

Legal Subcommittee Meeting Summary

June 17, 2020

This document provides a summary of key points that emerged over the course of a half-day meeting. More information about the meeting, including the materials, PowerPoint, and a meeting recording are available at <https://cadatasystem.wested.org/meeting-information/legal-subcommittee>.

The June 2020 meeting had the following goals:

- Update on key decisions and draft technical and legal framework
- Determine whether system disclaimer language is needed and how to draft it
- Establish a policy for managing exemptions

The following representatives attended the meeting:

Veronica Villalobos-Cruz, Association of Independent California Colleges and Universities; Freshta Rasoli, Bureau for Private Postsecondary Education; Kathy Lynch, California Community College Chancellor's Office; Bruce Yonehiro, California Department of Education; Jennifer Marquez, California Department of Technology; Jennifer Schwartz, California Health and Human Services Agency; Amy Fong & Rima Mendez, California School Information Services; Arun Casuba, California State University; Julia Blair, California Student Aid Commission; Jeanne Wolfe, Department of Labor; Carolyn Kubish, Department of Social Services; Stella Ngai, University of California Office of the President

Key Decisions and Framework

The meeting opened with the facilitator providing an update on activities underway by the Legal Subcommittee homework teams, decisions made by the Cradle-to-Career Workgroup at the May 30 meeting, and the proposed legal and technical framework for the data system.

Subcommittee members asked for clarification about the scope of the partner research data set and how information in that data set would remain deidentified, particularly when combined with information from other partner entities. One possibility would be to apply a strict deidentification policy. Another would be to use a synthetic data set, such as is under development for the Maryland data system (see: <https://mldscenter.maryland.gov/syntheticdataproject.html>).

The group also discussed the difference between the Interagency Data Exchange Agreement (IDEA) and the agreement between the partner entities and the managing entity.

System Disclaimer Language

Baron Rodriguez from WestEd provided examples of disclaimer language used in other state data systems. These statements, which are directed to people using the data and are distinct from language in legal agreements, include clarifications about data recency, quality, divulging data, and the responsibilities of the user. The subcommittee discussed whether similar language would be appropriate for the California data system.

First, the group identified when language might be appropriate and noted that the language might differ based on the context for accessing the data. For example, it could be displayed at the bottom of the webpage on the dashboard and query tools, as a way to set expectations about the quality and recency

of available data. One subcommittee member expressed concern that a message disclaiming the quality of the data might bring the purpose of the data system into question. Another indicated that this language could be helpful to set expectations and serve as a terms and conditions warning. A third noted that the purpose of the disclaimer would be to dissuade members of the public from suing the data system due to the quality of data provided by local education providers. The language could indicate that the data are made available as is, and that the data system makes no representation or warranty on their accuracy. Another participant suggested using language that clarifies the managing entity takes no responsibility for errors in submission, but that the data system strives to present reasonable information. Finally, a participant recommended that the disclaimer should note that small data sets are not being displayed for privacy purposes.

The group noted that disclaimer language would also be helpful if a secure data enclave is created, with researchers required to confirm that they have read the disclaimer before they could access a data set. For example, the language could appear in a pop-up window when users access the system. This would help to reinforce the requirements laid out in the legal agreement between the third party and the partner entities, or among partner entities. One participant noted that this concept is similar to an End User License.

Finally, the group noted that disclaimer language should be built into IDEA, the agreement between the partner entities and the managing entity, and agreements with third parties.

As both the CALPADS data set and Health and Human Services Open Data Portal include disclaimers, these models could be reviewed for the Cradle-to-Career Data System. Wisconsin's disclaimer language was also listed as a viable example.

Exemption and Exception Process

Next, the group discussed three policy considerations, to create recommendations for the workgroup and the Technology & Security Subcommittee, for how to handle requests:

- by students to opt out of the state data system in the context of the European Union (EU) General Data Protection Regulation (GDPR)
- by any individual who does not want their records included in the state data system (laws allowing this exemption have already been passed in two states and a similar policy is under discussion in California)
- by parents seeking to access records in the state data system about their child (this is required under FERPA, as evidenced in a letter from the U.S. Department of Education to Nevada)

The notes below reflect both full group discussions and small group breakout sessions on these topics.

GDPR

The group recommended that guidance be provided by the California Attorney General's Office about whether GDPR is applicable to the state data system. Stella Ngai from UC indicated that GDPR does apply to application data, which will be part of the dashboard and query tools. However, it would be helpful to understand how the regulation applies to other types of data that will be included in the state data system.

Regardless of the guidance provided by the Attorney General's Office, the group recommended that EU students be flagged by partner entities before uploading information to the state data system, so that it would be possible for the state data system to comply with GDPR.

Individuals Who Do Not Want Their Records Included

The group recommended that individuals be given the option to have their records removed from the data system, but that the request should be made to the managing entity, rather than to the partner entities or individual institutions. While there is some risk that key populations might not be fully represented in the state data system, it would be important to provide everyone with the same options that would be available for EU citizens. Furthermore, creating a mechanism that respects the desires of individuals, while not overly burdening individual institutions, could help to build trust in the data system.

The group also recommended that the opt out option should be simple: if an individual asks to be excluded, they would be removed at the level of person matching, as opposed to only being excluded from some data sets. For example, an individual could not ask to be included in the dashboard but be excluded from research studies.

Finally, the group clarified that this policy would only apply to the state data system, and the opt-out process could not be used to remove an individual's data from local student or social service information systems.

Requests from Parents About Their Children

Given that parents must be able to learn what types of data the state system has about their minor children under FERPA and the Internet Privacy Act—which is consistent with similar policies under HIPAA—the governance structure should include a policy regarding how information will be provided. However, the Nevada letter indicates that the requirements apply to particular types of data. Therefore, it would be helpful to review how the specific data elements that have been identified for the dashboards and query tools relate to the federal requirements.

Technology and Data Implications of the Recommendations

These recommendations establish some requirements for the partner entities, the master data management (MDM) solution that will be used to match records, and the managing entity:

- Partner entities will need to flag which students are EU citizens, and this flag will need to be stored in the MDM.
- For individuals who wish to be excluded, the MDM must be able to flag individuals whose information should be removed at the point of person matching. The MDM must also be able to reidentify records so that individual data could be removed from existing data sets.
- For requests from parents, the MDM must be able to reidentify records to determine which information has been included in each data set about specific individuals.
- The managing entity must be allowed to view fully identified, student-level information in order to fulfil these requests.

Next Steps

- Subcommittee members will receive meeting notes by June 19 and should provide comments by June 26.

- Subcommittee members were urged to discuss the legal and technical framework with their agency representative in advance of the June 30 Cradle-to-Career Workgroup meeting, as the partner entities will be voting on whether to move forward with this framework.
- WestEd will compile draft language for the system disclaimers, an exemption policy for individuals, and a policy for parental requests. This language will be reviewed by a homework team and draft language will be provided by July 15, for review at the July Legal Subcommittee meeting. Homework team members include: Bruce Yonehiro, CDE; Carolyn Kubish, DSS; and Jennifer Schwartz, CHHS.
- The two existing homework teams will continue to work on draft legislation for the data system and an agreement between the partner entities and managing entity, which will also be reviewed at the July meeting.