

**2021 SENATE EDUCATION**

**SB 2090**

# 2021 SENATE STANDING COMMITTEE MINUTES

Education Committee  
Room JW216, State Capitol

SB 2090  
1/11/2021

A BILL relating to records of local school districts; relating to the definition of state agency, the threshold for requiring annual reports, the ability to follow state funding, and fees for audit reviews; and to relating to audits of the state board of higher education.

Chair Schaible called the committee to order at 9:00.

**Discussion Topics:**

- Relating to audits conducted by the state auditor

**Josh Gallion** introduced and testified in support SB 2090.  
Testimony: #510

Senator	Attendance
Chairman Schaible	P
Senator Elkin	P
Senator Conley	P
Senator Lemm	P
Senator Oban	P
Senator Wubbema	P

**Additional written testimony:**

Alexis Baxley testified against SB 2090 #423.

Aimie Copas testified against SB 2090 #429.

Adjourned at 9:52.

*Lynn Wolf, Committee Clerk*



## TESTIMONY TO SENATE EDUCATION COMMITTEE

SB 2090 – STATE AUDITOR'S OFFICE

1/6/2021

Good afternoon, Chairman Schaible, members of the committee, my name is Joshua Gallion, and I serve as North Dakota's State Auditor. I'm here today to discuss some of the updates and clarifications necessary to make N.D.C.C. 54-10 more effective.

As you are aware, the State Auditor is a constitutional state official elected by North Dakota citizens. My job is to lead the way in providing truthful, objective, and independent information to you and the citizens of North Dakota. Our mission is to produce informative audits to improve government through our team who is committed to generating greater value for taxpayers.

Today, I'll walk you through the number of updates and clarifications we'd be requesting to the chapter of the North Dakota Century Code that guides the work of our team at the Auditor's Office.

**State Agency Defined**

When I first started with this agency four years ago, I challenged our staff to understand what our audit universe looked like. The first thing we encountered was a lack of definition for 'state agency.' Including this definition in 54-10 will clarify for our team and our audit clients who exactly is required to have an audit completed by our office.

**Simplify and Increase Thresholds**

Currently, the political subdivision of our office conducts audits of local governments in North Dakota. Most local governments are required to have an audit completed once every two years — or instead of an audit — our office can require annual financial reports from:

- School districts with less than 100 students
- Cities with less than 500 residents
- Local governments with less than \$300,000 in annual receipts

The amendments our office is proposing would update verbiage to base the need for an audit on the revenue from cities and school districts. The current thresholds set are arbitrary numbers, and there is substantial risk that cities and school districts that are receiving significant revenue are not being audited. For examples of these, please reference the appendix on page 5.

We strongly recommend that audits are based on the risk of an entity misspending taxpayer money rather than an arbitrary threshold. Evidence of this risk was most recently seen at the Oberon Public School District (student count of 64) audit called by the governor, with our team identifying ten separate areas of concern including \$230,595 in payments with no record of work provided.

As mentioned above, currently our office can require annual reports from local governments with less than \$300,000 in annual receipts rather than a full audit. Our office is proposing raising that revenue threshold amount to \$750,000. This threshold is already familiar to all local governments as this is the current federal revenue threshold to receive a federal Single Audit.

Example of how this update would impact school districts:

- Presently, 43 Public School Districts are not required to receive an audit. Out of this number, only 27 of them choose not to. Switching to a \$750,000 threshold would only impact 13 of those 27 Public School Districts.

Example of how this update would impact cities:

- Presently, 262 cities are not required to receive an audit. Switching to a \$750,000 threshold would only impact 19 of those cities.

Cost analysis overview if these updates are implemented:

There would be 50 water, fire, park, and other districts that would no longer need an audit if these changes are implemented. The total of these audits is approximately \$500,000. Because of these savings, **the total savings to the state would be \$276,000.**

- The cost for an additional 13 audits for school districts would be \$91,000.
- The cost for an additional 19 audits for cities would be \$133,000.
- The total cost of those audits for school districts and cities would be \$224,000.

