

Legal Subcommittee Meeting Summary

March 23, 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 March 2021 meeting had the following goals:

- Provide an update on planning
- Review the proposed:
 - Deidentification policy
 - Incident response plan
 - Opt out language
- Provide an update on IDEA/BUCP

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; Marina Feehan, California Department of General Services; Kary Marshall, California Department of Technology; Cynthia Bosco, California Department of Health Care Services; Carolyn Kubish, California Department of Social Services; Rima Mendez, California School Information Services; Monique Shay and John Walsh, California State University; Julia Blair, California Student Aid Commission; Jeanne Wolfe, Labor and Workforce Development Agency; Stella Ngai, University of California, Office of the President

Update on Key Decisions by the Cradle-to-Career Workgroup

The meeting opened with Kathy Booth of WestEd providing an update on decisions made by the workgroup at its February meeting, including approving the definition of personally identifiable information (after removing county), the data classification protocol, the system disclaimer (with the caveat that its implementation should be addressed through the user centered design process), and the privacy policy.

Carolyn Kubish of CDSS asked about the decision to remove "county" from the list of personally identifiable information. She noted that California includes some very small counties, which introduces risk for revealing individual identities. Therefore, it will be important to pair this definition with the deidentification protocol to ensure data with small cell sizes are hidden.

Bruce Yonehiro of CDE, who attended the workgroup meeting, clarified that the discussion had focused on the idea that individual items can be flagged as personally identifiable information when used in combination with other data points. This approach would help to address cases like small counties.

Bruce Yonehiro of CDE asked what was being done to address concerns raised by the partner entities about the trailer bill language. Kathy Booth of WestEd clarified that the planning team is compiling requested changes from the partner entities to share with the Department of Finance. She noted that

any edits should be shared by March 31 (including evolving recommendations), and that partner entities are also welcome to address their concerns directly with the Department of Finance. Amy Supinger of WestEd encouraged partner entities to provide specific alternative language, as opposed to general areas of concern.

Bruce Yonehiro of CDE noted that a number of the partner entities are concerned about whether the trailer bill—and AB 99 (Irwin), which also addresses the data system—complies with FERPA, which requires disclosure of student records only pursuant to a written agreement instead of a statutory mandate. The statutes need to reflect the legal framework approved by the legal subcommittee and the workgroup, which requires that the partner entities retain control of the data that they contribute. As currently written, the statute blurs the appropriate line about the level of control that data providers have over information that they provide. Some of these issues will also need to be addressed in the participation agreement that the Legal Subcommittee will be developing that will govern the responsibilities of GovOps as the managing entity.

Monique Shay of CSU shared CDE's concerns about FERPA and the trailer bill and indicated her agency will share proposed alternative language. She is specifically concerned that the language is written so broadly that it could be read to require each data provider to upload all 160 data points. While CSU can share many of the data points under the FERPA exemption for improving instruction, others—such as financial aid—cannot be disclosed. Amy Supinger of WestEd suggested that CSU work together with the other postsecondary partners to ensure the proposed changes meet the needs of all segments.

Note: the related trailer bill language addressed the data points as follows:

10871. (a) Data Providers, as defined in Section 10861, shall submit, at least annually, the data points contained in the P20W data set as defined in Section 10861.¹

(1) Source data shall be consistent with data definitions and standards adopted by the Governing Board. Data Providers shall make every effort to ensure source data is of the highest quality prior to submitting to the Managing Entity for inclusion in the Cradle-to-Career Data System.

(2) Any data sharing agreements necessary to effectuate this provision shall occur using the "IDEA/BUCP" process as defined in Section 10861, or a successor process by which state entities share data.

(b) The Managing Entity shall work with the Data Providers to ensure data quality, in furtherance of paragraph (8) of subdivision (a) of Section 10867.

Bruce Yonehiro of CDE noted that his understanding was that partner entities would participate in the data system voluntarily and determine which data points to contribute, as codified in the participation agreement with GovOps. However, as currently written, the trailer bill requires mandatory participation (data disclosure) by education agencies in violation of federal law and the approved Cradle-to-Career Data System legal framework. He therefore urged the subcommittee to resume work on the participation agreement.

Kathy Booth of WestEd clarified that work on the participation agreement had been delayed because the Legal Subcommittee had recommended not using the Interagency Data Exchange Agreement (IDEA)

¹ Section 10861 covers definitions, with the P20W Data Set described as "the data set adopted by the Governing Board, including but not limited to the approximately 160 data points described in the Report to the Legislature required by pursuant to subdivision (a) of Section 10856 and as adjusted by the Governing Board. The Governing Board is authorized to add or remove data points based on changes in the usage of the element."

and Business Use Case Proposal (BUCP), as had been proposed in the December 2020 report to the legislature. Therefore, the first task was to create alternatives to those two documents. However, referencing the considerable work already done by subcommittee members, Marion McWilliams, a FERPA expert from WestEd, has developed a matrix that lists where critical elements should appear in a modified IDEA, modified BUCP, and the participation agreement.

Marion McWilliams of WestEd provided some clarification about where specific concepts will be addressed. She noted that as long as subcommittee members are available, WestEd can work with them to complete all three documents within the month.

Stella Ngai of UC noted she shared the concerns raised by CDE and CSU about the trailer bill. She asked for clarification on WestEd's role related to AB99. Kathy Booth of WestEd noted that her organization is tasked with supporting the planning process, as outlined in the Cradle-to-Career Data System Act, which focuses on producing three reports to the legislature that address a highly specific list of topics. However, WestEd is not involved in writing or editing legislation. The compilation of recommended changes to the trailer bill is being done as a courtesy to the Department of Finance, to ensure that feedback from the partner entities can be easily referenced. However, WestEd can use that opportunity to clearly articulate concerns that are prioritized by the partner entities.

