



CALIFORNIA Data System

Legal Sub-Committee Background Paper 1: Frameworks for Data Sharing Agreements in a Statewide Data System

Introduction

In 2019, California enacted the Cradle-to-Career Data System Act (Act), which calls for the establishment of a state longitudinal data system to link existing education, social services, and workforce information.¹ The Act also lays out a long-term vision for putting these data to work to improve education, social, and employment outcomes for all Californians, with a focus on identifying opportunity disparities in these areas.

The legislation articulated the scope of an 18-month planning process for a linked longitudinal data system. The process will be shaped by a Workgroup that consists of the partner entities named in the California Cradle-to-Career Data System Act.² Suggestions from this workgroup will be used to inform a report to the legislature and shape the state data system designs approved by the Governor's Office. Because the legislation lays out a number of highly technical topics that must be addressed as part of the legislative report, five sub-committees were created that include representatives from the partner entities and other experts. The Legal Sub-Committee will help to create contracts to support data sharing and protect privacy.

1 Read the California Cradle-to-Career Data System Act at:
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=EDC&division=1.&title=1.&part=7.&chapter=8.5.&article=

2 The partner entities include the Association of Independent California Colleges and Universities, Bureau for Private Postsecondary Education, California Community Colleges, California Department of Education, California Department of Social Services, California Department of Technology, California Health and Human Services Agency, California School Information Services, California State University, California Student Aid Commission, Commission on Teacher Credentialing, Employment Development Department, Labor and Workforce Development Agency, State Board of Education, and University of California.

This brief is intended to provide a discussion framework for members of the Legal Subcommittee. It includes background information on the authorizing legislation and a summary of the priorities established by the Workgroup for phase one of the data system. Next, it outlines common legal structures for data sharing and provides two examples from California that could be amended for the purpose of a state data system. The brief concludes with framing questions that the subcommittee will consider at their first meeting, in order to recommend how a legal agreement could be developed for the first phase of state data system development.

The California Cradle-to-Career Data System Act

In 2019, California enacted the Cradle-to-Career Data System Act, which outlines the scope of an 18-month planning process, allocates \$2 million to support that process, and earmarks an initial \$10 million toward the development of a state data system.

The Act also lays out a long-term vision for putting data to work to improve outcomes for all Californians, with a focus on identifying disparities in opportunities. By securely linking data that schools, colleges, social service agencies, financial aid providers, and employers already collect, the data system will

- enable users to identify the types of supports that help more students learn, stay in school, prepare for college, graduate, and secure a job;
- provide information that teachers, parents, advisors, and students can use to identify opportunities and make decisions;
- help agencies plan for and improve education, workforce, and health and human services programs; and
- support research to ensure policy effectively supports individuals from birth through career.

Recognizing that the data system will need to be built in phases, the California Cradle-to-Career Data System Act lays out several priorities:

- **Linking existing information in the system.** The first data sets to be linked should be existing K–12 and college data sets, followed by employment and earnings data, early childhood education information, and social services information, although this order can be amended.
- **Guaranteeing privacy and security.** The system cannot be built until clear guidelines and legal agreements have been established to ensure that

information will be securely gathered and stored in compliance with federal and state laws and in accordance with privacy best practices, and that the identity of sensitive populations will be protected.

- **Providing information for students, families, and educators.** The system will include an interface for sharing information with teachers, parents, advisors, and students.
- **Facilitating analyses for researchers and policymakers.** The system will link data between agencies to help answer foundational questions about the impact of state policies and investments.
- **Assuring quality.** The legislation addresses the need to improve the quality and reliability of education information, both within and between agencies and other entities providing data.

Priorities for Phase One of the Data System

In the first meeting of the Workgroup, the partner entities recommended that the California Cradle-to-Career data system should be an ecosystem that allows for various tools, processes, and resources to be developed under a governance structure. In its first phase, the state should build a P20W data set that includes early care, K–12, postsecondary, financial aid, and employment information. This data set should be used to create dashboards that provide useful information for practitioners and the public, as well as query tools that allow for more nuanced analyses. The P20W data system should be paired with a clearly defined process to link additional data points as needed to answer inquiries, including requests from outside entities such as researchers, policymakers, and regional partnerships, as well as to foster the secure exchange of information between partner entities. Finally, the Workgroup recommended that the state develop tools that provide information directly to individuals or allow teachers and counselors to better understand the needs of the people they serve. Possible options will be examined at the February 2020 Workgroup meeting, based on tools that have been built in other states or developed in California but not implemented statewide, such as alerting students about the social service and health benefits that they are eligible for, informing educators about services that a student is receiving, or creating an e-transcript service to support college and financial aid applications.

