AGENDA

- Brief Overview of Generative AI

- Benefits, Uses and Drawbacks

- Challenges & Legal Issues

- Recommended Best Practices

- Q & A

# A Brief Overview of Artificial Intelligence

What is Artificial Intelligence ("AI")?

- "A machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments." (15 U.S.C.A. 9401(3).)

- Examples of AI we have already been using for years: Google, GPS, Alexa, recommendations, etc.

- Examples of AI tools used by educational agencies
  - UC-Irvine launched its own customized AI tool for faculty and staff.
  - Zoom's built-in AI tool can summarize meetings into notes.
  - Generative AI platforms assist educators with lesson planning and writing assessments.

AI and Generative AI

AI: Computer systems that perform tasks requiring human-like cognition, enabling machines to autonomously learn, reason, and adapt through experience

- **Generative AI:** A subset of AI focused on creating new, original content or data, such as images, text or music by autonomously learning patterns and features from existing datasets
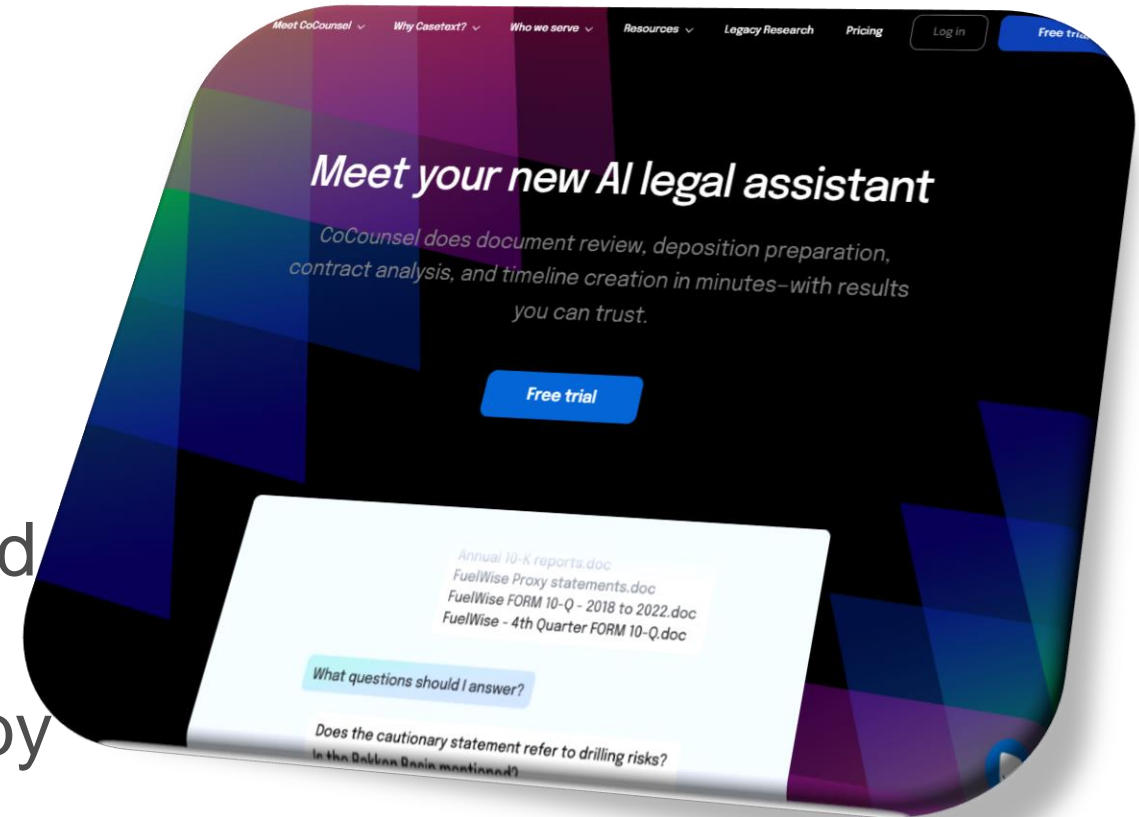
Large Language Model (LLM)

- AI systems are designed to understand and generate human-like texts by learning from vast amounts of textual data

- Trained in 2 steps:
  - 1) Pre-Training: using large data sets with diverse text sources, system learns grammar and facts to predict the next word in a sentence
  - 2) Fine-Tuning: Using specific datasets for targeted applications, systems improves contextual understanding and accuracy

LLM
LARGE LANGUAGE MODEL

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Was this photo made by AI?

