Legal Subcommittee Meeting Summary

July 15, 2020

This document provides a summary of key points that emerged over the course of a half-day 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 July 2020 meeting had the following goals:

- Update on key decisions
- Review the intake and request process model for the managing entity
- Review a draft legal agreement with the Employment Development Department
- Finalize the system disclaimer language

The following representatives attended the meeting:

Thomas Vu, Association for Independent California Colleges and Universities; Douglas Smith, Bureau of Private Postsecondary Education; Kathy Lynch, California Community College Chancellor's Office; Bruce Yonehiro, California Department of Education; Carolyn Kubish, California Department of Social Services; Jennifer Marquez, California Department of Technology; Jennifer Schwartz, California Health and Human Services Agency; Amy Fong & Rima Mendez, California School Information Services; Ed Hudson, California State University; Julia Blair, California Student Aid Commission; Brian Davis, Employment Development Department; Jeanne Wolfe, California 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 the June 30 meeting, including adopting a vison, mission, and strategic objectives for phase one, as well as expanding and approving the technical and legal framework. Then the group heard updates from homework teams working to develop a legal agreement with the managing entity and to craft legislation to create the data system. Volunteers were requested for a homework team on editing the FERPA addendum to the Interagency Data Exchange Agreement (IDEA), which will form the basis for legal agreements among the partner entities.

Managing Entity Structure and Employment Development Department Data

Note: this portion of the notes is grouped by topic rather than the order of the discussion.

Next, the facilitator described the work underway by the Cradle-to-Career Workgroup to better assess the optimal organizational structure for the managing entity, including describing the managing entity selection criteria and responsibilities established by the workgroup. Bruce Yonehiro of CDE asked whether it was possible for the managing entity to change over time. Baron Rodriguez, who previously served as a federal technical assistance provider to state intersegmental data systems, indicated that some other states have taken this approach.

Next, Baron Rodriguez walked through the intake and request process model. In the course of reviewing a visual representation of the model, subcommittee members expressed concern regarding how the

Employment Development Department (EDD) would match records for the purpose of returning employment and earnings outcomes.

Jeanne Wolfe of CLWDA and Jennifer Schwartz of CHHS asked for clarification about the division of responsibility between EDD and the managing entity. Baron Rodriguez responded that, in cases where partner entities are requesting EDD data, the managing entity would provide secure cloud storage, share match elements from the approved partner entities to EDD, and provide data back to approved partner entities once matched by EDD. However, data sharing between a single partner entity and EDD does not have to be done through the Cradle-to-Career data system.

Stella Ngai of UC asked for clarification about when the managing entity versus EDD would match data. Baron Rodriguez noted that, per the US Department of Labor, only EDD can match data to the Unemployment Insurance (UI) file, which is the proposed source of employment and earnings data. All other data sources would be matched by the managing entity, based on data elements that the partner entities provide permission to link.

Jeanne Wolfe of CLWDA asked how mixed data sets would be handled. Baron Rodriguez noted that the managing entity would link all records other than the EDD data. EDD would provide UI data for individuals that have the requisite data elements for matching. The managing entity would then combine employment and earnings outcomes for each individual with other records regarding that individual from other partner entities.

Bruce Yonehiro of CDE asked how EDD would do the match. Baron Rodriguez explained that EDD will match based on social security numbers (SSN), which limits which individuals will be represented in the data set. For example, because CDE does not collect SSNs, employment outcomes for students who do not enter postsecondary will not be included.

Ed Sullivan of CSU noted that connecting K-12 records to the Department of Motor Vehicles could assist with securing SSNs. The facilitator noted that this option has been discussed in other subcommittees for phase two of the state data system.

Brian Davis of EDD noted that they cannot do fuzzy matches and only match records with valid SSNs. The only information EDD would return is whether individuals were employed, how much they earned, and the industry in which the individual was employed. However, Brian Davis indicated that greater clarity is needed about when EDD would return the matched data back to the managing entity and when it would be returned them to the partner entity. The frequency of data refreshes is also a key consideration. While the P20W and Partner Research Data Sets would be refreshed annually, when else would the partner entities want data to be matched? Furthermore, the entity paying for the EDD match in each case has to be determined.

Jennifer Schwartz of CHHS noted that additional provisions may be needed to the legal agreements currently being drafted, such as IDEA, to allow EDD to act on behalf of the partner entities.