**Adjustment of Fees and Cap**

The local government division is specially funded and runs similar to a small business – no general funds are used. The local government division charges the local governments we work with and any revenue generated is deposited into a special fund. All related expenses — including salaries — are paid from that same fund.

North Dakota Century Code 54-10-14 (2) states, “the state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered.” Because of rising costs over the years, it is becoming increasingly difficult to cover the costs of these audits and reviews.

Our office is proposing four adjustments to our fees to cover costs:

**1. N.D.C.C. 54-10-14 (3)**

Our office has not increased this fee in 12 years. We are proposing an increase of \$10 an hour to change our rate from \$80 an hour to \$90 an hour.

*Background on rate: In 1993 the rate was \$50 an hour. Increased to \$80 an hour in 2009.*

**2. N.D.C.C. 54-10-14 (4)**

Our office has not increased this fee in 12 years. We are proposing an increase of \$10 an hour to change our rate from \$80 an hour to \$90 an hour.

*Background on rate: In 1993 the rate was \$50 an hour. Increased to \$80 an hour in 2009.*

**3. N.D.C.C. 54-10-27**

Our office has not increased this fee in two decades. We are proposing an increase of \$40 an hour to update our rate from \$50 an hour to \$90 an hour.

*Background on rate: In 2001 the rate was \$50 an hour. The rate has not increased since.*

**4. N.D.C.C. 54-10-14 (4)**

This section allows our office to charge political subdivision a fee, not to exceed \$500, for the costs related to reviewing audit reports and working papers. We are proposing to increase that cap to \$1,000 both to reflect inflation since the cap was established 18 years ago and to allow us to conduct our statutory duty of reviewing working papers.

*Background on rate: In 1993 the cap was added at \$500. The rate has not increased since.*

Because there have been no adjustments to the cost for the past 18 years, this rate is not keeping up with inflation. Our office will lose money if an audit report is rejected because the cost of re-reviewing a report after a private firm has had to make changes exceeds \$500.

Our office is also charged with the responsibility of reviewing workpapers to ensure private firms are properly following audit standards. If this cap is raised, we would also have the opportunity to provide feedback to local governments where risk is identified. Presently because of lack of funding, our team is unable to conduct these risk assessments.

Right now, our office is limited on resources to ensure the 14 private firms conducting government audits are meeting standards by performing quality audits.

**Access to Records**

Section 54-10-24.1 would allow our office the ability to request supporting documentation from local school districts when conducting an audit and examining the distribution of state funding.

We encountered this situation in the 2020 Department of Public Instruction audit. The Assistant Attorney Generals assigned to the State Auditor's Office and the Department of Public Instruction determined neither agency had the authority to obtain supporting documentation from school districts for the audit. During this audit, we found state aid payments of \$1.9 billion and transportation payments of \$54 million that were made to school districts during the audit period. These are significant amounts

of taxpayer dollars yet, because of the inability to follow the records to the individual school district, our team was unable to verify whether those amounts were correct.

**Elimination of NDUS Performance Division**

This would eliminate the North Dakota University System Performance Division. This was purely done to satisfy the executive budget requirements. Regular audits of the North Dakota University System will continue — as always — through our Agency Division which conducts one audit of each of the public colleges and universities each biennium, including the system office.

This concludes my testimony and I'm happy to answer any questions you may have. Thank you.