Yes   No

Yes, this photograph was generated by AI.

Benefits, Uses and Drawbacks

Benefits of AI in Education

- AI can be applied to provide assistance in a variety of settings

  - **Personalized learning** (including both instruction and tutoring)

  - **Grading and assessment** (beyond traditional multiple choice, can also assess substantive answers to questions or inquiries)

  - **Providing constructive feedback on concepts** (above and beyond giving simple answers to binary questions)

  - **Deployment of "chatbots"** (University of Murcia study): present capabilities on lower-level thinking provide a 91% success rate on answers to more than 38,000 inquiries

    - Staffordshire University and Georgia Tech have recently deployed chatbots to answer lower-level questions that previously required professor-level input

    - Interesting labor relations angle: double-edged sword!

Benefits of AI in Education (cont'd)

- **Student Grading/Evaluation** – use of algorithms to monitor student performance that can be used to predict performance on final examination
- **Personalized Learning** – AI used to tailor instruction for better engagement, closer interaction, improved comprehension, and wider scope of coverage of learning outcomes
- **Sentiment Analysis** – Analyzing student feedback to better understand options and make adjustments to delivery of content or learning material
- **Intelligent Tutoring Systems –** Platforms that provide immediate and customized feedback to improve outcomes

ChatGPT in Education

- Advanced language model – Natural Language Processing

- AI chatbot

- Generative Pre-Trained Transformer model – to understand and generate text based on prompts

- Multilingual support

- Customization

- Trained on massive data from the internet

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How Are Teachers Using ChatGPT?

- Creating course content
- Communicating with students
- Grading assignments
- Personalized learning plans for students
- Adaptive tutoring
- Homework and assignment assistance
- Test preparation

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How Are Administrators Using ChatGPT?

- Virtual assistant for administrative tasks

- Teacher professional development

- Answering frequently asked questions

- Parent/teacher communications

- Student registration and enrollment assistance

- Student counseling and mental health support

- Developing policy and regulations

- Automating processes

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Drawbacks of AI

- Academic dishonesty/potential for cheating (new Massachusetts lawsuit)

- Privacy concerns and security threats

- Limited understanding of context and potential for misinformation (e.g. "hallucinations")

- Ethical considerations (e.g. perpetuation of bias)

- Loss of human interaction/overreliance on technology

AI's Capabilities

Was this photo made by AI?

Yes   No

No, this photograph was not generated by AI.

Challenges & Legal Issues

Challenges & Legal Issues

Logistical Challenges

- Understanding of how to use powerful functions of AI
- What to do with the information generated
- Concerns about cheating or plagiarism/discipline

Legal Issues:

- Intellectual Property and Copyright
- Misinformation/Defamation
- Algorithmic Bias and Discrimination
- Equity and Accessibility

- Privacy and Security Issues
- Student Records (FERPA Obligations)
- Concerns about Job Replacement
- California Public Records Act Requests

Negotiability?

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Potential Legal Issues

- Misinformation/Defamation
  - Headline: OpenAI Fails to Escape First Defamation Suit From Radio Host – AI generated content incorrectly summarized Radio Host background identifying him as being convicted of embezzlement
  - Walters v. OpenAI LLC, Ga. Super. Ct., No. 23-A-04860-2, 1/11/24
  - Would a reasonable person consider a ChatGPT summary a "statement of fact"?
  - OpenAI has disclaimers warning users not to take ChatGPT's output as accurate all the time

- Employment Discrimination
  - 8.9.23 EEOC Breaks New Ground by Settling First-Ever AI Discrimination Lawsuit: 10 Pointers to Avoid Robot Bias – New York - iTutorGroup
  - AI employment screening technology flagged due to applicant filling out same application with different birth dates

Potential Legal Issues (cont'd)

- Intellectual property – who owns the prompts and responses?

