

Senator Curtis S. Bramble proposes the following substitute bill:

**EDUCATIONAL RECORDS PROTECTION AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Craig Hall**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill amends provisions related to records to which access is governed or limited by statute, rule, or regulation.

**Highlighted Provisions:**

This bill:

► adds a reference to education records in provisions related to records to which access is governed by statute, rule, or regulation.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63G-2-201**, as last amended by Laws of Utah 2013, Chapter 445

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **63G-2-201** is amended to read:

**63G-2-201. Right to inspect records and receive copies of records.**



26 (1) Every person has the right to inspect a public record free of charge, and the right to  
27 take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and  
28 63G-2-204.

29 (2) A record is public unless otherwise expressly provided by statute.

30 (3) The following records are not public:

31 (a) a record that is private, controlled, or protected under Sections 63G-2-302,  
32 63G-2-303, 63G-2-304, and 63G-2-305; and

33 (b) a record to which access is restricted pursuant to court rule, another state statute,  
34 federal statute, or federal regulation, including records for which access is governed or  
35 restricted as a condition of participation in a state or federal program or for receiving state or  
36 federal funds.

37 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or  
38 63G-2-305 may be classified private, controlled, or protected.

39 (5) (a) A governmental entity may not disclose a record that is private, controlled, or  
40 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section  
41 63G-2-202, 63G-2-206, or 63G-2-303.

42 (b) A governmental entity may disclose a record that is private under Subsection  
43 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in  
44 Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee,  
45 determines that:

46 (i) there is no interest in restricting access to the record; or

47 (ii) the interests favoring access are greater than or equal to the interest favoring  
48 restriction of access.

49 (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may  
50 disclose a record that is protected under Subsection 63G-2-305(51) if:

51 (i) the head of the governmental entity, or a designee, determines that the disclosure:

52 (A) is mutually beneficial to:

53 (I) the subject of the record;

54 (II) the governmental entity; and

55 (III) the public; and

56 (B) serves a public purpose related to:

57 (I) public safety; or  
58 (II) consumer protection; and  
59 (ii) the person who receives the record from the governmental entity agrees not to use  
60 or allow the use of the record for advertising or solicitation purposes.

61 (6) (a) The disclosure of a record to which access is governed or limited pursuant to  
62 court rule, another state statute, federal statute, or federal regulation, including a record for  
63 which access is governed or limited as a condition of participation in a state or federal program  
64 or for receiving state or federal funds, and including an education record as defined in the  
65 Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, is governed by the specific  
66 provisions of that statute, rule, or regulation.

67 (b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter  
68 is not inconsistent with the statute, rule, or regulation.

69 (7) A governmental entity shall provide a person with a certified copy of a record if:

- 70 (a) the person requesting the record has a right to inspect it;
- 71 (b) the person identifies the record with reasonable specificity; and
- 72 (c) the person pays the lawful fees.

73 (8) (a) In response to a request, a governmental entity is not required to:

- 74 (i) create a record;
- 75 (ii) compile, format, manipulate, package, summarize, or tailor information;
- 76 (iii) provide a record in a particular format, medium, or program not currently  
77 maintained by the governmental entity;
- 78 (iv) fulfill a person's records request if the request unreasonably duplicates prior

79 records requests from that person; or

80 (v) fill a person's records request if:

81 (A) the record requested is accessible in the identical physical form and content in a  
82 public publication or product produced by the governmental entity receiving the request;

83 (B) the governmental entity provides the person requesting the record with the public  
84 publication or product; and

85 (C) the governmental entity specifies where the record can be found in the public  
86 publication or product.

87 (b) Upon request, a governmental entity may provide a record in a particular form

88 under Subsection (8)(a)(ii) or (iii) if:

89 (i) the governmental entity determines it is able to do so without unreasonably  
90 interfering with the governmental entity's duties and responsibilities; and

91 (ii) the requester agrees to pay the governmental entity for providing the record in the  
92 requested form in accordance with Section 63G-2-203.

93 (9) (a) A governmental entity may allow a person requesting more than 50 pages of  
94 records to copy the records if:

95 (i) the records are contained in files that do not contain records that are exempt from  
96 disclosure, or the records may be segregated to remove private, protected, or controlled  
97 information from disclosure; and

98 (ii) the governmental entity provides reasonable safeguards to protect the public from  
99 the potential for loss of a public record.

100 (b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

101 (i) provide the requester with the facilities for copying the requested records and  
102 require that the requester make the copies; or

103 (ii) allow the requester to provide the requester's own copying facilities and personnel  
104 to make the copies at the governmental entity's offices and waive the fees for copying the  
105 records.

106 (10) (a) A governmental entity that owns an intellectual property right and that offers  
107 the intellectual property right for sale or license may control by ordinance or policy the  
108 duplication and distribution of the material based on terms the governmental entity considers to  
109 be in the public interest.

110 (b) Nothing in this chapter shall be construed to limit or impair the rights or protections  
111 granted to the governmental entity under federal copyright or patent law as a result of its  
112 ownership of the intellectual property right.

113 (11) A governmental entity may not use the physical form, electronic or otherwise, in  
114 which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and  
115 receive a copy of a record under this chapter.

116 (12) Subject to the requirements of Subsection (8), a governmental entity shall provide  
117 access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

118 (a) the person making the request requests or states a preference for an electronic copy;

119 (b) the governmental entity currently maintains the record in an electronic format that  
120 is reproducible and may be provided without reformatting or conversion; and

121 (c) the electronic copy of the record:

122 (i) does not disclose other records that are exempt from disclosure; or

123 (ii) may be segregated to protect private, protected, or controlled information from  
124 disclosure without the undue expenditure of public resources or funds.