

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON HIGHER EDUCATION  
Jose Medina, Chair  
AB 2627 (Bauer-Kahan) – As Introduced February 18, 2022

**SUBJECT:** Electronically collected personal information: state and local agencies: the California Community Colleges: memorandum of understanding

**SUMMARY:** Allows a California Community College (CCC) district to enter into a memorandum of understanding with a state or local agency, as defined for the purposes of sharing data for enrollment purposes. Specifically, **this bill:**

- 1) Permits a state agency, including but not limited to, the California Health and Human Services Agency, the Department of Housing and Community Development, the Labor and Workforce Development Agency, the State Department of Social Services, and the Department of Veterans Affairs, and a local agency, identified in Government Code Section 6252, to enter into a memorandum of understanding (MOU) with a local governing board of a community college district for the purpose of sharing personal information collected either from students or from users of the services provided by the state or local agency.
- 2) Clarifies the data shared between the state or local agency and the CCC district shall only be information about users that the state or local agency is permitted to share unless the user has not authorized the personal information to be shared.
- 3) Authorizes the CCC district to use the data received from a local or state agency for the purpose of informing users of the educational benefits and support programs offered by the CCC district in order to increase enrollment.
- 4) Stipulates it is the intent of the Legislature for a local agency to comply with the same information requirements of a state agency must comply. Specifically, a local agency is asked to inform users how their personal information is collected, for how long the information will be held, and a notification to opt out or refuse for the collected data to be shared or reused.
- 5) Stipulates it is the intent of the Legislature that community college districts who receive personal information from an MOU will do the following:
  - a) Comply with the United States Constitution and applicable federal laws including, the Family Educational Rights and Privacy Act of 2001 (FERPA) and its implementing regulations.
  - b) Comply with the California Constitution and all state laws and regulations including conditions of disclosure of personal information as established in the Civil Code Section 1798.24;
  - c) Only use the material received from the MOU for outreach, enrollment, and notification of resources in a manner that protects the identity of the individual of the targeted population;

- 6) Requires CCC districts when contacting users from the list received from either a state or local agency, the district will also offer an opt out option to the future contact and will discard the personal information obtained from the MOU without reuse or distribution if and when requested by the user or when the user no longer attends the California Community College system.
- 7) Clarifies the personal information shared as part of the MOU between the CCC district and the state or local agency will include; electronically collected personal information including the user's name, home address, home and cellular numbers, electronic mail address, education and employment or training history for the purpose of determining credit for prior learning through work experience, training, professional development, and similar learning activities.

**EXISTING LAW:** *For an overview of existing state law on privacy, please examine the Assembly Privacy and Consumer Protection Analysis for AB 2627.*

*Federal law.*

- 1) Protects the privacy of student education records in federal law with the FERPA. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level (20 U.S.C. § 1232g; 34 CFR Part 99).

*State law.*

- 1) Establishes the CCC under the administration of the Board of Governors of the CCC, as one of the segments of public postsecondary education in this state. The CCC shall be comprised of community college districts (Education Code (EDC) Section 70900).
- 2) Creates for each CCC district a board of trustees, known as the governing board, and authorizes the governing board to establish, maintain, operate, and govern each CCC within their district in accordance with state and federal law, as specified. The governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict or inconsistent with any law and that is not in conflict with the purpose of a CCC district, as specified. (EDC Section 70902).
- 3) Permits a community college to provide statistical data to any public agency, private nonprofit college, university, or educational research and development organization when it is deemed the data will be used in a manner that is in the best educational interest of students (EDC Section 76241).
- 4) Permits a CCC district to allow access to student records to any person that a student has provided written consent for those records to be released. Transmission of the records by the permitted person to another third party is prohibited and the consent notice provided by the student is to be kept within the student's record (EDC Section 76242).

**FISCAL EFFECT:** Unknown

**COMMENTS:** *Double referral.* This bill passed out of the Assembly Privacy and Consumer Protection Committee with a vote of 10-0 on April 19, 2022. The Committee heard the measure as it pertained to matters that were germane to its jurisdiction.

*What the measure will do.* AB 2627 (Bauer-Kahan) seeks to establish the opportunity for CCC districts to obtain personal identifying information from various state and local agencies for the purpose of informing and recruiting individuals, who receive services from the various state and local agencies, to seek a higher education learning opportunity at a community college campus within the confines of the district. Currently, K-12 districts have the authority to enter into MOU agreements with local agencies, such as the local welfare agency, to share information regarding students within their district boundary.

*Need for the measure.* As delineated by the author, “everyone deserves to have the option and access to an education. Community colleges are having a hard time reaching out to vulnerable populations like veterans, adults, and incarcerated individuals who could potentially have a second chance at a higher education, but are not aware of the services and programs available to them. AB 2627 will eliminate this obstacle and give community colleges the access they need to reach out to such populations.”