  - We have already seen challenges (e.g. New York Times lawsuit)

- Do AI-generated responses infringe on copyright?

- Whether and how will the laws around copyright infringement apply?

"Algorithmic Bias & Discrimination"

- An algorithm is a set of rules or instructions that is to be followed by computers in problem-solving operations to achieve an intended end goal. They are the "core elements of AI."

- "Whenever people create algorithms, they also create a set of data that represent society's historical and systemic biases."

- While it may not be explicitly intended, various biases such as gender and/or racial biases have been found in different AI platforms.

  – Akgun S, Greenhow C. *Artificial intelligence in education: Addressing ethical challenges in K-12 settings*. AI Ethics. 2022

Digital Equity

- Defined: "The condition in which individuals and communities have the information technology capacity that is needed for full participation in the society and economy of the United States."

- In February 2023, President Biden issued an Executive Order that stated "members of underserved communities – many of whom have endured generations of discrimination and disinvestment – still confront significant barriers to realizing the full promise our great Nation…"

- "The Federal Government shall both pursue educational equity so that our Nation's schools put every student on a path to success" and also "root out bias in the design and use of new technologies, such as AI."

  – Source: U.S. Department of Education, Office of Educational Technology, *Artificial Intelligence and Future of Teaching and Learning: Insights and Recommendations*, Washington, DC, 2023

Accessibility

- Title II of the Americans with Disabilities Act (ADA):
  - Prohibits disability-based discrimination in public services furnished by governmental entities. (42 U.S.C. §§ 2131-12165.)

- CA Unruh Civil Rights Act:
  - All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments, including both private and public entities. Any violation of an individual's rights under the ADA also constitutes a violation of the Unruh Act. (Civil Code § 51.)

- Section 504 of the Rehabilitation Act of 1973:
  - "No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (29 U.S.C. § 794(a).)

Privacy Considerations & Risks

Define the "circumstances"; define the privacy right

- Potential Factors:
  - Clear written policy?
  - Information stored on District-owned equipment?
  - Use of institution network?
  - Exchange of personal communications?
  - Notification of how data may be used?

Privacy in Student Records

Federal (FERPA) and state law:

- Defines educational records

- Protects the <u>privacy</u> of records (and the information contained therein)

- Protects the right of <u>access</u> to records

Governing Laws:

- Family Educational Rights and Privacy Act (FERPA)

  - 20 U.S.C. § 1232(g)

- Code of Federal Regulations, title 34, Part 99

- Rules for Community College Districts

  - California Education Code sections 49060-49085

  - California Code of Regulations, title 5, sections 400-450

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California Public Records Act Implications

- **Basis for the CPRA:**

  - **Government Code section 7921.000**

    - "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

  - **Proposition 59 (Cal. Const., Art. 1, § 3(b))**

    - Requires that statutes or other types of governmental decisions, including those already in effect, be broadly interpreted to further the people's right to access government information and narrowly construed if it limits the right of access.

California Public Records Act Implications

- **The General Rule:**

  – Unless an individual's right to privacy outweighs the public's interest in disclosure, or if disclosure is exempted by statute, a record retained by a public agency in the course of business must be disclosed upon request. (*BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742 [60 Cal.Rptr.3d 445])

  – General policy favors disclosure.

  – A <u>very</u> powerful tool.

- **A public record is:**

  – A writing with content relating to the conduct of the public's business, which is prepared by, or owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Government Code Section 7920.530.)

- **What is a writing?**

  – "'Writing means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation . . **. regardless of the manner in which the record has been stored**." (Government Code Section 7920.545.)

