Recommended Federal Actions to Govern AI Use in State Data Systems

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Artificial intelligence (AI) data tools and capabilities are reshaping the education and workforce development landscape. As state agencies reimagine their state data systems to enable increased data access, use, and transparency, AI has the unique potential to help states meet the data needs of individuals. AI's analytical advantages hold immense promise for enhancing the efficacy and reach of education, training, and other public agency programs by improving access to data, enhancing data linkages, and better protecting individual data. But the technology also presents significant challenges for decisionmakers, such as the potential to perpetuate bias, reduce transparency, and compromise personally identifiable information (PII). While AI tools are the most widely discussed technology that state and federal leaders are considering right now, the following recommendations can and should also apply to future emerging technologies that may raise similar data use and ethical considerations.

State and federal policymakers must create AI policy and guardrails to promote effective and ethical data practices. The Office of Management and Budget has begun this work, issuing memorandum M-24-10 on Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence. This memorandum offers a starting point for developing policies and practices on AI governance, auditing and evaluating use, and ethics applicable to state data systems. Building on this foundation, the Data Quality Campaign's (DQC) recommendations focus on establishing a state and federal policy environment that allows states to safely and effectively use AI to enhance state data systems and analyses across the education to workforce continuum. This includes policies governing statewide longitudinal data systems (SLDSs) that connect individual-level data over time from early childhood through K–12, postsecondary, and workforce.

State leaders contemplating using AI in conjunction with their data systems should first ensure they are following data policy best practices designed to enable education and workforce systems to safely and effectively leverage AI tools to support the use of state data, including by taking the following actions:

- **Strengthen statewide data infrastructure and quality.** State leaders must first establish the policy conditions that are prerequisites to building a strong SLDS before using AI tools as part of or in conjunction with their state data systems. In particular, state leaders should ensure they have established cross-agency data governance—including a statute that codifies authority, roles, and responsibilities, and maintains a data system housed within an independent agency.
- **Protect individual data**. State agencies must keep individual data secure while employing new AI technologies, including by adopting technical, physical, and administrative safeguards.
- **Develop formal policies for AI use in state data systems.** State agencies must create explicit processes and requirements for using AI in their data systems to reduce bias and algorithmic discrepancies and center privacy, transparency, and ethics.
- **Ensure transparency.** State leaders should incorporate transparency provisions into state data policies and practices so that individuals understand how their data is used by AI in state data systems.
- **Train people.** State agencies must require and invest in AI literacy training for employees and partners that use the technology to interact with state data, including how to recognize and address algorithmic bias and other ethical concerns associated with AI.

State leaders need support from federal policymakers to take these steps. Federal actors should create a policy foundation that can support state leaders to use AI in their SLDSs in an effective, sustainable, and transparent manner.

Recommended Federal Actions to Support States

Federal leaders can support state agencies and local leaders by prioritizing the following actions:

I. Promote the ethical use of AI tools.

- Federal agencies should **provide guidance and best practices that address the ethical and safe use of AI,** including how to:
  - Identify and address algorithmic bias, including the disproportionate impact of bias on historically vulnerable students (such guidance should, at a minimum align with existing civil rights laws and regulations);
  - Ensure appropriate human oversight when using AI in conjunction with individuals' education and workforce data, particularly when connected to an SLDS;
  - Determine whether AI use is appropriate for the situation, including guidance on how to conduct audits for when and whether data should be used with an AI tool;
  - Continuously monitor the functionality, efficacy, and impartiality of AI models and whether AI remains a suitable tool;
  - Communicate about the equity and bias implications of AI with individuals in an ongoing and responsive manner; and
  - Build AI governance and decisionmaking into existing SLDS governance functions.
- Federal laws and grant programs should **require and prioritize transparency around AI use**. To do this, laws and grant programs should:
  - Require state leaders to publicly disclose the use of AI, including what data was involved and how AI was used, on relevant websites, reports, and tools designed for the public;
  - Require state and local leaders to publicly disclose when AI is used for decisionmaking that impacts individuals' education and employment opportunities; and
  - **Emphasize open-source, Creative Commons licensed structured data formats**. Open-source data is generally of higher quality and more transparent than data in other formats, mitigating some bias and accessibility concerns. Federal leaders should require recipients of federal funds to make data available in structured, open, and interoperable formats.

II. Address AI's privacy implications.

- Federal actors should **establish clear guardrails to govern state use of AI**, including, for example, prohibiting state actors from uploading PII into open, generative AI tools.
- Federal leaders should **provide guidance about how existing privacy laws address AI-specific issues.** For example, the US Department of Education (ED) should provide clear, unambiguous guidance about when and how uses of individual data within AI tools can be compliant with the Family Educational Rights and Privacy Act (FERPA) and other federal privacy laws applicable to students. This step includes clarifying:
  - FERPA's application to different types and uses of data, including linked P–20W data, synthetic data, vendor uses of data, and more; and

    - How, if, and when FERPA's consent provisions should extend to the use of PII in AI tools, including by disseminating best practices and templates to help state leaders design consent policies for AI's use.
- Federal actors should **disseminate best practices related to AI vendor contracts**, including:
    - Templates and model language that state and local leaders can use for procurement processes, such as memorandums of understanding (MOUs) that satisfy federal privacy requirements; and
    - Recommended language state actors can use to govern the ownership and control of data or intellectual property when using AI or third-party vendors, especially as it impacts individuals' education and employment opportunities.

III. **Support state capacity.** Federal resources and expertise are important in building and retaining state capacity to adequately adapt to and implement new AI technologies. Federal actors can support states in a myriad of ways, including the following:

- Congress should **expand ED's Privacy and Technical Assistance Center's mandate and funding** to focus on providing AI-specific privacy, security, and legal technical assistance. This expansion would provide invaluable guidance to entities at all levels by helping them implement AI responsibly and securely. Congress should also explore the viability of building federal expertise and technical assistance services into other existing structures, such as the Regional Education Laboratories (RELs) and Comprehensive Centers.
- Federal actors should **provide funding and support to state agencies to enhance staff capacity to manage, use, and protect data while using AI.** Resources and support should focus both on how to attract and retain personnel, as well as how to build a shared understanding of innovation, technology, privacy and ethics issues. Funding may be provided directly or through clarifying the ability of state actors to blend and braid existing grant dollars, such as Title I, II, and IV of the Elementary and Secondary Education Act of 1965 (ESEA).

IV. **Invest in learning and development.** Federal actors must invest in AI research with a focus on effective SLDS development and use that includes elevating ethics, avoiding bias, promoting transparency, and ensuring the confidentiality of PII. As part of this research and development, federal actors can:

- **Create forums and incentives** for multi-jurisdictional sharing of best practices, ideas, codes, models, tools, privacy enhancing technologies, and training data; and
- **Establish a repository for national information-sharing about AI projects** so that state and local actors can collectively learn from the technology's use in the field.