*Existing data sharing agreements.* Under existing law, CCC districts are not permitted to enter into data sharing agreements with state agencies, this authority is relegated to the Board of Governors (BOG) who has authority to contract for the procurement of goods and services according to Education Code Section 70901 (b) (15). Also the BOG is responsible for representing, advocating for, and providing accountability for the CCC before the state and national legislative and executive agencies, as described in Education Code Section 70901 (b) (4) (A). Therefore one could reasonably ascertain the authority AB 2627 (Bauer – Kahan) is currently relegated to the BOG, who is responsible for contracts on behalf of the system.

Under existing law, there are several circumstances which would lead to a community college providing data to a state agency or a local agency. Under existing law, Education Code Section 76240, a community college district may provide directory information to private schools or colleges in the state if the purpose is to use the information to further the academic and professional goals of the institution. Community college campuses can also provide statistical data to state agencies as long as individual students cannot be identified and the use of the data is in the best educational interest of the students. Either the CCC district or the community college can share a student’s record to a specified party if the student provides consent or if the record is being provided to a list of codified individuals as identified in Education Code Section 76243. State agencies under current education law may only receive a student’s record if it is in connection with qualifying or dispersing financial aid. Otherwise, state agencies and local agencies are not permitted to access student data. Community colleges are permitted to enter into an MOU with a local school district for various reasons, including dual enrollment of high school students, as long as the district or college complies with FERPA.

There are currently 116 community colleges and 73 community college districts. Each of these districts have their own local governing board who oversee the day to day operations of the campuses within their district. Due to the vast nature of the CCC system within California, part of the reasoning to permit the BOG to enter into MOUs with state agencies for the purposes of data procurement is to ensure the statewide information received by the entity represents the entire system and not part. If a district were to receive statewide information for the purpose of

recruitment and enrollment, feasibly they could be drawing students away from another community college district. *If the purpose is to provide educational resources to a marginalized population, then the Author should consider the unintended consequence of multiple community college districts entering into MOU agreements and poaching students away from other community college district service areas. In existing MOUs, for example the Career and College Access Program Partnerships, local community college districts enter into agreements with local high schools within their service area and must obtain permission from another community college district before intruding on their service area.*

*FERPA.* The Family Educational Rights and Privacy Act is federal law that permits a parent or legal guardian the right to access their child’s education records, the ability to have the records amended, and the right to control the disclosure of their child’s records. When a student turns 18 or enters into a postsecondary educational institution, whichever comes first, the authority under FERPA afforded to parents is then released to the student.

AB 2627 (Bauer-Kahan) is explicit in that the data from the state agency or local agency may not provide personal identifying information to the CCC district without the expressed permission of the individual and further the CCC district may not provide personal identifying information to the state agency or the local agency without the student’s permission as it would be in violation of FERPA. *Since this is a federal requirement, the Author may wish to remove the desire that is the intent of the Legislature for the CCC district to comply with existing state and federal law and instead require it.*

*Enrollment at the CCC and the targeted population.* While the COVID – 19 pandemic has exasperated enrollment declines, the California Community College has been suffering from enrollment declines since the recession. According to the California Community Colleges Chancellor’s Office Management Information Systems Data Mart, between the 2010-2011 academic year and the 2020-2021 academic year, the CCC saw an enrollment decline of 540,165.

Enrollment data for the last three fall terms as recorded by the California Community Colleges Chancellor’s Office Management Information System Data Mart depicts the following:

<u>Term and Year</u>	<u>Total Student Head Count</u>	<u>Full-time Equivalent Students (FTES)</u>
Fall 2021	1,339,683	424,462
Fall 2020	1,459,681	457,465
Fall 2019 (pre-pandemic)	1,659,399	521,453

Head count is the total number of student taking courses at one of the 116 CCC colleges and FTES is the number of students who take a full course load during an academic semester or quarter. Systemwide since fall 2019 the CCC have lost 319,716 students and 96,991 FTES. Providing avenues by which CCC can increase their enrollment has been a priority of the Legislature and the Governor in recent years. Specifically in the 2021-2022 Budget Act, the State provided the following investments to increase enrollment at CCC:

- \$23.8 million in ongoing funding for .5% enrollment growth; and,
- \$120 million in one-time funds to support efforts to bolster CCC student retention rates and enrollment.

AB 132 (Ting), Chapter 144, Statutes of 2021 clarified the \$120 million allocated for the retention and enrollment of community college students should be primarily used to engage former community college students, who had withdrawn from the college due to the impacts of COVID – 19. The funding was also allocated to encourage current community college students who may be hesitant to continue with their education to persist at the community college. AB 132 (Ting) permitted colleges to use the funds to provide fiscal incentives to students to reenroll or remain enrolled at community colleges while also permitting the Office of the Chancellor of the CCC to allocate additional funds to colleges with the largest loss in enrollment due to the pandemic. Furthermore, AB 132 (Ting) permits the CCCCO to allocate up to 10% for statewide recruitment and retention efforts. In his January 2022 budget proposal, the Governor has proposed \$150 million in one-time funds to support community college efforts and focused strategies to increase student retention rates and enrollment. AB 2627 (Bauer-Kahan) could be seen as a supplemental proposal to help bolster enrollment rates by providing CCC districts an opportunity to procure a list of individuals who may need the educational opportunities the CCC provides.