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AI's Capabilities: Supreme Court Opinion or AI?
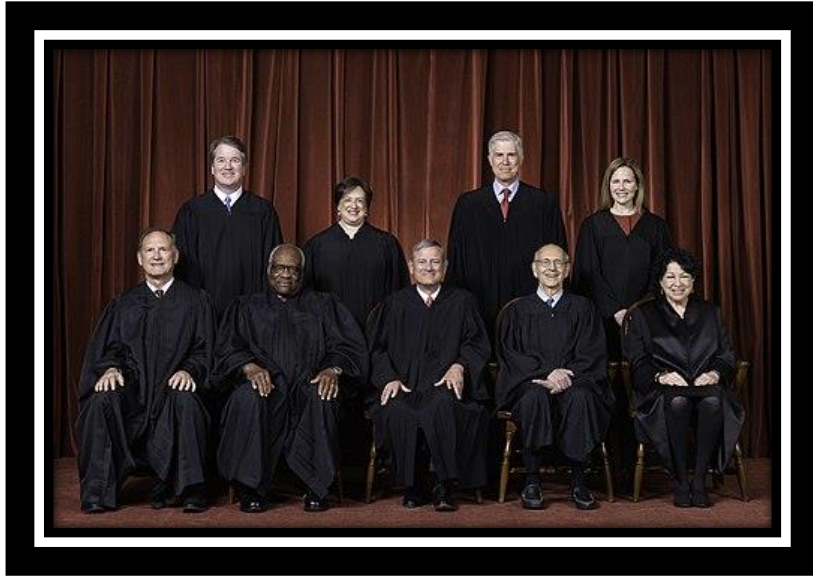
"The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."

Bush v. Gore (2000)
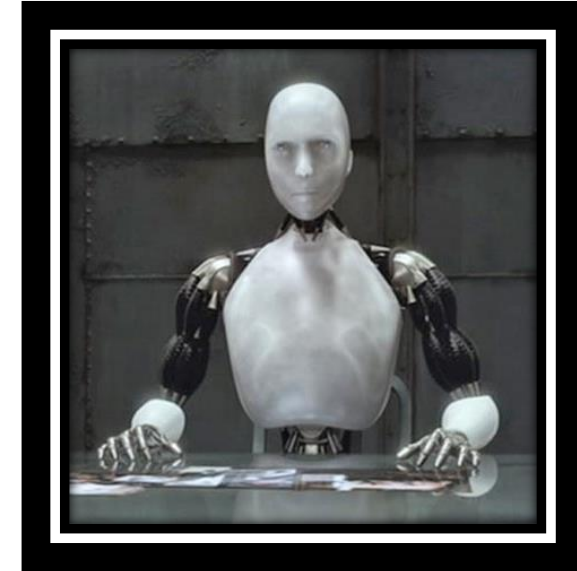
"The right to vote occupies a central place in our democratic system of government. It is both a fundamental right and a civic duty, essential to the functioning of a representative democracy. As such, any regulation that imposes a substantial burden on the exercise of this right must be subject to strict scrutiny."

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Impact on Job Duties: Bargaining Implications

- Upon reaching a firm decision and before implementing a non-negotiable decision, an employer must give notice and a reasonable opportunity to negotiate upon request over the reasonably foreseeable effects of that decision on matters within the scope of representation

Scope of Representation

- Management must bargain on topics within the "scope of representation" which include matters relating to wages, hours and other terms of conditions of employment. (*Gov. Code § 3543.2(a)*.)

- Examples of **wages** include salary, schedule increases, duty pay, uniform reimbursement, employer provided vehicles and bonuses, and turkeys.