## **APPENDIX A: \$750,000 Threshold Examples**

*Examples of cities with population < 500 that would receive an audit using the \$750,000 annual receipts threshold:*

• <i>Arnegard</i>	<i>pop. 161</i>	<i>2018 revenue = \$3,507,963</i>
• <i>Peterburg</i>	<i>pop. 172</i>	<i>2018 revenue = \$4,700,072</i>
• <i>Oxbow</i>	<i>pop. 308</i>	<i>2016 revenue = \$4,193,531</i>
• <i>Alexander</i>	<i>pop. 325</i>	<i>2018 revenue = \$4,652,173</i>

*Examples of public school districts with student count < 100 that audit using the \$750,000 annual receipts threshold:*

• <i>Halliday PSD</i>	<i>23 ct.</i>	<i>2017 revenue = \$1,094,514</i>
• <i>St. Thomas PSD</i>	<i>45 ct.</i>	<i>2018 revenue = \$1,706,754</i>
• <i>Oberon PSD</i>	<i>64 ct.</i>	<i>2018 revenue = \$1,503,545</i>
• <i>Wing PSD</i>	<i>79 ct.</i>	<i>2016 revenue = \$1,875,352</i>
• <i>Drake PSD</i>	<i>80 ct.</i>	<i>2018 revenue = \$2,047,797</i>



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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 violations of these laws. Districts risk loss of federal funding if found in violate 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.



1   **SB 2090 – State Auditor’s request of expansion of state auditor authority over K12 Schools**

2   Chairman Schaible and members of the Senate Education Committee. Good day. For the record,  
 3   my name is Dr. Aimee Copas. I serve as the Executive Director for the North Dakota Council of  
 4   Educational Leaders – serving our school leaders in North Dakota. I am here today to share with  
 5   you information regarding the protection of student information at the district level, the importance  
 6   thereof in the state of North Dakota, the state protections in place with regard to that data as well  
 7   as the Federal Protections in place with regard to that data. As an aside, nearly a decade ago, I  
 8   served as the Associate Chancellor for Academics and the Director of Research for the North  
 9   Dakota University System, so the high level of understanding regarding the protection of student  
 10   data is something I understand to be of critical importance to our state.

11   Uniquely in my role with NDCEL, I have a statutory role as a member on the State Longitudinal  
 12   Data Warehouse (SLDS) council and serve also on the governance subcommittee of that council.  
 13   For decades that group has hashed out student data. Specifically, the question often arises of what  
 14   is protected data? What is district data and is exclusive to districts? What data can NDDPI have  
 15   automatically? What is the rationale for sharing data? What type of effort must be taken to protect  
 16   student data in the sharing of other information? What is reasonable? What is needed? What is  
 17   “nice” to know vs. “need” to know? Over the years, it has been clearly indicated what data remains  
 18   protected and is at the district level and what should be allowed – with some protections in place  
 19   – and what should not. There are quite a few data fields that do not leave the purview of the local  
 20   school district – not even at the request of NDDPI. In fact, that data is fiercely protected as has  
 21   been assured by the legislative body for as many sessions as I can remember. To be honest, there  
 22   are times where things would be easier if we didn’t have to go to the extents we do to protect  
 23   student privacy, but these protections are in place for important reasons and these protections need  
 24   to remain in place even if it makes our jobs harder to do.

25   What the state auditor is asking for is stepping outside of the lines of what is allowable information  
 26   for a school district to disclose. With regard to information needed to perform a state audit on  
 27   distribution of funding, all of the information needed to do so is already shared with NDDPI in

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- 1 accordance with state law, administrative rules, and funding formula rule reporting requirements.  
2 The information shared by local school districts to NDDPI has the appropriate required state and  
3 federal protections in place to protect our ND Student's data to the degree the state and federal  
4 legislative bodies have deemed appropriate. To request that dive deeper into district level data is  
5 a request beyond the audit needs and would require unallowable disclosure of data.
- 6 Distribution of state funds for education on a per pupil basis are based on a students ADM  
7 (Average Daily membership). That is calculated and shared with the state in a real time format  
8 through our statewide student information systems. That information lives in a shared context  
9 with the state and local districts. The state auditor has full access to that information.
- 10 Distribution of state funds for transportation are distributed based on a percentage basis.

