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Balancing Act:
AI's Legal Landscape & Practical Impacts in Education
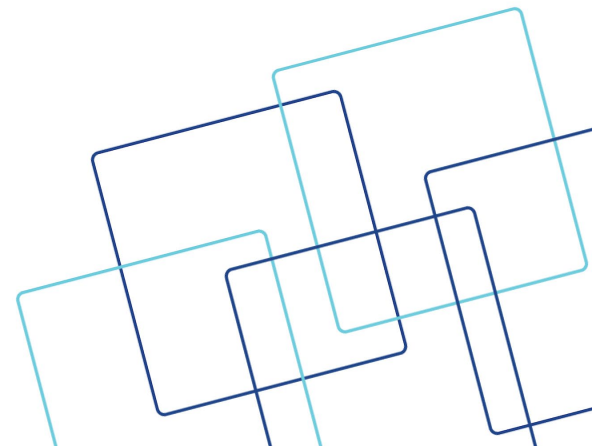
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Curricular and Improvement Support Committee for Computer Science

California County Superintendents

March 11, 2024

Presenter

Karen M. Rezendes

AT LOZANO SMITH

Karen M. Rezendes is the Managing Partner of Lozano Smith. Karen has extensive expertise in all areas of private and public sector employment law including effective employee recruitment, retention, employee contracts, evaluation, investigations, equal employment opportunity issues and discipline. Karen is also an expert in employee/employer relations and negotiations. Over her 34 years of experience, Karen has negotiated hundreds of agreements with labor associations throughout the State of California. Karen also provides day to day employment and labor law support to public and private sector employers and supports education and public agency clients regarding the Brown Act and board governance, student issues and general school and public agency law.

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Nicholas J. Clair is Senior Counsel in Lozano Smith's Sacramento Office. Mr. Clair focuses on local government and facilities and business issues for public agencies. Mr. Clair advises clients on a variety of transactional matters affecting special districts and local governments, including the Brown Act, California Public Records Act, Proposition 218, elections law, ethics, governance, financing, CEQA, and human resources.

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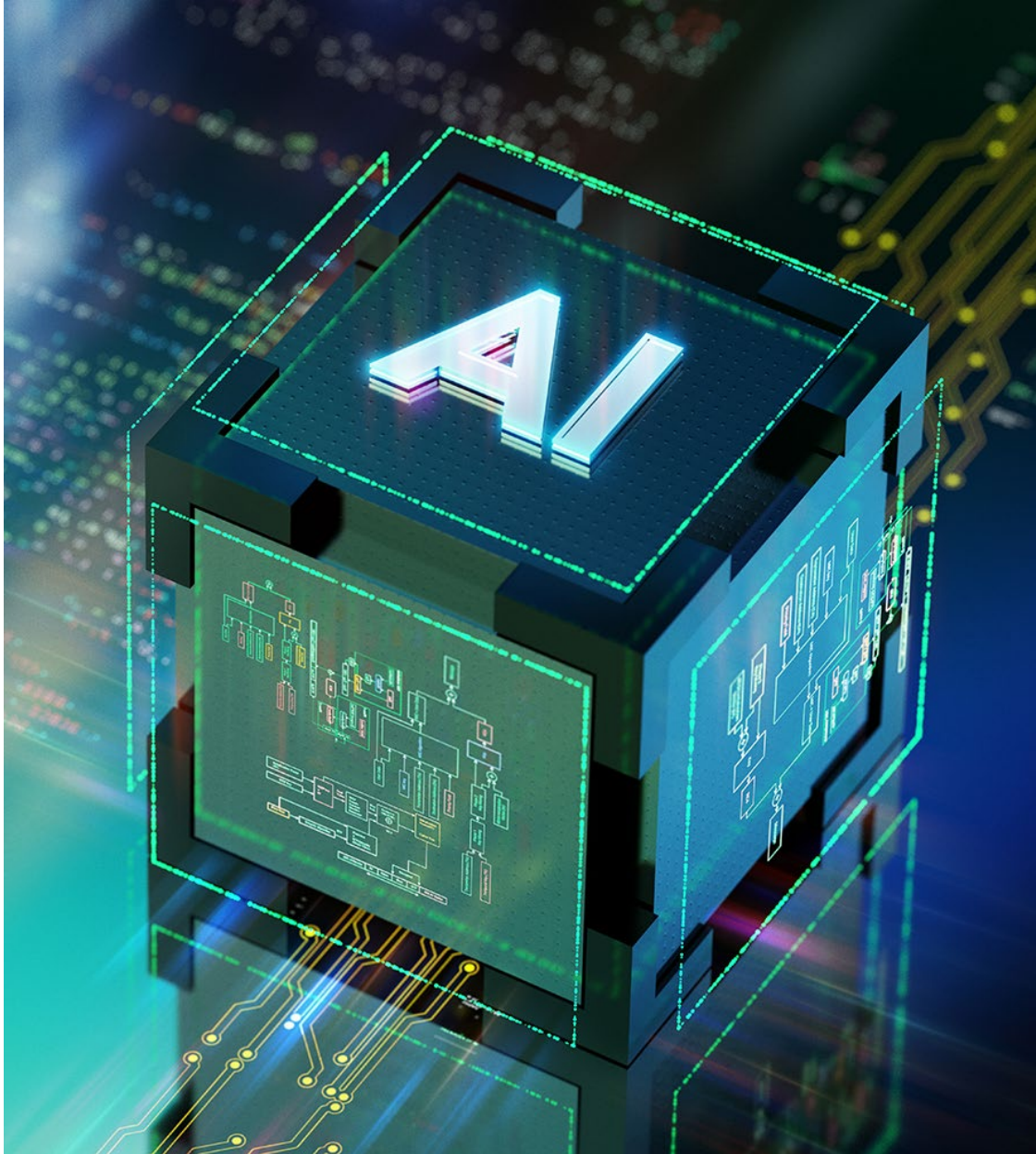
Topics

