12) "Cloud computing service" means a service that enables on-demand
36 network access to a shared pool of configurable computing resources, such
37 as networks, servers, storage, applications, and services, to provide a
38 student, teacher, or staff member account-based productivity applications
39 such as email, document storage and document editing that can be rapidly
40 provisioned and released with minimal management effort or cloud-computing
41 service-provider interaction. A cloud computing service has the character-
42 istics of on-demand self-service, broad network access, resource pooling,
43 rapid elasticity and measured service;
44 (13) "Cloud computing service provider" means an entity, other than an
45 education institution, that operates a cloud computing service;
46 (14) "Process" or "processing" means to use, access, manipulate, scan,
47 modify, transform, disclose, store, transmit, transfer, retain, aggregate
48 or dispose of student or teacher data;

1 (15) "Affective computing" means systems and devices that can or at-
 2 tempt to recognize, interpret, process or simulate aspects of human feelings
 3 or emotions;

4 (16) "Psychological resources" means noncognitive, emotional charac-
 5 teristics, attributes and skills, including mind-sets, learning strategies
 6 and effortful control, used by an individual to address or manage various
 7 life situations;

8 (17) "Intrapersonal resources" or "intrapersonal skills" means
 9 noncognitive emotional and psychological characteristics and attributes
 10 used to manage emotions and attitudes within an individual;

11 (18) "Interpersonal resources" or "interpersonal skills" shall mean
 12 noncognitive, emotional, and psychological characteristics and attributes
 13 and skills used to manage relationships and interactions between or among
 14 individuals;

15 (19) "Track" means to collect and maintain records of a student's ac-
 16 tivities once he exits the K-12 educational system including, but not lim-
 17 ited to, his entrance into and progression through the workforce or the mili-
 18 tary; and

19 (20) "Predictive modeling" means use of educational data-mining meth-
 20 ods to make predictions about future behaviors or performance.

21 33-5802. TYPES OF DATA THAT MAY BE COLLECTED. The following types of
 22 data may be collected:

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

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

28 (b) State and national assessment results;

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

30 (d) Course grades and grade point average;

31 (e) Date of birth, grade level and expected graduation date and gradua-
 32 tion cohort;

33 (f) Degree, diploma or credential attainment;

34 (g) Enrollment in the education institution;

35 (h) Attendance and transfers;

36 (i) Medical, health and mental health records limited to immuniza-
 37 tion records required by state law, records needed or created by a
 38 school-based health professional for administering prescription drugs
 39 or otherwise treating a student at school, records needed or created
 40 by a school-based counselor when a student seeks counseling while at
 41 school or records required by the individuals with disabilities educa-
 42 tion act, 20 U.S.C. section 1400 et seq.;

43 (j) Discipline reports limited to objective information about disci-
 44 plinary incidents and actions or, for institutions of higher education,
 45 objective information sufficient to produce the title IV annual inci-
 46 dent report pursuant to the Clery act, 20 U.S.C. section 1092(f);

47 (k) Juvenile delinquency or other criminal or correctional records
 48 if necessary to meet the educational needs of the student or to ensure
 49 staff or student safety, provided that an institution of higher edu-

1 cation may collect records sufficient to produce the title IV annual
 2 incident report pursuant to the Clery act, 20 U.S.C. section 1092(f),
 3 and may collect law enforcement unit records in accordance with 34 CFR.
 4 99.8;

5 (l) Remediation data;

6 (m) Special-education data, limited to data required by the individu-
 7 als with disabilities education act, 20 U.S.C. section 1400 et seq.;

8 (n) Demographic and other descriptive data limited to that required by
 9 the elementary and secondary education act, such as race, gender, eth-
 10 nicity status, economic status, disability status, English proficiency
 11 status, country of birth and immigration information and migrant sta-
 12 tus;

13 (o) Student workforce information, limited to information related to
 14 work-study, technical or industry-certificate programs participated
 15 in for academic credit;

16 (p) Student or family social security numbers only if needed to deter-
 17 mine eligibility for, to facilitate participation in, or to receive fi-
 18 nancial assistance under a scholarship, free or reduced lunch, or other
 19 financial assistance program, or by an institution of higher education
 20 to comply with state or federal law;

21 (q) Student or family income data, limited to data required by law to
 22 determine eligibility for, to facilitate participation in, or to par-
 23 ticipate in or receive financial assistance under a scholarship, free
 24 or reduced lunch or other financial assistance program; and

25 (r) Information about extracurricular activities, limited to activi-
 26 ties that are school sponsored or engaged in for academic credit.