11 **15.1-27-01. Payments to school districts - Distribution.**

- 12 1. *The superintendent of public instruction shall estimate the total state payments to which*  
13 *a school district is entitled each year.*
- 14 2. *The superintendent of public instruction shall pay each district ten percent of the amount*  
15 *determined under subsection 1, within the limits of legislative appropriation, on or before*  
16 *August first and September first of each year. The superintendent shall pay each school*  
17 *district twenty percent of that amount, within the limits of legislative appropriation, on or*  
18 *before October first of each year.*
- 19 3. *The superintendent of public instruction shall estimate the amount that, in addition to the*  
20 *payments already made, is necessary to constitute the remainder of the amount due*  
21 *each district for the current school year.*
- 22 4. *On or before November first, the superintendent of public instruction shall pay to each*  
23 *district, within the limits of legislative appropriation, an amount that, in addition to the*  
24 *above payments, constitutes sixty percent of the sum due under this chapter.*
- 25 5. *On or before the first day of December, January, February, March, and April, payments*  
26 *equal to twenty percent of the total remaining payments must be made to each district.*



1       6. *If funds appropriated for distribution to districts as state aid become available after April  
2           first, the superintendent of public instruction shall distribute the newly available  
3           payments on or before June thirtieth.*

4

5       Beyond just what we've decided in North Dakota – it is important to keep in mind that every  
6       district in North Dakota must be mindful of laws outlined in Family Educational Rights and  
7       Privacy Act commonly known as FERPA. FERPA is the federal student data protection law.  
8       According to the US Department of Education at this link:

9       <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

10      *Family      Educational      Rights      and      Privacy      Act      (FERPA)*

11

12      *The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a  
13       Federal law that protects the privacy of student education records. The law applies to all schools  
14       that receive funds under an applicable program of the U.S. Department of Education.*

15      *FERPA gives parents certain rights with respect to their children's education records. These rights  
16       transfer to the student when he or she reaches the age of 18 or attends a school beyond the high  
17       school level. Students to whom the rights have transferred are "eligible students."*

- 18      • *Parents or eligible students have the right to inspect and review the student's education  
19           records maintained by the school. Schools are not required to provide copies of records  
20           unless, for reasons such as great distance, it is impossible for parents or eligible students to  
21           review the records. Schools may charge a fee for copies.*
- 22      • *Parents or eligible students have the right to request that a school correct records which  
23           they believe to be inaccurate or misleading. If the school decides not to amend the record,  
24           the parent or eligible student then has the right to a formal hearing. After the hearing, if the  
25           school still decides not to amend the record, the parent or eligible student has the right to*



1       *place a statement with the record setting forth his or her view about the contested*  
2       *information.*

- 3       • *Generally, schools must have written permission from the parent or eligible student in order*  
4       *to release any information from a student's education record. However, FERPA allows*  
5       *schools to disclose those records, without consent, to the following parties or under the*  
6       *following conditions (34 CFR § 99.31):*
- 7           ○ *School officials with legitimate educational interest;*
  - 8           ○ *Other schools to which a student is transferring;*
  - 9           ○ ***Specified officials for audit or evaluation purposes;***
  - 10          ○ *Appropriate parties in connection with financial aid to a student;*
  - 11          ○ *Organizations conducting certain studies for or on behalf of the school;*
  - 12          ○ *Accrediting organizations;*
  - 13          ○ *To comply with a judicial order or lawfully issued subpoena;*
  - 14          ○ *Appropriate officials in cases of health and safety emergencies; and*
  - 15          ○ *State and local authorities, within a juvenile justice system, pursuant to specific State*  
16       *law.*

17      *Schools may disclose, without consent, "directory" information such as a student's name, address,*  
18      *telephone number, date and place of birth, honors and awards, and dates of attendance. However,*  
19      *schools must tell parents and eligible students about directory information and allow parents and*  
20      *eligible students a reasonable amount of time to request that the school not disclose directory*  
21      *information about them. Schools must notify parents and eligible students annually of their rights*  
22      *under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student*  
23      *handbook, or newspaper article) is left to the discretion of each school.*

24      \*\*\*\* caveat\*\*\*\*

25      As you look at line 2 above, you may naturally think that this would allow this to the auditor. In  
26      fact, the definition does not. The below provided by USED and Cornell Law outlines the following  
27      as deeper definitions of the following. What you find in the below must be a legitimate educational  
28      interest to seek the information.



