



RESEARCH SUBJECT TO THE U.S. DEPARTMENT OF EDUCATION REGULATIONS

7/22/2021

I. OVERVIEW

The following special considerations apply to all research involving human subjects supported or conducted by the U.S. Department of Education. These considerations are in addition to those found in 45 CFR 46 Subparts A-D.

II. DEFINITIONS

For research funded by the Department of Education, the following definitions apply, regarding access to instructional material used in a research or experimentation program:

- Research or experimentation program or project means any program or project in any research that is designed to explore or develop new or unproven teaching methods or techniques.
- Children are persons enrolled in research not above the elementary or secondary education level, who have not reached the age of majority as determined under state law.

III. RESEARCH SUBJECT TO THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

The Family Educational Rights and Privacy Act (FERPA) (34 CFR 99) is a federal law that provides protections for personally identifiable information contained within student educational records. In regards to research activities, FERPA applies to:

- Use of educational records for scholarly research, and
- Use of educational records for research on teaching and learning

A. Use of Educational Records with Student/Parent Permission

Generally, use of identifiable information from students' educational records requires written permission from the student's parent (if the student is a minor) or from the student (if the student is not a minor). This permission may be met if the student or parent signs and dates a consent form authorizing the release of their educational records for the research. The consent must include:

- The records to be disclosed
- The purpose of the disclosure, and
- The recipient of the disclosed information

B. Use of Educational Records without Student/Parent Permission

FERPA allows (but does not require) educational institutions to disclose education records without written permission under three categories. These categories are:

- Directory information
- De-identified information
- Information that qualifies for a study exception (see below)

1. Directory Information

FERPA defines “directory information” as information contained in a student’s education record that would not generally be considered harmful or an invasion of privacy if disclosed. This may include, for example: the student’s name, the name of the student’s school, major course of study, dates of attendance, or other basic academic information.

2. De-Identified Information

Education records may be released without consent under FERPA if all personally identifiable information has been removed including:

- Student’s name and other direct personal identifiers, such as the student’s social security number, student number or biometric record.
- Indirect identifiers, such as the name of the student’s parent or other family members; the student’s or family’s address, and personal characteristics or other information that would make the student’s identity easily traceable; date and place of birth and mother’s maiden name
- Biometric records, including one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual, including fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting
- Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

3. Study Exception

When research is subject to the Family Educational Rights and Privacy Act (FERPA) (34 CFR 99), an exception may be granted to the requirement for obtaining parental/student consents to release student records for research if the study is being conducted for, or on behalf of, the disclosing institution in order to:

- Develop, validate, or administer predictive tests.
- Administer student aid programs.
- Improve instruction.

A school district or post-secondary institution that uses this exception is required to enter into a written agreement with the Organization or researcher conducting the research that specifies:

- The determination of the exception.
- The purpose, scope, and duration of the study.
- The information to be disclosed.
- That information from education records may only be used to meet the purposes of the study stated in the written agreement and must contain the requirements in 34 CFR 99.31(a)(6) on re-disclosure and destruction of information.
- That the study will be conducted in a manner that does not permit personal identification of parents and students by anyone other than representatives of the Organization with legitimate interests.
- That the Organization is required to destroy or return all personally identifiable information when no longer needed for the purposes of the study.
- The time period during which the Organization must either destroy or return the information.

C. Information Not Protected Under FERPA

Information not considered part of the education record, and therefore not subject to FERPA, includes:

- Records kept in sole possession of the creator, such as instructor's notes
- Some law enforcement records
- Employment records that relate exclusively to the individual as an employee
- Records confined to information about an individual after they are no longer a student, such as information about alumni activities

IV. RESEARCH SUBJECT TO THE PROTECTION OF PUPIL RIGHTS AMENDMENT

In order to comply with the Protection of Pupil Rights Amendment (PPRA) (34 CFR 98.4), the following must be in place as applicable. Additionally, investigator must document for the IRB that (for research projects directly funded by the US Department of Education) no student will be required, as part of any research project, to submit without prior consent to surveys, psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning one or more of the following:

- Political affiliations or beliefs of the student or the student's parent.
- Mental or psychological problems of the student or the student's family
- Sex behavior or attitudes

- Illegal, anti-social, self-incriminating, or demeaning behavior. Critical appraisals of other individuals with whom respondents have close family relationships
- Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers
- Religious practices, affiliations, or beliefs of the student or student's parent
- Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

Prior consent refers to the prior consent of the student, if the student is an adult or emancipated minor; or prior written consent of the parent or guardian, if the student is an un-emancipated minor.

V. RESEARCH CONDUCTED IN A SCHOOL RECEIVING US DEPARTMENT OF EDUCATION FUNDING (34 CFR 98, 99)

For research not directly funded by the U.S. Department of Education but conducted in a school that receives funding from the U.S. Department of Education, the research protocol must include provisions, as applicable, to ensure:

- The right of a parent of a student to inspect, upon the request of the parent, a survey created by a third party before the survey is administered or distributed by a school to a student. Such access must be made available within a reasonable period of time after the request is made by the parent.
- The protection of student privacy and data confidentiality in the event of the administration or distribution of a survey to a student containing one or more of the following items (including the right of a parent of a student to inspect, upon the request of the parent, any survey containing one or more of such items):
 - Political affiliations or beliefs of the student or the student's parent.
 - Mental or psychological problems of the student or the student's family.
 - Sex behavior or attitudes.
 - Illegal, anti-social, self-incriminating, or demeaning behavior.
 - Critical appraisals of other individuals with whom respondents have close family relationships.
 - Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.
 - Religious practices, affiliations, or beliefs of the student or the student's parent.
 - Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).
- The right of a parent of a student to have reasonable access to inspect any instructional material used as part of the educational curriculum for the student. The procedures for granting such a request must be described.

- The school has adopted a policy in conjunction with parents regarding:
 - Administration of physical examinations or screenings that the school or agency may administer to a student.
 - The collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for that purpose), including arrangements to protect student privacy that are provided by the agency in the event of such collection, disclosure, or use.
 - The right of a parent of a student to inspect, upon the request of the parent, any instrument used in the collection of personal information before the instrument is administered or distributed to a student.
 - Any applicable procedures for granting a request by a parent for reasonable access to such instrument within a reasonable period of time after the request is received.

References: 34 CFR 97
34 CFR 98
34 CFR 99
34 CFR 350

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