Legal Subcommittee Meeting Summary

November 12, 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 November 2020 meeting had the following goals:

- Provide an update on key Cradle-to-Career Workgroup decisions
- Make a recommendation on the payment policy
- Make a recommendation on the opt-out policy
- Make a recommendation on the definition for personally identifiable information
- Make a recommendation on the deidentification policy
- Make a recommendation on the legal crosswalk
- Provide updates on the homework teams

The following representatives attended the meeting:

Veronica Villalobos Cruz, Association for Independent California Colleges and Universities; Freshta Rasoli (for Doug Smith), 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; Martha Friedrich, California School Information Services (CSIS); Brian Davis, Employment Development Department; Jeanne Wolfe, Labor and Workforce Development Agency; 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 September meeting, including approving the data request process, the core public content of the data system, and the responsibilities of the managing entity.

Payment Policy

The subcommittee reviewed a revised statement that reflected input from the October Legal Subcommittee meeting. First, the group clarified that this policy would be a new statute that would not undo existing statute. Next, the group reviewed edits proposed by UC representatives regarding whether the managing entity would charge fees when fulfilling requests made by state agencies.

Jeanne Wolfe of CLWDA asked whether there should be a benchmark cost for fees, to ensure that they are reasonable. Bruce Yonehiro of CDE suggested using his agency's rates of $65/hour, as noted on this webpage: https://www.cde.ca.gov/ds/da/.

Amy Supinger of WestEd stated that Government Code Section 11010 addresses cost recovery, which has permissive language. Therefore, it would be the responsibility on the Governing Board to establish a payment policy and define the term reasonable. She also indicated that any language should be careful

to explicitly state which data providers would be affected, given that UC is not defined as a state agency in government code.

Given that the rest of the subcommittee was reluctant to take the suggested edits, Stella Ngai of UC offered to share feedback with her colleagues and bring their thoughts back to the subcommittee. The group will vote by email on the final language to submit to the workgroup.

Opt-Out Policy Draft Recommendation

The subcommittee reviewed a revised statement that reflected input from the October Legal Subcommittee meeting. Marion McWilliams of WestEd clarified that this policy would only opt an individual out of the Cradle-to-Career Data System, not out of the agencies that provide information for the data system.

The subcommittee approved of the revised language and recommended that the opt-out policy be forwarded to the workgroup.

Personally Identifiable Information (PII) Definition

The subcommittee reviewed a definition for PII that includes provisions from both the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA). The definition was developed by a homework team made up of several subcommittee members. Marion McWilliams reminded the group that all individual-level data is being treated as PII for the Cradle-to-Career Data System.

Bruce Yonehiro of CDE emphasized that the definition seeks to be comprehensive. Therefore, it includes a clause that allows for future changes that would be triggered by shifts in available technology or new privacy statutes.

Brian Davis of EDD asked whether the definition was sufficiently broad to address partial data, such as the final four digits of a social security number. The group added a clause to indicate that rules apply to full or truncated variations of data points.

Jeanne Wolfe of CLWDA asked for clarification on the term "reasonable person in the community." Baron Rodriguez of WestEd explained that due to the breadth of the information that would be available in the data system, information at the individual level could be reidentified by a statistician. Therefore, in cases like FERPA, the term "reasonable person" is used to distinguish between those with the skills to reidentify data versus other types of users.

The subcommittee approved of the revised language and recommended that the definition for PII be forwarded to the workgroup.

Deidentification Definitions

The subcommittee reviewed definitions for terms associated with deidentifying data. The definitions were developed by a homework team made up of several subcommittee members, in partnership with data experts at both DCHS and CDE. Bruce Yonehiro of CDE noted that despite the differences in health and education legal frameworks, they had been able to find common ground.

Jeanne Wolfe of CLWDA asked how the definitions would be used. Bruce Yonehiro of CDE explained that they help to create a common language. For example, there has not been consistent terms used in the

planning process for data on groups of individuals, which are variously described using words like "aggregate" and "summary." Douglas Smith of BPPE raised a concern that definitions might change over time, so they would need to be reviewed periodically.

Stella Ngai of UC inquired how the managing entity would mitigate risk. For example, will the Technology & Security Subcommittee write a policy that explains the appropriate procedure for deidentifying data? Baron Rodriguez of WestEd noted that the federal Privacy Technical Assistance Center provides resources on appropriate data deidentification approaches, which could be used for tools like the dashboards and query builder. Kathy Booth of WestEd added that the data request process includes a disclosure review requirement such that the managing entity must work with appropriate experts (both at the partner entities and using other experts as needed) to review and ensure the appropriate deidentification of data before it is removed from the secure data enclave. Similar procedures are already in place for Texas' longitudinal data system (see: https://texaserc.utexas.edu/wp-content/uploads/2019/09/PP-General-Info-9.10.19.pdf).

Finally, Kathy Booth confirmed that any formal deidentification policies developed as part of the planning process would be reviewed by the Legal Subcommittee. Douglas Smith of BPPE recommended that the timing for when data would be deidentified should be defined as part of this process.

After reviewing the text, subcommittee members recommended removing an example that was associated with one term. Then they recommended that the definitions be shared with the Technology & Security Subcommittee. That subcommittee should establish core procedures related to deidentification, which should be brought back to the Legal Subcommittee before it is forwarded to the workgroup.

Legal Crosswalk

Marion McWilliams of WestEd clarified that the crosswalk had been developed to ensure that both the Interagency Data Exchange Agreement (IDEA) and the Business Use Case Proposal (BUCP) include the necessary language for these templates to meet FERPA exemptions. This was a useful exercise because it revealed provisions that were not covered.

The subcommittee recommended that the crosswalk be added to IDEA FERPA addendum and be brought to the workgroup.

Homework Team Updates

Privacy Policy

The homework team reviewed privacy policies used by partner entities and other state longitudinal data systems (SLDS). They elected to use the North Dakota SLDS privacy policy as a starting point for the Cradle-to-Career Data System. The group will meet in early December and will focus on documenting topics such as which information the data system collects, what the data system does, and who has access to various tiers of information.

The homework team recommends that GovOps develop a user privacy policy for the website, which addresses topics such as the cookies requested or accessed through the website, at a later date.

Managing Entity Agreement

Homework team members were recruited to resume earlier work on the legal agreement with the managing entity. The agreement will use the IDEA and BUCP templates. The following individuals volunteered to participate: Cyndi Bosco, Veronica Villalobos Cruz, Akhtar Khan, Carolyn Kubish, Rima Mendez, Stella Ngai, Jennifer Schwartz, Jeanne Wolfe, and Bruce Yonehiro.