1    **§ 99.31 Under what conditions is prior consent not required to**  
2    **disclose information?**

3    **(a)** An educational agency or institution may disclose personally identifiable information  
4    from an education record of a student without the consent required by § 99.30 if  
5    the disclosure meets one or more of the following conditions:

6        **(A)** The disclosure is to other school officials, including teachers, within the  
7        agency or institution whom the agency or institution has determined to have  
8        legitimate educational interests.

9        **(B)** A contractor, consultant, volunteer, or other party to whom an agency or  
10      institution has outsourced institutional services or functions may be considered a  
11      school official under this paragraph provided that the outside party -

12        **(1)** Performs an institutional service or function for which the agency or  
13        institution would otherwise use employees;

14        **(2)** Is under the direct control of the agency or institution with respect to the  
15        use and maintenance of education records; and

16        **(3)** Is subject to the requirements of § 99.33(a) governing the use and  
17        redisclosure of personally identifiable information from education records.

18        **(ii)** An educational agency or institution must use reasonable methods to ensure  
19        that school officials obtain access to only those education records in which they  
20        have legitimate educational interests. An educational agency or institution that  
21        does not use physical or technological access controls must ensure that its  
22        administrative policy for controlling access to education records is effective and  
23        that it remains in compliance with the legitimate educational interest requirement  
24        in paragraph (a)(1)(i)(A) of this section.

25        **(2)** The disclosure is, subject to the requirements of § 99.34, to officials of another  
26        school, school system, or institution of postsecondary education where the student  
27        seeks or intends to enroll, or where the student is already enrolled so long as  
28        the disclosure is for purposes related to the student's enrollment or transfer.



1      **Note:**

2      Section 4155(b) of the [No Child Left Behind Act of 2001, 20 U.S.C. 7165\(b\)](#), requires  
3      each State to assure the [Secretary](#) of Education that it has a procedure in place to  
4      facilitate the transfer of disciplinary [records](#) with respect to a suspension or expulsion  
5      of a student by a local educational agency to any private or public elementary or  
6      secondary school in which the student is subsequently enrolled or seeks, intends, or is  
7      instructed to enroll.

8      **(3)** The [disclosure](#) is, subject to the requirements of [§ 99.35](#), to authorized  
9      representatives of -

- 10     **(i)** The Comptroller General of the United States;  
11     **(ii)** The Attorney General of the United States;  
12     **(iii)** The [Secretary](#); or  
13     **(iv)** State and local educational authorities.

14     **(4)**

15     **(i)** The [disclosure](#) is in connection with financial aid for which the student has  
16     applied or which the student has received, if the information is necessary for such  
17     purposes as to:

- 18     **(A)** Determine eligibility for the aid;  
19     **(B)** Determine the amount of the aid;  
20     **(C)** Determine the conditions for the aid; or  
21     **(D)** Enforce the terms and conditions of the aid.

22     **(ii)** As used in [paragraph \(a\)\(4\)\(i\)](#) of this section, financial aid means a payment of  
23     funds provided to an individual (or a payment in kind of tangible or intangible  
24     property to the individual) that is conditioned on the individual's [attendance](#) at  
25     an [educational agency or institution](#).