Topic One: Overview LLMs

Topic Two: General Risks

Topic Three: The Educator's Special Responsibility

Topic Four: AI Deployment & Culture

Topic Five: Policies

Topic Five: AI Resources

Overview of LLMs

Large Language Models (LLMs)

- Imagine a large "equation" with billions of variables (parameters and weights/bias)

- Trained by predicting text from sample documents. Model is adjusted to reduce inference error (backpropagation)

- Through training the model "learns" language, conversation, facts, and maybe even logic

- Further training transforms document predicting base model to helpful assistant

- Context Window

Model Types

Foundational Models vs Domain Specific Models

- Foundational Models – General Purpose
- Domain Specific – Trained or Fine Tuned on Domain Specific Dataset

Open Source vs. Closed Source

- Closed Source – Proprietary
- Open Source – Non-proprietary – Potential for fine tuning, student projects, hosting flexibility
  - Classrooms – Hugging Face

Small and Edge Models

- Models small enough to run on local hardware, even laptops

General Risks

Hallucinations

- Making things up – LLMs do not have a central database of information to refer to
- Retrieval Augmented Generation

Bias

- Unfairness in datasets can be "learned" by the models

Privacy

- Many LLM providers train on user inputs (generally for reinforcement learning)
- Most LLM systems are not designed for student use, creating challenges around student records, etc.

Over Reliance

- "I understood it to be a super charged search engine and had repeatedly used it in other contexts to (successfully) find accurate information online," Michael Cohen wrote. "I did not know that Google Bard could generate non-existent cases."

Copyright

- Mostly a risk related to model/service availability if lawsuits succeed or for locally run models
- Small risk of reproduction of copyrighted works

Is ChatGPT Safe for All Ages?

ChatGPT is not meant for children under 13, and we require that children ages 13 to 18 obtain parental consent before using ChatGPT. While we have taken measures to limit generations of undesirable content, ChatGPT may produce output that is not appropriate for all audiences or all ages and educators should be mindful of that while using it with students or in classroom contexts.

We advise caution with exposure to kids, even those who meet our age requirements, and if you are using ChatGPT in the education context for children under 13, the **actual interaction with ChatGPT must be conducted by an adult.**

https://help.openai.com/en/articles/8313401-is-chatgpt-safe-for-all-ages

Do AI Detectors Work?

In short, no, not in our experience. Our research into detectors didn't show them to be reliable enough given that educators could be making judgments about students with potentially lasting consequences.

https://help.openai.com/en/articles/8313351-how-can-educators-respond-to-students-presenting-ai-generated-content-as-their-own

Can ChatGPT Be Used for Assessment and Feedback?