- Examples of **hours** of employment include daily hours of work, annual work days, holidays and vacations. (The nature, direction and level of service is generally construed as non-negotiable and a management right)

Other Negotiable Terms and Conditions of Employment

"Other negotiable terms and conditions of employment" under Gov. Code § 3543.2(a)(1) include the following subjects:

- Health & welfare benefits

- Leaves, transfer & reassignment procedures

- Safety conditions of employment

- Class size

- Procedures for evaluating employees

- Layoff of probationary certificated employees

- Organizational Security

- Contracts grievance procedures

- Causes and procedures for certificated discipline other than dismissal and suspension without pay for up to 15 days

- Procedures and criteria for certificated employee layoff for lack of funds

Added Topics That May Become Mandatory Subjects of Bargaining

California Supreme Court test:

Anaheim UHSD (1981) PERB Dec. No. 177, 62 CPER 64 upheld in *San Mateo City SD v. PERB* (1983) 33 Cal.3d 850

If subject is not specifically listed as negotiable (mandatory), it may still be held to be negotiable if:

1) The subject is logically & reasonably related to wages, hours or an enumerated term or condition of employment; <u>and</u>

2) Is a subject of such concern to District and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict; <u>and</u>

3) The District's obligation to negotiate would not significantly abridge its freedom to exercise those managerial prerogatives essential to the achievement of the District's mission

Added Subjects Within Scope Based on Case Law

Extension of case law to examples of topics determined to be within the scope of representation;

- Affirmative action plans

- Class size

- School calendars

- Contracting out bargaining work

- Payments of additional compensation based upon criteria other than years of training and experience

- Job assignments

- Job reclassification

- Negotiation ground rules

- Overtime work assignments

- Personnel files

- Preparation time

- Reduction in hours in lieu of layoff

- Release time

- Evaluation of procedures

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Bargaining the Effects of Non-Negotiable Decisions

Before implementing a <u>non-negotiable decision</u>, a district must first negotiate any <u>impact</u> of that decision that is negotiable, called "**EFFECTS BARGAINING**." However, PERB has recognized an <u>exception</u> to this general rule and has permitted districts to implement non-negotiable decisions while continuing to bargain negotiable effects of that decision when:

1) The implementation date is based on an immutable (i.e. fixed) deadline or an important managerial interest, such that a delay in implementation beyond the date chosen would effectively undermine the employer's right to make a decision; **and**

2) The District gives <u>sufficient advanced notice</u> of the decision and implementation date to the employee representative to allow for meaningful negotiations prior to implementation; **and**

3) The employer negotiates in good faith <u>prior</u> to implementation <u>and continues to negotiate afterwards in an effort to address the unresolved negotiable effects</u>.

Compton Community College District (1989) PERB Decision No. 720

Permissive/Non-mandatory Bargaining Topics

- Under Gov. Code § 3543.2(a)(4) all matters not specifically enumerated and reserved to districts are not required to be negotiated, except a district is not limited to <u>consulting</u> with an employee representative on any matter outside the scope of representation. You cannot <u>require</u> districts or employee representative to meet and negotiate regarding permissive or non-mandatory subjects of bargaining.

- There is no recourse if an agreement is not reached on a permissive/non-mandatory bargaining topic.

<u>Note</u>: permissive/non-mandatory bargaining topics are not converted to mandatory subjects of negotiations because they are included in a collective bargaining agreement. These subjects are only required to be maintained for the duration of the contract because of the contractual obligation

Recommended Best Practices

Adopt District Policies re: Generative AI

- Adopt/update District policies to address AI-related issues

  – Existing policies may be read to cover AI

  – Consider updating internal protocols to expressly account for AI or creating a new internal policy specifically about AI