26     (Authority: [20 U.S.C. 1232g\(b\)\(1\)\(D\)](#))

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1                   **(5)**

2                   **(i)** The disclosure is to State and local officials or authorities to whom this  
3                   information is specifically -

4                   **(A)** Allowed to be reported or disclosed pursuant to State statute adopted before  
5                   November 19, 1974, if the allowed reporting or disclosure concerns the juvenile  
6                   justice system and the system's ability to effectively serve the student  
7                   whose records are released; or

8                   **(B)** Allowed to be reported or disclosed pursuant to State statute adopted after  
9                   November 19, 1974, subject to the requirements of § 99.38.

10                  **(ii)** Paragraph (a)(5)(i) of this section does not prevent a State from further  
11                  limiting the number or type of State or local officials to whom disclosures may be  
12                  made under that paragraph.

13                  **(6)**

14                  **(i)** The disclosure is to organizations conducting studies for, or on behalf of,  
15                  educational agencies or institutions to:

16                  **(A)** Develop, validate, or administer predictive tests;

17                  **(B)** Administer student aid programs; or

18                  **(C)** Improve instruction.

19                  **(ii)** Nothing in the Act or this part prevents a State or local educational authority or  
20                  agency headed by an official listed in paragraph (a)(3) of this section from entering  
21                  into agreements with organizations conducting studies under paragraph (a)(6)(i) of  
22                  this section and rediscovering personally identifiable information from education  
23                  records on behalf of educational agencies and institutions that disclosed the  
24                  information to the State or local educational authority or agency headed by an  
25                  official listed in paragraph (a)(3) of this section in accordance with the  
26                  requirements of § 99.33(b).

27                  **(iii)** An educational agency or institution may disclose personally identifiable  
28                  information under paragraph (a)(6)(i) of this section, and a State or local

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1       *educational authority or agency headed by an official listed in paragraph (a)(3) of*  
2       *this section may redisclose personally identifiable information under paragraph*  
3       *(a)(6)(i) and (a)(6)(ii) of this section, only if -*

4       **(A)** *The study is conducted in a manner that does not permit personal*  
5       *identification of parents and students by individuals other than representatives of*  
6       *the organization that have legitimate interests in the information;*

7       **(B)** *The information is destroyed when no longer needed for the purposes for*  
8       *which the study was conducted; and*

9       **(C)** *The educational agency or institution or the State or local educational*  
10      *authority or agency headed by an official listed in paragraph (a)(3) of this*  
11      *section enters into a written agreement with the organization that -*

12      **(1)** *Specifies the purpose, scope, and duration of the study or studies and the*  
13      *information to be disclosed;*

14      **(2)** *Requires the organization to use personally identifiable information*  
15      *from education records only to meet the purpose or purposes of the study as*  
16      *stated in the written agreement;*

17      **(3)** *Requires the organization to conduct the study in a manner that does not*  
18      *permit personal identification of parents and students, as defined in this part,*  
19      *by anyone other than representatives of the organization with legitimate*  
20      *interests;*

21      *and*

22      **(4)** *Requires the organization to destroy all personally identifiable information*  
23      *when the information is no longer needed for the purposes for which the study*  
24      *was conducted and specifies the time period in which the information must be*  
25      *destroyed.*

26      **(iv)** *An educational agency or institution or State or local educational authority or*  
27      *Federal agency headed by an official listed in paragraph (a)(3) of this section is not*



1 required to initiate a study or agree with or endorse the conclusions or results of  
2 the study.

3 (v) For the purposes of paragraph (a)(6) of this section, the  
4 term organization includes, but is not limited to, Federal, State, and local agencies,  
5 and independent organizations.

6 (7) The disclosure is to accrediting organizations to carry out their accrediting  
7 functions.

8 (8) The disclosure is to parents, as defined in § 99.3, of a dependent student, as  
9 defined in section 152 of the Internal Revenue Code of 1986.

