

Legal Subcommittee Meeting Summary

February 18, 2021

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 February 2021 meeting had the following goals:

- Update on planning
- Information on the trailer bill
- Review approach for establishing legal agreements between data providers, with the managing entity, and with other state agencies
- Review proposed data classification approach
- Review proposed data deidentification policy

The following representatives attended the meeting:

Veronica Villalobos Cruz, Association for Independent California Colleges and Universities; Freshta Rasoli, Bureau for Private Postsecondary Education; Linh Nguyen, California Commission on Teacher Credentialing; Kathy Lynch, California Community College Chancellor's Office; Bruce Yonehiro, California Department of Education; Jennifer Marquez, California Department of Technology; Cynthia (Cyndi) Bosco, California Department of Health Care Services; Carolyn Kubish, California Department of Social Services; Jennifer Schwartz, California Health and Human Services Agency; Rima Mendez, California School Information Services; Jeanne Wolfe, Labor and Workforce Development Agency; Mark Paxson, California Student Aid Commission; Marina Feehan, Office of Government Services; Stella Ngai, University of California, Office of the President

Update on Key Workgroup Decisions

The meeting opened with the facilitator providing an update on decisions made by the workgroup at the two December meetings, including expanding the governing board to include an additional seat for CLWDA, establishing a timeline and priorities for phase one, developing an estimate for the fiscal impact, and finalizing content for the legislative report, which was submitted at the end of the December.

Information on the Trailer Bill

Chris Ferguson from the Department of Finance provided an overview of the content of the trailer bill language for the Cradle-to-Career Data System, which was crafted to mirror the recommendations from the workgroup. He noted that a few items are being fine-tuned and indicated that minor technical suggestions could be shared through the WestEd facilitation team to provide a streamlined communications vehicle. Finally, he clarified that funding for the data system would flow directly to the various state agencies instead of flowing through the Office of Planning and Research, as was the case for the planning period.

Interagency Data Exchange Agreement and Companion Agreements

Marion McWilliams of WestEd described the three types of legal agreements that will inform data sharing between data providers, with the managing entity, and with other state agencies. The Interagency Data Exchange Agreement (IDEA) is a high-level framework to outline how data will be shared between state agencies. For Cradle-to-Career Data System, data providers and the managing entity will also sign a Business Use Case Proposal (BUCP) for the P20W data set that clarifies the information that will be shared and its allowable use. If the data providers identify other appropriate use cases for sharing information, they would fill out an additional BUCP. Finally, a participation agreement will outline the relationships between the data providers and the Government Operations Agency (GovOps) as the managing entity for the Cradle-to-Career Data System.

For this meeting, subcommittee members discussed the IDEA and a proposed BUCP for the Cradle-to-Career Data System that was developed by a homework team, with the intent of sending the language for vote at the workgroup meeting next week. Additional work is underway to complete the participation agreement, with the goal of finalizing it at an April subcommittee meeting.

Jennifer Schwartz of CHHS provided a more detailed description of the IDEA and BUCP, clarifying what the agreements do and do not do, and describing the benefit that state agencies that have already signed IDEA have experienced related to faster data sharing under a more consistent security and privacy framework. She clarified the dispute resolution process for the context of the Cradle-to-Career Data System. Because many of the data providers are not part of the executive branch, disagreements about business use case proposals would be mediated by the state's Chief Data Officer, but data providers such as public postsecondary entities cannot be compelled to share data.

Finally, she noted that given that the heads of the Executive Branch agencies have already signed IDEA, it would be preferable to address additional terms and conditions through the BUCP or the participation agreement.

Jeanne Wolfe of CLWDA inquired whether her agency would need to sign IDEA again, and Jennifer Schwartz clarified that they would only need to sign a BUCP for the Cradle-to-Career Data System.

Stella Ngai of UC expressed concern about the comprehensive nature of IDEA and indicated discomfort with agreeing to a framework that addresses sharing data beyond the P20W data set. For example, as written, the IDEA would cover data from every corner of UC, including UC health data. She further questioned whether the BUCP could be used to amend IDEA. Jennifer Schwartz of CHHS replied that the BUCP can be used to limit the types and uses of information.