Federal Legal Framework for Data Sharing

As a first step in creating the P20W data set, the Legal Sub-Committee is tasked with considering the best legal framework to enable data sharing, while ensuring that student privacy will be protected in accordance with state and federal laws and best practices. In February 2020, the subcommittee will address federal requirements and identify requirements that are specific to California. For the federal legal context, the subcommittee can reference tools developed to support state longitudinal data systems, such as materials created by the U.S. Department of Education's Privacy Technical Assistance Center (PTAC).³

In the document *The Family Educational Rights and Privacy Act: Guidance for Reasonable Methods and Written Agreements*, PTAC lays out key information that should be included in legal agreements in order to allow for data sharing that is in compliance with the Family Educational Rights and Privacy Act (FERPA). For example, there are two exceptions to FERPA that authorize sharing of personally identifiable information—such as name and birthdate—without securing consent from students or their families. The audit or evaluation exception allows the sharing of personally identifiable information from education records if information will be used to audit, evaluate, or conduct a compliance activity for a program that is funded by the federal government or the state. The studies' exception enables data to be shared with organizations that are working on behalf of education institutions related to predictive testing, student aid, or improving instruction.

For FERPA exceptions, legal agreements should include language that:

- Describes the purpose, scope, and duration of the study and the information that will be disclosed
- Requires that personally identifiable information only be used for the purpose stated in the written agreement
- Clarifies that personally identifiable information can only be shared with organizational representatives with legitimate interests and must be protected from unauthorized disclosure

³ The U.S. Department of Education established PTAC to help education stakeholders learn about data privacy, confidentiality, and security practices related to student-level longitudinal data systems and other uses of student data. PTAC is funded by the federal government to develop resources and respond to questions regarding national standards. For more information, visit <https://studentprivacy.ed.gov/about-us>.

- States that information cannot be published in a way that would allow individual students or their parents to be identified
- Requires that all personally identifiable information be destroyed when the information is no longer needed for the study
- Specifies the date by which personally identifiable information must be destroyed

In addition, legal agreements using the audit or evaluation exception should include:

- A formal designation of the entity as an authorized representative
- A specific statement that the disclosure of personally identified information is in furtherance of an audit, evaluation, or enforcement or compliance activity, with sufficient detail regarding how the data will be used for this specific purpose

PTAC also suggests including the following elements in a legal agreement:

- Name the points of contact, including the individuals responsible for managing and accessing the data
- State that disclosing personally identifiable information does not assign ownership to the entity
- Highlight requirements for Institutional Review Board approval to protect the rights and welfare of human research subjects
- Identify penalties for data breaches
- Include funding terms
- Reserve the right to audit the entity to ensure appropriate policies and procedures are in place to protect personally identifiable information
- Outline responsibilities if there is a data breach
- Specify the terms for reviewing and approving results
- Define the terms for conflict resolution
- Describe terms for modifying or terminating the agreement

Child Trends, in a similar brief that was published in 2018 on sharing early childhood data, included the following additional recommendations:

- Describe security guidelines and expectations
- Specify reporting guidelines, such as programs that should not be identified or the number of students that should trigger suppression thresholds
- Detail the roles and responsibilities for participating parties
- Clarify ownership of analyzed data

- Outline allowable methods for destroying data
 - Establish expectations about retention of de-identified data for future use by other teams
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Sharing Data as Part of College Applications and Financial Aid

In addition to the two FERPA exceptions commonly used by state data systems to share data without consent, personally identifiable data can be shared for college applications. So long as the sending school includes this information in its annual notification of rights statement, it can forward data to colleges where the student intends to enroll. In a similar case, schools can disclose personally identifiable information in the context of a student applying for or receiving financial aid, so long as the data are used to determine eligibility, set aid amounts, and establish or enforce the conditions for the aid (Department of Education, 2011).

Potential California Legal Frameworks for Data Sharing

As the subcommittee examines how to forge data sharing agreements for the Cradle-to-Career data system, it may be helpful to consider two approaches that have already been developed in California. The examples below are intended to focus conversation around legal frameworks that could be easily adapted for a state data system and the critical elements that are missing.

2011 Interagency Agreement

After the dissolution of the California Postsecondary Education Commission in 2011, the California Department of Education, California Community Colleges, California State University, University of California, and the Employment Development Department worked together to devise a data sharing agreement that allows information to be transferred for the purpose of policy, planning, and program implementation. All of these agencies signed the interagency agreement.⁴

⁴ See “2011 Interagency Agreement” posted at <https://wested.ent.box.com/s/zjlrotp3nlu0v5tnzkrwjuqotcuxs9gm>

The document establishes a flexible framework that allows information to be shared between any of the signatories or the creation of a centralized data warehouse. It also includes a straightforward design for data sharing between individual agencies.