10 (9)

11 (i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

12 (ii) The educational agency or institution may disclose information  
13 under paragraph (a)(9)(i) of this section only if the agency or institution makes a  
14 reasonable effort to notify the parent or eligible student of the order or subpoena  
15 in advance of compliance, so that the parent or eligible student may seek  
16 protective action, unless the disclosure is in compliance with -

17 (A) A Federal grand jury subpoena and the court has ordered that the existence  
18 or the contents of the subpoena or the information furnished in response to the  
19 subpoena not be disclosed;

20 (B) Any other subpoena issued for a law enforcement purpose and the court or  
21 other issuing agency has ordered that the existence or the contents of the  
22 subpoena or the information furnished in response to the subpoena not be  
23 disclosed; or

24 (C) An **ex parte** court order obtained by the United States Attorney General (or  
25 designee not lower than an Assistant Attorney General) concerning investigations  
26 or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of  
27 domestic or international terrorism as defined in 18 U.S.C. 2331.

28 (iii)

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1           **(A)** If an educational agency or institution initiates legal action against  
2       a parent or student, the educational agency or institution may disclose to the  
3       court, without a court order or subpoena, the education records of the student  
4       that are relevant for the educational agency or institution to proceed with the  
5       legal action as plaintiff.

6           **(B)** If a parent or eligible student initiates legal action against an educational  
7       agency or institution, the educational agency or institution may disclose to the  
8       court, without a court order or subpoena, the student's education records that  
9       are relevant for the educational agency or institution to defend itself.

10          **(10)** The disclosure is in connection with a health or safety emergency, under the  
11       conditions described in § 99.36.

12          **(11)** The disclosure is information the educational agency or institution has  
13       designated as "directory information", under the conditions described in § 99.37.

14          **(12)** The disclosure is to the parent of a student who is not an eligible student or to  
15       the student.

16          **(13)** The disclosure, subject to the requirements in § 99.39, is to a victim of  
17       an alleged perpetrator of a crime of violence or a non-forcible sex offense.  
18       The disclosure may only include the final results of the disciplinary proceeding  
19       conducted by the institution of postsecondary education with respect to that alleged  
20       crime or offense. The institution may disclose the final results of the disciplinary  
21       proceeding, regardless of whether the institution concluded a violation was  
22       committed.

23          **(14)**

24           **(i)** The disclosure, subject to the requirements in § 99.39, is in connection with a  
25       disciplinary proceeding at an institution of postsecondary education. The institution  
26       must not disclose the final results of the disciplinary proceeding unless it  
27       determines that -

28           **(A)** The student is an alleged perpetrator of a crime of violence or non-forcible  
29       sex offense; and

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1           **(B)** With respect to the allegation made against him or her, the student has  
2           committed a violation of the institution's rules or policies.

3           **(ii)** The institution may not disclose the name of any other student, including a  
4           victim or witness, without the prior written consent of the other student.

5           **(iii)** This section applies only to disciplinary proceedings in which the final  
6           results were reached on or after October 7, 1998.

7           **(15)**

8           **(i)** The disclosure is to a parent of a student at an institution of postsecondary  
9           education regarding the student's violation of any Federal, State, or local law, or of  
10           any rule or policy of the institution, governing the use or possession of alcohol or a  
11           controlled substance if -

12           **(A)** The institution determines that the student has committed a disciplinary  
13           violation with respect to that use or possession; and

14           **(B)** The student is under the age of 21 at the time of the disclosure to  
15           the parent.

16           **(ii)** Paragraph (a)(15) of this section does not supersede any provision of State  
17           law that prohibits an institution of postsecondary education from disclosing  
18           information.

19           **(16)** The disclosure concerns sex offenders and other individuals required to register  
20           under section 170101 of the Violent Crime Control and Law Enforcement Act of  
21           1994, 42 U.S.C. 14071, and the information was provided to the educational agency  
22           or institution under 42 U.S.C. 14071 and applicable Federal guidelines.