Ed Sullivan of CSU asked what will happen if an agency is not comfortable signing IDEA. LeAnn Fong-Batkin of WestEd shared language from the trailer bill that indicates:

SEC. 5. Section 10858 of the Education Code is amended to read:

10858. (a) The partner entities shall, and the University of California is requested to, enter into memoranda of understanding for data sharing purposes, as necessary, or using the Interagency Data Exchange Agreement/Business Use Case Proposal (IDEA/BUCP) process as defined in Section 10861 for the implementation of this article.

Stella Ngai of UC suggested that the trailer bill, by virtue of using the word "or," allowed data providers to sign a memorandum of understanding instead of IDEA. Chris Ferguson of Department of Finance

clarified that the intent of the legislation is to have as many data providers sign onto IDEA as possible. Veronica Villalobus Cruz of AICCU noted that she assumed the language was intended to provide flexibility for entities that are not eligible to sign IDEA, such as independent colleges.

Jeanne Wolfe of CLWDA asked if data providers would be required to only use IDEA for data sharing. Jennifer Schwartz of CHHS noted that agencies that are not under the executive branch could not be compelled to share data under IDEA beyond the BUCPs that they sign. She noted that agencies under the executive branch can use the data sharing agreements that are not under the IDEA framework where appropriate and do not have to modify their current data sharing agreements

Ed Sullivan of CSU asked if it would be possible to create an IDEA that is only for the Cradle-to-Career Data System. This question was noted for discussion with the Governor's Office.

Jeanne Wolfe of CLWDA wondered if data providers who were willing to sign IDEA would see the creation of a Cradle-to-Career IDEA as a less collaborative position. Jennifer Schwartz of CHHS underscored that the intention of IDEA is to create a collaborative approach, rather than an adversarial one, to improve the state's ability to meet Californians' needs.

The representatives from the public postsecondary partners asked that a homework team be created to document and discuss concerns about their agencies signing onto IDEA.

Data Classification Scheme

Kathy Booth of WestEd described the proposed data classification scheme, which would enshrine the expansive definition for personally identifiable information that was recommended by the Legal Subcommittee.

Stella Ngai of UC asked whether the approach would comply with the new California Consumer Protection Act (CCPA). Jennifer Schwartz clarified that the CCPA does not apply to government entities or nonprofits.

Jeanne Wolfe of CLWDA asked whether GovOps could be required to share information through a subpoena. Marina Freehan of the Office of Government Services noted that data privacy laws include exceptions for legislation, court orders, and subpoenas to release information. However, GovOps could go to court and argue for information to not be released. She further recommended that the participation agreement state that information will only be released under a BUCP, agreement signed by the data provider, or if required by legislation or a court order. Marion McWilliams of WestEd noted that this stipulation is already included in the current draft.

In response to an inquiry from Kathy Booth of WestEd about the relationship between the data classification scheme and breach notifications, Jennifer Schwartz noted that proposed approach would ensure that the GovOps and its subcontractors will be in compliance with the state's breach reporting requirements.

After addressing a few requests for clarification, the group approved the data classification scheme and recommended that it be forwarded to the workgroup.

Deidentification Protocol

Kathy Booth of WestEd described the process used by a homework team to develop a draft deidentification protocol, which would be applied to information available through the dashboard,

query builder, and expedited data request process. The protocol was developed using the expertise of Linette Scott, the Deputy Director and Chief Data Officer from the California Department of Healthcare Services (who oversees the state's framework for the deidentification of health information), Randy Bonnell of CDE (who oversees deidentification of K-12 data), and the CCCCCO's posted deidentification policy, as well as recommendations from the National Center for Education Statistics. The Deidentification Protocol was approved by the Technology & Security Subcommittee and is being brought to the Legal Subcommittee, with the goal of forwarding it for this month's workgroup meeting.

Bruce Yonehiro of CDE was concerned that anonymized data sets that populate the dashboard and query tools could be subject to Public Records Act (PRA) requests. Kathy Booth of WestEd noted that the trailer bill states "notwithstanding any other provision of law, individual records contained in the Data System shall not be subject to the Public Records Act."

Bruce Yonehiro of CDE and Stella Ngai of UC recommended that the process by which information is first anonymized should also be described in the protocol. They asked for more time to circulate the policy to others before forwarding it to the workgroup.