27 (2) Unless explicitly mandated by federal statute, a state agency, dis-
 28 trict or education institution must obtain written consent from parents or
 29 eligible students before collecting any data points other than those listed
 30 in subsection (1) of this section including, but not limited to, the follow-
 31 ing:

32 (a) Medical, health, including height, weight and body mass index, and
 33 mental health records, except as otherwise provided in this section;

34 (b) Student or family workforce information, except as otherwise pro-
 35 vided in this section;

36 (c) Student biometric records;

37 (d) Any data collected via affective computing, including analysis
 38 of facial expressions, EEG brain wave patterns, skin conductance, galvanic
 39 skin response, heart-rate variability, pulse, blood volume, posture and
 40 eye-tracking;

41 (e) Any data, including any resulting from state or national assess-
 42 ments, that measure psychological resources, mind-sets, learning
 43 strategies, effortful control, attributes, dispositions, social
 44 skills, attitudes or intrapersonal resources;

45 (f) Any data collected for the purpose of predictive modeling, except
 46 for data used to assist with dropout-prevention programs; and

47 (g) Information about student or family religious affiliation.

48 (3) No funds, whether from federal race to the top grants, Ameri-
 49 can reinvestment and recovery act funds, or elsewhere, shall be used on
 50 construction, enhancement or expansion of any data system that does not

1 comply with these limitations, or that is designed to track students beyond
2 their K-12 or postsecondary education careers or compile their personal,
3 nonacademic information beyond what is necessary for either administrative
4 functions directly related to the student's education or evaluation of aca-
5 demic programs and student progress.

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

10 33-5803. TRANSPARENCY OF DATA SYSTEMS. (1) State agencies, districts
11 and education institutions shall publicly and conspicuously disclose on
12 their websites the existence and detailed specifics about character of
13 any personally identifiable information from education records or teacher
14 records maintained by the agencies, districts or education institutions,
15 directly or through contracts with outside parties. This disclosure shall
16 include the specific types of education records or teacher records that
17 are transferred to cloud computing service providers. Districts and edu-
18 cation institutions shall annually notify parents, eligible students and
19 teachers of this website posting. State agencies shall also provide annual
20 electronic notification of this information to the chairs of the senate
21 education committee and house education committee. Such disclosure and
22 electronic notifications shall include the following: the legal authority
23 that authorizes the establishment and existence of the data repository,
24 including a citation to the statute or regulation; the principal purpose or
25 purposes for which the information is intended to be used; the categories
26 of individuals on whom records are maintained in the data repository; the
27 categories of records maintained in the data repository; each expected dis-
28 closure of the records contained in the data repository, including the cate-
29 gories of recipients and the purpose of such disclosure; a log of disclosures
30 actually made, including description of data disclosed, the identities of
31 the recipient and the person(s) who prepared the data for disclosure or au-
32 thorized the disclosure and any limitations or requirements connected with
33 the disclosure; the policies and practices of the state agency, district or
34 education institution regarding storage, retrievability, access controls,
35 retention and disposal of the records; the title and business address of the
36 official who is responsible for the data repository and the name and busi-
37 ness address of any contractor or other outside party maintaining the data
38 repository for or on behalf of the state agency or education institution; the
39 procedures whereby parents, eligible students or teachers, can be notified
40 at their request if the data repository contains a record pertaining to that
41 student or teacher; and the procedures whereby parents, eligible students or
42 teachers, can be notified at their request how to gain access to any record
43 pertaining to that student or teacher contained in the data repository, in-
44 cluding a time limit on responding to such requests not to exceed thirty (30)
45 days, and how they can contest the record's content.

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

1 (3) State agencies, districts and education institutions shall use
2 only aggregate data in published, external and publicly viewable, reports.

