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SB 2090
Testimony of Alexis Baxley
Senate Education Committee
January 11, 2021

Good morning Chairman Schaible and members of the Senate Education committee. I am Alexis Baxley, executive director of the North Dakota School Boards Association. NDSBA represents every public school district and their board in North Dakota and several special education units. I am here today in opposition to SB 2090

As SB 2090 is currently written, it would provide the auditor's office access to every single record kept by a school district. This presents numerous, significant problems.

First, the sheer volume of records would create incredible burdens of time and cost for school district staff. I have with me today a records retention schedule we provide to our members. It is essentially, a list of every record a district must keep for variable periods of time. It does not represent all records a district may have, and yet, it is a 14-page list of records. If a citizen were to submit an open records request of this size, by law, the district would have the ability to charge up to \$25 per hour and \$.25 per page if copies are required.

In addition to the burdens of time and cost, there is the burden of how the record is provided. Not all records a school district keeps are kept in hard copy format. The legislature has acknowledged this, and as such, only required districts to provide records in the form in which they exist when subject to an open records request. Would the State Auditor be satisfied with this, or would school districts again carry the burden of converting these records to the auditor's desired format?

We are also concerned by the burden on any state agency asked to process these records. I cannot imagine that this would require at least one additional FTE for that agency. NDSBA does not believe this to be a prudent use of taxpayer dollars in the current climate.

But even more concerning than additional burdens or FTEs are potential violations of student and employee privacy. Both the Individuals with Disabilities in Education Act (IDEA) and the Family Educational Rights and Privacy Act (FERPA) are federal laws that protect student records from disclosure absent parental

consent or applicability of narrow exceptions. Under FERPA, any records maintained by a school district that directly relate to a student are education records protected from disclosure. IDEA protects records of students with disabilities, including but not limited to students' individual education plans or IEPs. Any audits performed by the state auditor that are authorized or required by state law would not necessitate access to student records protected by the IDEA or FERPA. The bill as proposed appears to give the state auditor unfettered access to school records, including student education records protected by FERPA and IDEA. If the bill passes as proposed, it may put school districts in situations where they are asked to disclose records in violation of these laws. Districts risk loss of federal funding if found in violation of these laws.

For these reasons Mr. Chairman, NDSBA has substantial objections to SB 2090. We urge the committee consider the ramifications of providing access to every single record kept by a district to the Auditor and request you give this bill a do not pass recommendation. I will stand for any questions.