It is inadvisable and against our Usage Policies to rely on models for assessment decision purposes without a "human in the loop" (i.e., a person who may use AI as an aide, but who ultimately makes the decision using their own judgment). Models today are subject to biases and inaccuracies, and they are unable to capture the full complexity of a student or an educational context.

https://help.openai.com/en/articles/8313397-how-can-chatgpt-be-used-for-assessment-ht-and-feedback

The Educator's Special Responsibility

Preparing Students for an AI-Centered World

- AI will become more powerful and integrated into our lives
- Students need to be prepared to utilize AI in both their personal and professional lives
- Safety, Ethics and Digital Citizenship

Students Need to Understand the Limitations of AI and Responsible Use

- LLMs are not magic answer machines
- LLMs can supplement, but not replace, the skills students learn

Establishing an AI Culture

Balancing Exploration with Responsible AI Use

- Schools should feel emboldened to experiment with & explore AI applications
- AI should always be used responsibly
    - Do not use for decision making
    - Always have a human-in-the-loop
    - Be mindful of data privacy
- General Liability Risks
    - Data privacy violations
    - Negligence
    - Discrimination
    - Bargaining issues
    - CPRA

Sample AI Policy

Training.
    a. AI Users shall receive training concerning the potential benefits and risks associated with AI Tool usage.
    b. Require that AI Users receive specific training on the operation and use of specific District or COE approved AI tools.

General Principles.
    a. When AI Users utilize AI Tools to perform, or assist in the performance of, any work-related activities without regard to the location of the AI Users at the time they use the AI Tools, or whether the AI Users operate the AI Tools on Company equipment and systems, on the AI Users' personal devices, or on third-party equipment.
    b. AI Users should only use the AI Tools in circumstances when they enhance or assist the AI Users in performing their job-related duties by enhancing productivity and efficiency.
    c. AI Tools may produce erroneous or inaccurate information and/or the information provided may not be suitable for specific uses within the District. Results may also reflect biased or incomplete data sets and AI Tools shall not be used solely as a decision maker or solely in situations involving important matters.
    d. AI Users shall recognize the limitations of the tools they are using, avoid over-reliance on AI Tools, carefully review output for errors, and identify potentially erroneous, incomplete, or otherwise problematic output.

Use of Approved AI Tools.
    a. The District will maintain a list of approved AI tools. The list will also indicate which students, department and staff are authorized to use AI Tool and specify which AI Tools they are authorized to use.
    b. Prior to using an approved AI tool, a request to use such tool and the reasons for such request, must be reviewed and approved by the appropriate District or COE Departments to ensure coordination with HR, Legal, Education, Technological, and Business Functions.

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LAUSD Responsible Use Policy-Part 1 (10/2023)

- Prevents unauthorized access and other unlawful activities by users online, prevent unauthorized disclosure of, or access to, sensitive information, and to comply with legislation including, but not limited to, the Children's Internet Protection Act (CIPA), Children's Online Privacy Protection Act (COPPA), Family Educational Rights and Privacy Act (FERPA), and the California Electronic Communications Privacy Act (CalECPA).
- "User" includes anyone using computers, Internet, email, and all other forms of electronic communication or equipment provided by the District (the "network") regardless of the physical location of the user. It applies even when District-provided equipment (laptops, tablets, etc.) is used off District property. It applies when non-District devices access the District network or sensitive information.
- Positive Digital Citizenship Training and Certification regarding Training and Policy Compliance

https://www.lausd.org/cms/lib/CA01000043/Centricity/Domain/21/BUL-999.15%20Responsible%20Use%20Policy_RUP%202023%20FINALPubAttachments.pdf

LAUSD Responsible Use Policy-Part 2

The District:

- Uses measures to block or filter access, as much as reasonably possible, to visual and written depictions that are obscene, pornographic, or harmful to minors over the network.
- Monitors users' online activities and access, review, copy, and store or delete any communications or files and share them with adults.
- No expectation of privacy regarding their use of District equipment, network, and/or Internet access or files, including email. Users understand that the District has the right to take back possession of District equipment at any time.
- Will secure the network against potential cyber security threats. This may include blocking access to District applications, including, but not limited to, email, data management and reporting tools, and other web applications outside the United States and Canada. **The policy applies to the use of artificial intelligence (AI), including, but not limited to, generative AI tools that can generate new content including text, images, video, audio, structures, computer code, synthetic data etc. in response to prompts generated by users.**

AI Deployment Examples

Low Risk

- Educational Content Summaries
- Lesson Planning Brainstorming
- Enhancing Library Search Capabilities