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

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

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

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

37 (3) No student or teacher social security numbers may be disclosed to
38 any third party, whether governmental or private.

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

43 (2) Personally identifiable information from an education record of a
44 student or from teacher records, may not be released to a party conducting
45 studies for or on behalf of the state agencies or education institutions
46 without the written consent of the parent, eligible student or the affected

1 teacher, except to: develop, validate or administer assessments; or admin-
 2 ister student financial aid programs.

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

5 33-5808. AUDITS, EVALUATIONS AND COMPLIANCE. In conducting any audit
 6 or evaluation of an education program, or any compliance or enforcement ac-
 7 tivity in connection with legal requirements that relate to state-supported
 8 or district-supported education programs, when such audit, evaluation or
 9 activity involves access to personally identifiable student or teacher in-
 10 formation, education records and teacher records may be released only to
 11 authorized representatives of the government auditor or the auditing agency
 12 or company state agencies, districts, or institutions. No party may be des-
 13 ignated an authorized representative unless that party is on the staff and
 14 under the direct control of the government auditor or the auditing agency or
 15 company. No agency or company may be chosen to conduct such audits unless it
 16 certifies in writing that it will comply with the terms and conditions set
 17 forth in this chapter. Results of such audits shall be posted on the website
 18 of the state agency, district or institution administering the audited pro-
 19 grams.

20 33-5809. OUTSOURCING. (1) State agencies, districts and institutions
 21 may not disclose personally identifiable information from education records
 22 or teacher records without the written consent of parents, eligible students
 23 or the affected teachers, to a contractor, consultant or other party to
 24 whom the state agency, district or institution has outsourced institutional
 25 services or functions unless that outside party: performs an institutional
 26 service or function for which the state agency, district or institution
 27 would otherwise use its employees; is under the direct control of the state
 28 agency, district or institution with respect to the use and maintenance of
 29 education records or teacher records; limits internal access to education
 30 records or teacher records to those individuals who require access to those
 31 records for completion of the contract; does not use the education records
 32 or teacher records for any purposes other than those explicitly authorized
 33 in the contract; does not disclose any personally identifiable information
 34 from education records or teacher records to any other party:

35 (i) Without the written consent of the parent, eligible student or the
 36 affected teacher; or

37 (ii) Unless required by statute or court order and the party provides a
 38 notice of the disclosure to the state agency, district or institution
 39 that provided the information no later than the time the information
 40 is disclosed, unless providing notice of the disclosure is expressly
 41 prohibited by the statute or court order; maintains reasonable admin-
 42 istrative, technical and physical safeguards to protect the security,
 43 confidentiality and integrity of the personally identifiable student
 44 or teacher data in its custody; uses encryption technologies to protect
 45 data while in motion or in its custody from unauthorized disclosure us-
 46 ing a technology or methodology specified by the secretary of the U.S.
 47 department of health and human services in guidance issued under sec-
 48 tion 13402(H) (2), Public Law 111-5; has sufficient administrative and

technical procedures to monitor continuously the security of personally identifiable student or teacher data in its custody; conducts a security audit annually and provides the results of that audit to each state agency, district or institution that provides education records or teacher records; provides the state agency, district or institution with a breach-remediation plan acceptable to the state agency, district or institution before initial receipt of education records or teacher records; reports all suspected security breaches to the state agency, district or institution that provided education records or teacher records, and to parents of affected students, affected eligible students and affected teachers, as soon as possible, but not later than forty-eight hours after a suspected breach was known or would have been known by exercising reasonable diligence; reports all actual security breaches to the state agency, district, or institution that provided education records or teacher records, and to parents of affected students, and affected teachers, as soon as possible but not later than twenty-four (24) hours after an actual breach was known or would have been known by exercising reasonable diligence; pays all costs and liabilities incurred by the state agency, district or institution related to any security breach or unauthorized disclosure including, but not limited to, the costs of responding to inquiries about the security breach or unauthorized disclosure, of notifying subjects of personally identifiable information about the breach, of mitigating the effects of the breach for the subjects of the personally identifiable information and of investigating the cause or consequences of the security breach or unauthorized disclosure; and destroys or returns to the state agency, district or institution all personally identifiable information in its custody upon request and at the termination of the contract. Destruction shall comply with the NISTPS800-88 standards of data-destruction.