Figure 14: Recommendation for desired qualities of AI tools and systems in education
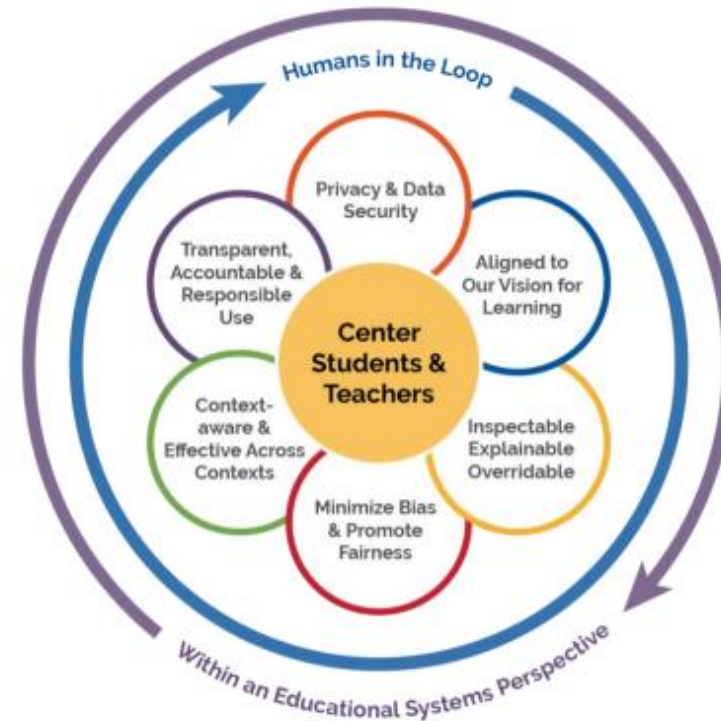
Adopt District Policies re: Generative AI

- Sets expectations for AI use in schools

- Ensures compliance with privacy and education laws

- Reduces exposure to liability by establishing safeguards

- Consistent application of rules across all schools and departments

- Provides a basis for training and enforcement

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Policy Development and Implementation

- Engage stakeholders (Including the Unions!)

- Pilot programs

- Oversight

- Feedback and monitoring

- Regular updates

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Best Practices – Ongoing Training

- Implicit Bias/Cultural Competence training to recognize and address "Algorithmic Bias and Discrimination" and ensure equity and accessibility for all students

- Meaningful PDs on AI platforms to level playing field and warn against sharing sensitive information about themselves, colleagues, or students

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Safeguarding Confidential Information

- Federal and state law protect privacy in student records.
  - Family Educational Rights and Privacy Act (FERPA): 20 U.S.C. § 1232(g)
  - Code of Federal Regulations, title 34, Part 99
  - Rules for K-12 School Districts
    - California Education Code sections 49060-49085
    - California Code of Regulations, title 5, sections 400-450

- Think twice about inputting student information, confidential employee information, and any other confidential information into open-source AI platform
  - Open-source AI platform is somewhat analysis to a public domain like social media

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Best Practices for Employers

- Understand the Tool

- Use AI to Enhance, not replace

- Maintain Student Privacy

  - Federal (FERPA) and State law protect the privacy of student records

- Be Transparent

- Bias Awareness

  - Various biases such as gender and/or racial biases have been found in different AI platforms

Best Practices for Employers

- Continuous professional development

- Encourage critical thinking

- Collaboration and feedback

- Ethical considerations

- Seek guidance when needed

Best Practices for Employers

- Learn how to identify AI generated content
  - Perplexity
  - Rigid structure
  - Tone
  - Generic language
  - Writing style
  - Too good to be true improvements in work
  - Consider AI to catch AI generated content – GPTZero, Turnitin, etc.
    - But these have frequent false positives and false negatives

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Policies Recommended by Dept. of Education

- **Guiding Questions:**

  - *1) What is the vision of a desirable and achievable system that leverages automation to advance learning while protecting human agency?*

  - *2) How and when will we be ready with necessary guidelines and guardrails to ethically and equitably implement this vision?*

- Leverage automation to advance learning outcomes while protecting human decision making and judgment;

- Interrogate the underlying data quality in AI models to ensure fairness and accuracy.

- Enable examination of how particular AI technologies, like ChatGPT, may increase or undermine equity for students; and,

- Take steps to safeguard and advance equity, including providing for human checks and balances and limiting any AI systems and tools that undermine equity

  - U.S. Department of Education, Office of Educational Technology, *Artificial Intelligence and Future of Teaching and Learning: Insights and Recommendations*, Washington, DC, 2023.

QUESTION & ANSWER

THANK YOU

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