Moderate Risk

- AI Tutors
- AI Character Interactions
- Managing Communications with Parents and Students

High Risk

- Using AI to Grade and Assess Students
- Using AI to generate IEPs/504s
- AI Grading
- Involvement of AI in Decision Making
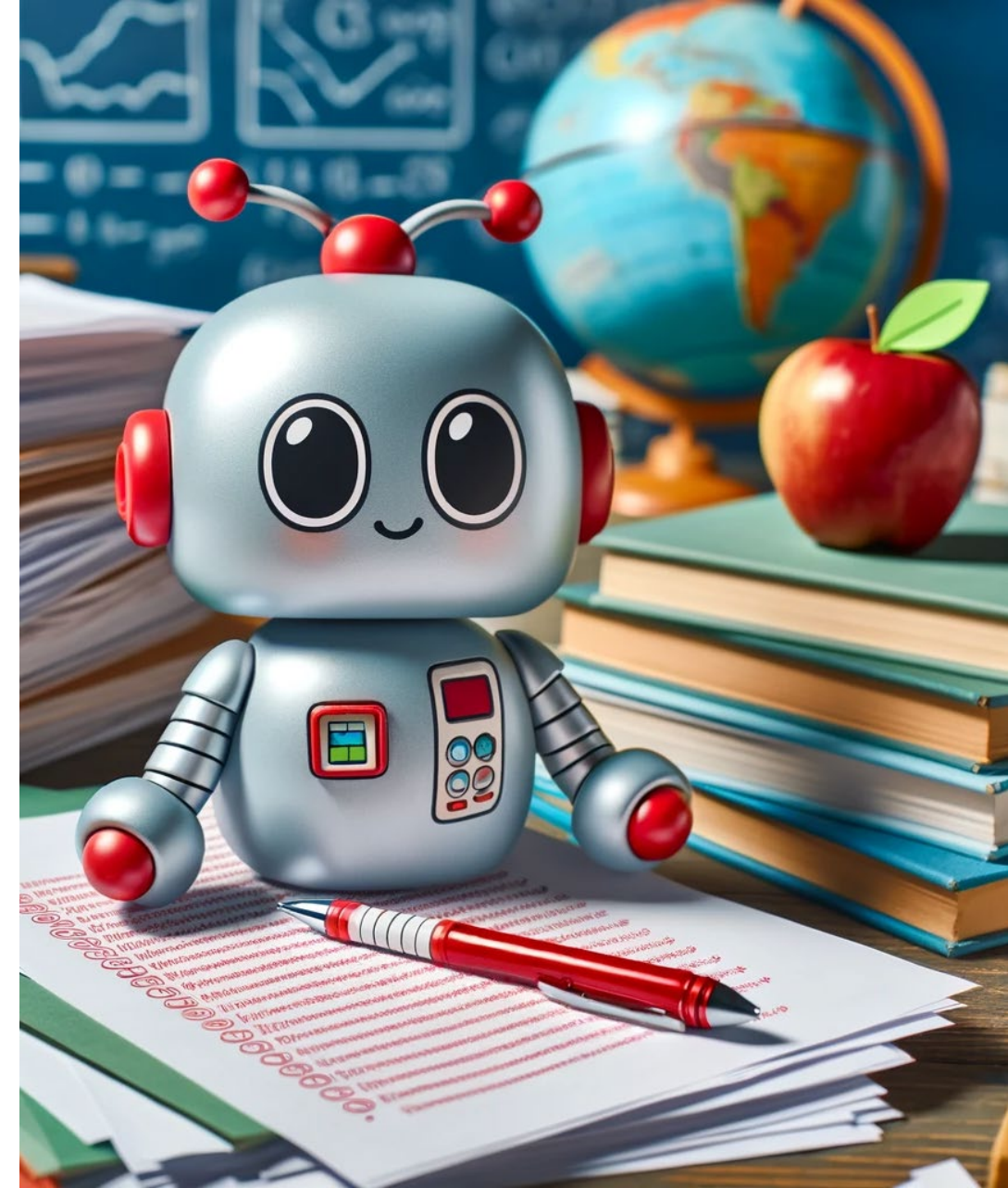
Lozano Smith AI Resources

Artificial Intelligence

- Policies

- Humans in the Loop-Adults

- Age-Appropriate

- Educationally Appropriate

- District-Level Approval & Coordination

- Trained on Safety, Privacy, Accuracy, Bias Risks, Legal, and Appropriate Use

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