(2) All outsourcing contracts or agreements entered into pursuant to the provisions of this chapter shall be posted on the website of the state agency, district or institution that entered into the contract or agreement

33-5810. ACTIONS REQUIRED IN CASE OF SECURITY BREACH OR UNAUTHORIZED DISCLOSURE. In the event of a security breach or unauthorized disclosure of personally identifiable student or teacher data, whether by a state agency, district, education institution or by a third party given access to education records or teacher records pursuant to this chapter, the state agency, district or education institution shall: immediately notify the subjects of the breach or disclosure; report the breach or disclosure to the family policy compliance office of the U. S. department of education; and investigate the causes and consequences of the breach or disclosure.

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

1 (2) A state agency, district or institution that contracts with a cloud
2 computing service provider must enter into an agreement with such provider
3 that includes the following terms: specification of the types of data to be
4 transferred or collected, including whether data will be collected directly
5 from students and whether the provider will track students' use of the ser-
6 vices; prohibition on the provider's redisclosure of information from edu-
7 cation records or teacher records, or use of such information for any sec-
8 ondary purposes that benefit the provider or any third party including, but
9 not limited to, online behavioral advertising, creating or correcting an in-
10 dividual or household profile primarily for the provider's benefit, the sale
11 of the data for any commercial purpose or any other similar commercial for-
12 profit activity; provided however, that a cloud computing service provider
13 may process or monitor student data solely to provide such service to the
14 state agency, district or institution, and to maintain the integrity of such
15 service.

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

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

24 33-5812. PREDICTIVE MODELING PROHIBITED. No student data shall be
25 used for predictive modeling for detecting behaviors, beliefs or value
26 systems, or predicting or forecasting student outcomes, except for use in
27 dropout-prevention programs.

28 33-5813. LIMITATIONS ON VIDEO MONITORING. There shall be no video
29 monitoring of classrooms for any purpose, including for teacher evaluation,
30 without the approval of the district school board after public hearings and
31 the written consent of the teacher, all eligible students and the parents of
32 all other students in the classroom.

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

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

1 quirement of participation; or when a student is classified as a "migrant"
2 for federal reporting purposes.

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

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

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

40 33-5817. DISCLOSURE TO ASSESSMENT CONSORTIUM OR COMPANY. State agen-
41 cies, district boards or institutions shall not disclose student or teacher
42 information to any assessment consortium of which the state is a member, or
43 company with which the state contracts for development and/or administra-
44 tion of any assessment, unless: the information is transmitted in nonindi-
45 vidual record format; the information is limited to information directly re-
46 lated to the assessment, such as a student's grade level and test scores; and
47 no psychological information of any kind, pursuant to section 33-5802, Idaho
48 Code, is included as part of the test scores.

1 33-5818. DESTRUCTION OF DATA. An education institution shall destroy
2 and remove from the student database all education records of a student
3 within five years of the student's graduation from that institution, pro-
4 vided that the institution may retain records showing dates of attendance,
5 course transcripts, diploma or degree received and contact information. If
6 a student withdraws from an education institution before graduating, the
7 institution shall, within one year of the student's withdrawal, destroy
8 and remove from the database all education records of that student except
9 records showing dates of attendance, course transcripts, diploma or degree
10 received and contact information.

11 33-5819. PENALTIES AND ENFORCEMENT. (1) Each violation of any provi-
12 sion of this section by an organization or entity other than a state agency, a
13 district board of education or an institution as defined in section 33-5801,
14 Idaho Code, shall be punishable by a civil penalty of up to one thousand dol-
15 lars (\$1,000); a second violation by the same organization or entity involv-
16 ing the education records and privacy of the same student shall be punishable
17 by a civil penalty of up to five thousand dollars (\$5,000); any subsequent
18 violation by the same organization or entity involving the education records
19 and privacy of the same student shall be punishable by a civil penalty of up
20 to ten thousand dollars (\$10,000); and each violation involving a different
21 individual education record or a different individual student shall be con-
22 sidered a separate violation for purposes of civil penalties.

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

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