Marion McWilliams, an expert on FERPA from WestEd, described work she started with Brian Davis of EDD to craft an addendum to the legal agreement with the managing entity regarding accessing EDD data on an annual basis for the P20W Data Set and Partner Research Data Set. She and Brian Davis recommend creating an addendum to the master agreement with the managing entity, rather than a separate agreement, to ensure consistency among provisions. The work to date has not addressed

sharing data back to third party requestors or partner entities. In addition to the addendum, UI Code 1095 will need to be amended to allow the managing entity to receive the data.

Baron Rodriguez noted that the workgroup could elect to only include EDD data in the P20W data set in phase one to reduce the degree of complexity.

The group recommended that a homework team be created to work with Marion McWilliams and Brian Davis to craft an appropriate set of legal agreements between the managing entity, partner entities, and EDD. Members include: Brian Davis, EDD; Carolyn Kubish, DSS; Jennifer Schwartz, CHHS; Jeanne Wolfe, Labor Agency.

Workgroup Questions Regarding Managing Entity Structures

The group moved on to address questions posed by the workgroup about the managing entity structure, which included:

- Which type of organization would best meet the desired criteria (new state agency, existing state agency, nonprofit auxiliary of an existing state agency, JPA)?
- If the managing entity is an existing state agency/department/program, what accountability would it have to that agency as opposed to the partner entities?
- Would there be a conflict of interest if a partner entity that provides the data is also the managing entity?

Bruce Yonehiro of CDE noted that FERPA is applied in the same manner, regardless of type of entity selected. However, under state law it is easier to outsource to another government entity because it does not require a competitive bidding process. Many of the proposed structures could be viewed as creating a conflict of interest, most particularly work with a for-profit. Regarding breaches, agencies frequently enter into data sharing agreements that address contractual liability. Whatever option is selected, it should foster trust among the partner entities. If the goal is low-hanging fruit, an existing state agency would be a good option because it is already staffed and has the necessary accounting, procurement, and IT structures in place.

Jennifer Schwartz of CHHS suggested that there may be challenges for health and human services data, which requires that the managing entity be a business associate of a HIPAA covered entity. The governance structure must ensure that the managing entity follows privacy requirements and state regulations. Conflict of interest is best addressed by having a clear separation of responsibilities between the managing entity and the governing board, which can be documented in statute. This could be done with any of the possible organizational structure. She concurred with Bruce Yonehiro's assessment that agencies frequently use legal agreements to address liability.

Brian Davis of EDD indicated that any of the options could work. For EDD data, the UI code needs to be amended to allow the managing entity to receive employment and earnings data for a state-approved purpose. The contract with the managing entity can address breach requirements. Confidentiality requirements will need to be addressed in legal agreements with the partner entities and third parties.

Ed Hudson of CSU said that most concerns raised by the partner entities can be handled through the contract with the managing entity. Whichever organizational option is selected, breach will be a significant risk for the managing entity because of the volume of data that it will manage. Trust should be at a premium.

Bruce Yonehiro of CDE followed up that it is expensive for the state to provide credit monitoring and other support for individuals whose identity is released in a breach. Even a very conscientious managing entity could still be subject to an attack by a skilled hacker. The legislature should take this potential cost into account. Ed Hudson of CSU clarified that, per the Ponemon Institute, the cost of a breach is $145 to $225 per record, depending on data elements involved.

System Disclaimer Language

Baron Rodriguez described work done by a homework team on system disclaimer language. Bruce Yonehiro of CDE noted that he had emailed some suggested changes. The group reviewed the edits to the short version of the statement and agreed to accept those changes. The approved statement reads:

System Disclaimer and Terms and Conditions of Use

The data in the California Cradle-to-Career Data System are collected and refreshed from multiple state agencies annually and may contain limitations, which include but are not limited to the following:

- *Potential for data mismatch or duplication between agencies.*

- *Data for out-of-state students or private school students may be missing or not as complete as in-state records or records from public schools.*

- *Employment data may exclude the self-employed, employees of religious or federal institutions, or others.*

- *Data may not be error-free, complete, validated, up-to-date, or confirmed.*

- *Data may not be available indefinitely and similar data may not be available for future periods.*

As a result, the State of California cannot guarantee the data will meet your needs and are provided "AS IS." Additional disclaimers and terms can be found in the Terms and Conditions of Use. By accessing and/or using this System, you agree to the Terms and Conditions of Use [hyperlink].

Then the group moved to the longer statement and approved many of those edits. However, there was not sufficient time to review all suggestions. Therefore, the group agreed to send written comment to Jimi Gilroy (jgilroy@wested.org) on the remaining items, for review by the homework team and final discussion at the August meeting.