



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

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

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

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

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accordance with state law, administrative rules, and funding formula rule reporting requirements. The information shared by local school districts to NDDPI has the appropriate required state and federal protections in place to protect our ND Student's data to the degree the state and federal legislative bodies have deemed appropriate. To request that dive deeper into district level data is a request beyond the audit needs and would require unallowable disclosure of data.

Distribution of state funds for education on a per pupil basis are based on a students ADM (Average Daily membership). That is calculated and shared with the state in a real time format through our statewide student information systems. That information lives in a shared context with the state and local districts. The state auditor has full access to that information.

Distribution of state funds for transportation are distributed based on a percentage basis.

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

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



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

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

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

Family Educational Rights and Privacy Act (FERPA)

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

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

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



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

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

(A) The [disclosure](#) is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

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

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

(2) Is under the direct control of the agency or institution with respect to the use and maintenance of [education records](#); and

(3) Is subject to the requirements of [§ 99.33\(a\)](#) governing the use and redisclosure of personally identifiable information from [education records](#).

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

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



Note:

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

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

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States;

(iii) The [Secretary](#); or

(iv) State and local educational authorities.

(4)

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

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

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

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



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

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

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

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

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

(2) Requires the organization to use personally identifiable information from [education records](#) only to meet the purpose or purposes of the study as stated in the written agreement;

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

and

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

(iv) An [educational agency or institution](#) or State or local educational authority or Federal agency headed by an official listed in [paragraph \(a\)\(3\)](#) of this section is not



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

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

(7) The [disclosure](#) is to accrediting organizations to carry out their accrediting functions.

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

(9)

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

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

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

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

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

(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



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



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

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

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

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

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

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

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

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

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3189, Jan. 7, 1993; 61 FR 59296, 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. 2, 2011]



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.