However, the agreement does not address the following critical issues:

- FERPA 2011 regulation changes, as well as additional California-specific laws, are not reflected in this agreement
- The approach is specific to education and would need significant revisions to include other entities such as health or human services
- There is no discernable approach for non-public agencies such as early care providers and private institutions of higher education
- There is no clearly defined governance approach for approval and review by partner agencies

Therefore, significant additional work would be needed to adapt this framework for the legal requirements, types of information, and governance structure that is needed for the phase one priorities of the California data system. However, information from more recent data sharing agreements between individual agencies could be used to fill in some of these gaps.

2020 Interagency Data Exchange Agreement

In an effort to facilitate data sharing between departments and offices that are part of the California Health and Human Services Agency (CHHS), the agency crafted a master data sharing agreement that addressed requirements under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as well as California-specific privacy provisions. Not only did this framework enable a simpler and more secure flow of information between state entities, it also enabled the development of public-facing tools, such as the Open Data Portal, which provides public access to non-confidential health and human services data. For example, the Health & Human Services Program Dashboard combines information on CalWORKs, CalFresh, In-Home Supportive Services, Foster Care, Medi-Cal, Women, Infants & Children, and Developmental Services. Members of the public can access information at the county or legislative district level on topics including how many people have been served by a

single department or received multiple services, demographic information, and the average grant amount.⁵

When Gavin Newsom was elected governor, he supported an effort to expand the CHHS data sharing framework to include all entities that are under the authority of the governor, for the purpose of improving services to the residents of California. The expanded framework is referred to as the Interagency Data Exchange Agreement (IDEA). IDEA separates the legal requirements that specify how data must be treated from the specific data request. The agreement is intended to serve as the overarching structure for all future data exchanges between signatory agencies, unless laws require a separate legal framework.

Once state agencies have signed on to the agreement, if they want to exchange data, they fill out a Business Use Case Proposal (BUCP). The BUCP includes many elements commonly found in legal data sharing agreements such as the specific information requested, responsibilities of each party, and purpose for the data use. However, the BUCP does not entail legal review for the foundational components found in the IDEA. Instead, the terms of the data exchange are finalized by data experts and policymakers in the participating agencies who ensure that the appropriate data elements, calculations, review processes, and data storage timeframes have been agreed upon. The BUCP could be amended to include a set of specific legal requirements related to education or employment data.⁶

This approach has several advantages, such as ensuring that all data exchanges follow the same privacy and security protocols and adhere to state and federal requirements. It also can speed the timeframe for securing agreements because fewer parties are involved. Finally, because IDEA includes a process for mediation when state agencies do not agree, it lays the groundwork for including information in the BUCP that codifies the governance processes for the California data system.

IDEA and the BUCP include the following key provisions, which align with recommended practices for state data systems:

⁵ For more information on the Health & Human Services Program dashboard, visit <https://data.chhs.ca.gov/dataset/health-human-services-program-dashboard>

⁶ See the IDEA and the BUCP template at <https://wested.ent.box.com/s/zjlrotp3nlu0v5tnzkrwjuqotcuxs9gm>

- Governance considerations are built into this process, which should reduce legal and other challenges
- This process allows for agencies outside of the education sector to easily insert sector-specific considerations
- IDEA and BUCP have already been leveraged to combine data sets to create the Children's Data Network and the Silicon Valley Regional Data Trust

However, the process is very complicated and may not be easily understood by agency leadership or legal teams, which could make the process time consuming. It might be important to start with a BUCP that is specific to the P20W warehouse, and then create separate template BUCPs for research requests and tools for individuals and practitioners.

Preparing for the Sub-Committee Meeting

This paper provides several frameworks for creating a legal structure to share information for the California data system. At the February 2020 meeting, the subcommittee will be asked to share key legal issues that are specific to California that will need to be taken into account for the P20W data set and the research request process. Next, the group will be asked to consider whether elements from the 2011 or 2020 interagency data sharing agreements could be used as a starting place to implement phase one of state data system development. Governor's Office staff will be available to provide more specific information about the IDEA and BUCP framework. Finally, subcommittee members will address the following questions:

- Which elements in the IDEA and BUCP framework are sufficient for phase one priorities?
- Where would language need to be changed to comply with federal laws?
- Where would language need to be changed to comply with state laws?
- Are there any existing documents that could address federal and state requirements?
- What additional information or resources does the subcommittee need to evaluate potential language?
- What process should this subcommittee use to draft a data sharing agreement or propose amendments to existing agreements?

References

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