23           **(b)**

24           **(1) De-identified records and information.** An educational agency or institution,  
25           or a party that has received education records or information from education  
26           records under this part, may release the records or information without the consent  
27           required by § 99.30 after the removal of all personally identifiable information  
28           provided that the educational agency or institution or other party has made a

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1 reasonable determination that a student's identity is not personally identifiable,  
2 whether through single or multiple releases, and taking into account other reasonably  
3 available information.

4 **(2)** An educational agency or institution, or a party that has received education  
5 records or information from education records under this part, may release de-  
6 identified student level data from education records for the purpose of education  
7 research by attaching a code to each record that may allow the recipient to match  
8 information received from the same source, provided that -

9 **(i)** An educational agency or institution or other party that releases de-identified  
10 data under paragraph (b)(2) of this section does not disclose any information about  
11 how it generates and assigns a record code, or that would allow a recipient to  
12 identify a student based on a record code;

13 **(ii)** The record code is used for no purpose other than identifying a de-  
14 identified record for purposes of education research and cannot be used to  
15 ascertain personally identifiable information about a student; and

16 **(iii)** The record code is not based on a student's social security number or other  
17 personal information.

18 **(c)** An educational agency or institution must use reasonable methods to identify and  
19 authenticate the identity of parents, students, school officials, and any other parties to  
20 whom the agency or institution discloses personally identifiable information  
21 from education records.

22 **(d)** Paragraphs (a) and (b) of this section do not require an educational agency or  
23 institution or any other party to disclose education records or information  
24 from education records to any party except for parties under paragraph (a)(12) of this  
25 section.

26 (Authority: 20 U.S.C. 1232g(a)(5)(A), (b), (h), (i), and (j)).

27 [53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3189, Jan. 7, 1993; 61 FR 59296,  
28 Nov. 21, 1996; 65 FR 41853, July 6, 2000; 73 FR 74852, Dec. 9, 2008; 74 FR 401, Jan. 6, 2009; 76 FR 75641, Dec.  
29 2, 2011]

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1      Lot's of information – what does it mean?

- 2            • Even for audit purposes – the requesting group must have educational interest. NDDPI  
3            already receives all needed information to satisfactorily perform their duty in delivering  
4            funds for both state aide and transportation grants. The local districts report the numbers.  
5            All the allowable information is already transmitted to execute the formula.
- 6            • Any additional information would require the signature and consent of every parent in  
7            question with regard to further requests for data.
- 8            • This is outside of allowable information sharing with regard to the intent to protect student  
9            information in North Dakota.

10     Based on this information – and likely more data if requested, we are respectfully asking that you  
11    consider this information as you decide whether allowing this type of carte-blanche access to  
12    school district and student information to the state auditor. Information that agreeable has been  
13    protected to the extent that it is not even shared with our state agency for education. Thank you  
14    for your time and consideration.

15

16

# 2021 SENATE STANDING COMMITTEE MINUTES

Education Committee  
Room JW216, State Capitol

SB 2090  
1/13/2021

A BILL relating to records of local school districts; relating to the definition of state agency, the threshold for requiring annual reports, the ability to follow state funding, and fees for audit reviews; and to relating to audits of the state board of higher education.

9:00 AM

**Discussion Topics:**

- Relating to audits conducted by the state auditor

Motion by **Senator Oban**, second by **Senator Lemm**  
**Do Not Pass SB 2090**

Senator	Attendance
Chairman Schaible	P
Senator Elkin	P
Senator Conley	P
Senator Lemm	P
Senator Oban	P
Senator Wubbema	P

**Motion Passed 6-0-0**

**Senator Schaible** will carry the bill.

9:12 AM

*Lynn Wolf, Committee Clerk*

Senator	Vote
Chairman Schaible	Y
Senator Elkin	Y
Senator Conley	Y
Senator Lemm	Y
Senator Oban	Y
Senator Wubbema	Y

**REPORT OF STANDING COMMITTEE**

**SB 2090: Education Committee (Sen. Schaible, Chairman) recommends DO NOT PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2090 was placed on the Eleventh order on the calendar.