

# Legal Subcommittee Meeting Summary

September 24, 2020

This document provides a summary of key points that emerged over the course of the 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 September 2020 meeting had the following goals:

- Update on key decisions
- Recommendation on system disclaimer language
- Complete edits to the Interagency Data Exchange Agreement (IDEA) Family Educational Rights and Privacy Act (FERPA) Addendum

The following representatives attended the meeting:

Veronica Villalobos Cruz, Association for Independent California Colleges and Universities; Freshta Rasoli (for Douglas Smith), Bureau of Private Postsecondary Education; Kathy Lynch, California Community College Chancellor's Office; Bruce Yonehiro, California Department of Education; Cynthia Bosco, California Department of Health Care Services; Carolyn Kubish, California Department of Social Services; Kary Marshall, California Department of Technology; Jennifer Schwartz, California Health and Human Services Agency; Rima Mendez, California School Information Services; Ed Hudson, California State University; Brian Davis, Employment Development Department; Jeanne Wolfe, California Labor and Workforce Development Agency; Gabriel Ravel, Government Operations Agency; Michelle Kim (for Stella Ngai), University of California, Office of the President

## Update on Key Decisions

The meeting opened with the facilitator providing an update on decisions made by the Cradle-to-Career Workgroup at the July and August meetings, including recommending that the managing entity should be a new office or program within GovOps and recommending that the California College Guidance Initiative and eTranscript California be scaled to provide operational tools for the data system.

Given that the governance structure and detailed responsibilities for the managing entity are still under discussion, work on by the Legal Subcommittee on the managing entity agreement will be tabled for now.

The Legal Subcommittee was also updated on the upcoming community engagement campaign and encouraged to join one of four new homework teams addressing the Deidentification Policy, Payment Policy, Opt-Out Policy, and the Third Party Legal Agreement.

## System Disclaimer

Bruce Yonehiro of CDE walked the group through a draft system disclaimer that had been developed by a homework team and pointed out areas that needed further clarification. During the review, minor line edits were made to the document, and the subcommittee unanimously approved the final document.

Other points made during the discussion included:

- It would be valuable to clarify on the public tools the date on which data points were uploaded
- As part of the user-centered design process, the managing entity will need to determine whether users would scroll through the Terms and Conditions before they could access certain features of the public tools, such as before viewing the dashboards or before downloading information from the query builder tool
- The disclaimer language should be introduced in a way that it does not lead users to feel that the data set has significant flaws
- The disclaimer language provides flexibility for the data to be leveraged for any lawful purpose, rather than preventing commercial businesses from making use of the information
- The language protects all entities (and their staff) that provide data for the system, including individual independent colleges.

The language in the disclaimer included a placeholder for public participation regarding recommendations for correcting or improving the data system and its content. The subcommittee referred the question of how to operationalize the formal mechanisms for this public comment to the Cradle-to-Career Workgroup.

### IDEA FERPA Addendum

Jennifer Schwartz of CHHS provided background on the Interagency Data Exchange Agreement (IDEA), the companion Business Use Case Proposal (BUCP), and the need for IDEA to have an addendum that addresses specific considerations for education data under the federal Family Educational Rights and Privacy Act (FERPA).

The Cradle-to-Career data system will leverage IDEA and tailored BUCPs as the mechanisms for establishing legal agreements between the data providers that are state agencies and with the managing entity. It will also be used to allow for data sharing between CDE, DHCS, CDSS, and juvenile justice to support AB 2083, which would enable agencies to work together to better support foster youth.

Bruce Yonehiro of CDE noted that under FERPA, there are several provisions that allow a state agency to share information without the consent of students, each of which has its own set of requirements. Therefore, it will be complicated to draft one document that addresses all scenarios. The IDEA FERPA addendum provides guidance to ensure all the necessary information will be included in each BUCP.

Jennifer Schwartz noted that the BUCP template is still undergoing revisions but recommended that the subcommittee review an earlier draft that clarified the general content to provide context. The group reviewed this document and the facilitator clarified that the Legal Subcommittee will develop one or more tailored versions of the BUCP for key Cradle-to-Career functions once the Governor's Office indicates the form has been finalized.

The group reviewed draft language that had been developed by Bruce Yonehiro, raised questions, and made line edits to the document.

Kathy Lynch from CCCCCO asked for clarification about which entities are considered to be data contributors: the state agencies or individual local educational districts and postsecondary institutions. Bruce Yonehiro edited the document to make clear that state agencies are considered the data

providers within the IDEA framework. The facilitator reminded the group that individual institutions, such as the independent colleges represented by AICCU, are not eligible to sign the IDEA.

Veronica Villalobos Cruz of AICCU noted that some independent colleges are concerned that FERPA does not allow institutions to disclose information to a state data system. Bruce Yonehiro clarified that in cases where unitary data would be released, all parties would need to sign a BUCP that makes the recipient(s) an authorized representative.

Baron Rodriguez of WestEd, who previously worked with the federal government on longitudinal data systems, noted that in 2011 the federal government recommended that states use the audit or evaluation exemption to allow for the creation of longitudinal data systems. This guidance can be found at <https://studentprivacy.ed.gov/resources/integrated-data-systems-and-student-privacy>.

Michelle Kim of UC asked for clarification on the section reading “Data Recipient acknowledges that its appointment as an authorized representative may create a fiduciary relationship prohibiting certain conflicts of interest that should be addressed in the Business Use Case Proposal.” Bruce Yonehiro explained that this provision protects the state, should a researcher both want to serve as an authorized representative of an agency for research purposes and simultaneously sue the agency.

The group unanimously agreed to recommend the FERPA addendum, once minor edits are made to address typos. Edits should be made to the document by September 29. A final version will be sent out the group on October 2.