Amy Supinger of WestEd, in response to a question from Bruce Yonehiro of CDE about why the trailer bill is out of sync with the Legal Subcommittee's recommendations, reminded that group that the Department of Finance had written the bill based on information that they received in late December. Therefore, it is important to alert the Department of Finance to the partner entities' more recent recommendations. The Department of Finance will release updated language in the May Revision, which is slated for May 14 this year.

In response to concerns that the intentions of the partner entities could be lost if they are not enshrined in statute or legal agreements, Kathy Booth noted that WestEd is compiling documentation on all of the detailed implementation recommendations developed over the 18-month planning period. If the Department of Finance's recommendation is approved by the legislature, WestEd's contract will also be extended for another year to provide knowledge transfer and to ensure the GovOps staff that are hired to manage the data system are fully aware of these more nuanced points of consensus.

[Incident Response Plan](#)

Kathy Booth of WestEd explained that the Technology & Security Subcommittee had adapted a plan by the Department for General Services (DGS) for how to respond to a data breach. When examining DGS's policy, subcommittee members noted that it did not expressly reference FERPA. Therefore, they asked that the Legal Subcommittee determine whether additional language is needed.

Stella Ngai of UC indicated that there may be a higher standard for financial aid data.

Bruce Yonehiro of CDE stated that FERPA does not have particular requirements regarding inadvertent disclosures. Most of the advisories put out by the U.S. Department of Education references negligence. However, GovOps should be aware that incident response policies may vary from one local education agency to the next.

Marion McWilliams of WestEd noted that FERPA focuses on the obligation of institutions to destroy data after its allowable use, which is different from a data breach.

Baron Rodriguez of WestEd noted that the U.S. Department of Education’s Privacy Technical Assistance Center provides an advisory on breach responses. This guidance does not identify a specific timeframe. Instead, it uses a “reasonable standard,” which in the context of security means 24 to 48 hours after becoming aware of a suspected breach. This timeframe should align with standards set by the data providers. Ideally the plan would also include a list of the data custodians at each data provider and ensure that requirements flow down to any third parties involved in implementing the data system, such as cloud storage providers.

Monique Shay of CSU requested that policy reference the Information Practices Act (IPA) incident response requirements.

Cyndi Bosco of DHCS requested that the plan be checked against HIPAA requirements.

The group agreed that Marion McWilliams of WestEd should review recommendations from the federal Privacy Technical Assistance Center, the IPA and HIPAA to determine whether additional language is needed. She will share her findings with the subcommittee to inform their recommendation.

Deidentification Protocol

At the February Legal Subcommittee meeting, the group asked for more time to review the deidentification protocol that had been developed by the Technology & Security Subcommittee. To refresh everyone’s memories, Kathy Booth of WestEd recapped how the deidentification protocol is designed to protect the expansive list of data points considered to be personally identifiable information. She outlined how the protocol was developed, with support from data experts in both education and health, and walked through its key features.

Stella Ngai of UC noted that her organization was not involved in developing the protocol and has concerns about it. They would like more time for the appropriate parties to review the protocol. Monique Shay of CSU also indicated that she would need to consult with others at her agency before she could approve it.

Bruce Yonehiro of CDE questioned whether the Legal Subcommittee should be making recommendations about the deidentification protocol, as this falls outside their area of expertise. Other members of the subcommittee agreed and the group voted that they would not weigh in on the protocol.

Next, Kathy Booth of WestEd noted a concern that had been raised by the advisory groups. While they were generally supportive of the deidentification protocol, they were concerned that the expansive definition of PII would result in the data partners refusing to share information such as a student’s race.

Cyndi Bosco of DHCS clarified that while race is not considered an identifier, it is considered to be a sensitive characteristic that needs additional protections through the agency’s deidentification policy. She encouraged those with concerns about the PII definition to think about the ways that identities could be disclosed by the combination of data points, as opposed to considering each one in isolation.

Marion McWilliams of WestEd noted that the PII definition was broad because it combined three laws: FERPA, HIPAA, and the IPA. The IPA states that any information that can identify an individual should be considered private information—which is where the deidentification policy comes in.

Stella Ngai of UC asked for clarification on whether individuals would be able to access the data system and look up their own information. Kathy Booth of WestEd responded that this would be true for CaliforniaColleges.edu, where students create accounts to track their career and college interests and view information on their progress on a-g eligibility, financial aid, and college applications. However, it would not be possible to do so in the analytical data set.

Opt Out Language

Stella Ngai of UC asked for clarification about the opt out language and whether children under the age of 18 can remove themselves from the data system.

Bruce Yonehiro of CDE noted that people under 18 can opt out, but that they are only opting out of the Cradle-to-Career Data System, not the underlying data.

Kathy Booth of WestEd noted that the workgroup had asked for edits to the language to clarify that information was being removed from the Cradle-to-Career Data System only, not from the source data sets. They also wanted to note that the managing entity would make its best effort to remove the records and explain that some information would be retained to track the opt out request.

The group reviewed the draft revised language and made minor edits for clarity, after which they unanimously approved the new language.

Next Steps

Kathy Booth of WestEd announced the dates of the next two meetings:

- April 20
- May 11

In these two meetings, the subcommittee will finalize the decision about the incident response plan, craft alternatives to IDEA and BUCP, complete the participation agreement, and affirm the proposed templates for agreements with third parties that are accessing information through the data request process (with appropriate templates determined based on the FERPA or HIPAA exemption).