*Committee comments.* From an equity standpoint, the CCC is an open access university system whose mission as delineated in Education Code Section 66010.4, is to provide academic and vocational instruction at the lower division for both younger and older adults, including those returning to school. More specifically the CCC is to advance California’s economic growth and global competitiveness through education training; and services that contribute to continuous workforce improvement. The “targeted group” of individuals who the CCC would be receiving information from with MOU agreements with either a state or local agency would be those who have either received support services or benefits from the various agencies. This would include veterans, those on social supports, or those who have engaged in employment or training programs. As AB 2627 (Bauer-Kahn) is currently written, anyone who has ever engaged in these services, who allowed the state agency to disperse their information, would now be subject to possible contact by community college districts regardless of their current circumstances. Therefore, those who are already enrolled at another CCC district or at the California State University, or perhaps have already graduated would be part of the list and therefore could possible receive a call or unsolicited information from the CCC. While the population who engage in these services often do need additional assistance the question of whether this is the best method of contacting them, remains to be seen.

Last year, the state completed the arduous task of establishing in code the Cradle-to-Career Database (C2C Database). Once fully established, the CCC will be providing data to the C2C Database. As currently codified in law, the BOG and the Chancellor’s Office are those representing the CCC for the C2C Database. If this bill is enacted, it is possible that a CCC district would see the C2C Database as a state agency and would elect to withdraw their data and support as the district would have the authority to enter into agreements with state agencies for the purposes of information sharing. *AB 2627 (Bauer-Kahan) describes what the CCC district may use the data for, however, the bill is silent on how the data provided by the CCC to the state agency will be used even if just for a statistical purpose.*

*To address the array of concerns listed throughout this analysis, the Committee has suggested and the author has agreed to the following amendments:*

*(d) ~~A state agency, including, but not limited to, the California Health and Human Services Agency, the Department of Housing and Community Development, the Labor and Workforce Development Agency, the State Department of Social Services, and the Department of Veterans Affairs, and~~ A local agency, as defined in subdivision (a) of Section 6252, may, at the request of the governing board of a California Community College district, enter into a memorandum of understanding that would allow the agency and the district to share electronically collected personal information about users, ~~subject to a local agency's authority to do so~~ subject to compliance with subdivision (a) of Section 11015.5, unless the user has not granted permission for that disclosure.*

*(1) ~~Electronically collected personal information provided by the local agency to the California Community College district pursuant to subdivision (d) may only be used for~~ The electronically collected personal information may only be used for facilitating outreach to, and enrollment of, individuals in the California Community Colleges system and notifying the user of all available support resources.*

*(2) ~~The California Community College district shall not provide student personal information or student level data to the local agency, unless for purposes as described in Education Code Section 76241.~~*

*(3)-(2) In enacting this subdivision, it is the intent of the Legislature that a local agency comply with subdivision (a) before distributing any electronically collected personal information.*

*(4) ~~A California Community College district entering into a memorandum of understanding pursuant to subdivision (b) will do all of the following that receives user information pursuant to this subdivision do all of the following:~~*

*A) Comply with the United States Constitution and applicable federal laws, including the Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. 99).*

*(B) Comply with the California Constitution, and applicable state laws and regulations, including, but not limited to, Section 1798.24 of the Civil Code.*

*(C) Ensure that material used by the California Community College district for outreach, enrollment, and notification of resources protects the user's identity so that the user's membership in the targeted population is not revealed.*

*(D) ~~Limit the memorandum of understanding to personal identifying user data received from the local agency to the service area of the community college district. A California community college district who receives data from the service area of another community college district shall delete the data without using it.~~*

*(5) ~~A California Community College District shall not use the electronically collected personal information provided by the local agency for purposes of prepopulating admission applications nor for enrollment documents.~~*

(6) Upon first contact with the user, the California Community College district shall notify the individual of any educational services available to them and include an opportunity to opt out of future contact. In any and all subsequent contact, the California Community College district shall notify the user of the opportunity to opt out of future contact. The California Community College district shall discard without reuse or distribution any electronically collected information upon the request by the user, *or when the user has enrolled at the California Community College district. ~~matriculated out of the California Community College system.~~*

(7) Notwithstanding paragraph (1) of subdivision (e), for purposes of this subdivision, electronically collected personal information only includes a user's name, home address, home telephone number, cellular phone number, electronic mail address, *and education. ~~and employment or training history for the purpose of determining credit for prior learning through work experience, training, professional development, and similar learning activities.~~*

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Legion, Department of California  
Amvets, Department of California  
Antelope Valley Community College District  
California Association of County Veterans Service Officers  
California State Commanders Veterans Council  
Contra Costa Community College District  
Military Officers Association of America, California Council of Chapters  
San Diego Community College District  
Vietnam Veterans of America, California State Council  
Yuba Community College District

### **Opposition**

None on file.

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