

Legal Subcommittee Meeting Summary

October 27, 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 October 2020 meeting had the following goals:

- Provide an update on key decisions
- Make a recommendation on the payment policy
- Make a recommendation on the opt-out policy
- Provide updates on the homework teams

The following representatives attended the meeting:

Veronica Villalobos Cruz, Association for Independent California Colleges and Universities; Linh Nguyen, California Commission on Teacher Credentialing; Kathy Lynch, California Community College Chancellor's Office; Bruce Yonehiro, California Department of Education; Kary Marshall, California Department of Technology; Jennifer Schwartz, California Health and Human Services Agency; Cynthia (Cyndi) Bosco, California Department of Health Care Services; Carolyn Kubish and Akhtar Khan, California Department of Social Services; Rima Mendez, California School Information Services (CSIS); Brian Davis, Employment Development Department; Gabriel Ravel, GovOps; Jeanne Wolfe, Labor and Workforce Development Agency; 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 September meeting, including recommendations related to record matching and the governance structure. In addition, information was provided on the level of participation in the community engagement campaign and the contents of a revised proposal for the data request process.

Payment Policy

Rima Mendez of CSIS walked the group through a draft payment policy developed by a homework team and the group made edits to the document.

Key points made during the discussion included:

- The decision about whether to use “may” or “shall” language should be informed by a discussion with GovOps about whether the managing entity would charge requestors for the cost of compiling data (current statute exists for CDE and EDD to charge for compiling data for specified reasons).
- Because all data would be compiled by the managing entity from information that has already been uploaded by the data providers, the entity that would receive payment would be the managing entity, not the data provider.
- If state agencies are requesting data from each other for administrative purposes, such as to complete required reporting, they should not be charged for access to the data.

- If requestors are to be charged for access, it should be based on a rubric that establishes clear policies for fees. For example, the rubric could be based on whether the data provider charges for access to this information, by the level of effort required to construct the data file, and/or by whether it is a time-sensitive request.
- The policy should be addressed in the Government Code, not as an edit to existing Education Code.
- It would be helpful for the language to specify that data would be released only to a qualified researcher.
- The departments that will be providing data should review the policy and the rubric before it is finalized.

Gabriel Ravel of GovOps will bring a recommendation to the November meeting regarding whether the managing entity would charge for data access, and if so, propose a rubric for payment options.

Opt-Out Policy

Amy Fong of CSIS walked the group through a draft opt-out policy developed by a homework team and the group made edits to the document.

Key points made during the discussion included:

- The language should be written to be understandable by members of the public (such as at a 5th grade reading level).
- The way the policy would be displayed should be determined by the managing entity.
- Rather than provide an exhaustive list of data points that could be used to match records, the form would collect a minimal amount of information that could be used to identify the individual in the Cradle-to-Career data set.
- The process should include authentication to make sure the person making the request is that individual or an appropriate parent or guardian.
- Individuals who are younger than 18 should be allowed to opt-out of the system.

Marion McWilliams of WestEd will send out an updated draft for the November meeting.

Homework Team Updates

Several subcommittee members shared progress on other documents, including:

- **Third party legal agreements:** Given the variance in requirements across legal contexts, the homework team will develop a suite of templates that are appropriate to the specific allowable use of information.
- **Deidentification policy:** The group has been focused on creating definitions for key terms, using legal language that is appropriate to privacy considerations.
- **Personally Identifiable Information (PII) definition:** The team is currently merging key statutes that define PII, such as HIPAA, FERPA, and the California Information Practices Act.
- **Legal crosswalk:** WestEd compiled a crosswalk that clarifies where federal statutes are addressed in the Interagency Data Exchange Agreement (IDEA) and the Business Use Case Proposal (BUCP). This document will continue to evolve as IDEA and BUCP are finalized.

The subcommittee launched an additional homework team to develop a privacy policy. Volunteers included: Bruce Yonehiro of CDE, Jennifer Schwartz of CHHS, Amy Fong of CSIS, Cyndi Bosco of DHCS, Carolyn Kubish of CDSS, and Ed Hudson of CSU. The group will start by referencing CHHS's policy. In addition, WestEd will compile examples of privacy policies from other states.