UNLV | Office of RESEARCH INTEGRITY HUMAN SUBJECTS

Guidance – Department of Education Requirements

General Description

Research that is regulated by federal agencies often times have agency-specific requirements. This guidance is the assist researchers and the IRB in identifying additional regulatory considerations.

When it applies / context

This guidance may be used by members of the UNLV Human Research Protection Program (HRPP), Researchers and the IRB. Researchers should review this guidance when conducting research supported by the Department of Education (ED). The IRB should use this guidance to review for agency-specific requirements in research supported by the ED.

Considerations & Best Practices

For research funded by the National Institute on Disability and Rehabilitation Research, when the IRB reviews research that purposefully requires inclusion of children with disabilities or individuals with mental disabilities as research participants, the IRB must include at least one person primarily concerned with the welfare of these research participants.

For approving waivers of alterations of the consent process and waivers of consent documentation,

- The process will comply with the Family Education Rights and Privacy Act (FERPA).
- The IRB may approve waivers or alterations of the consent process and waiver of consent documentation.
- FERPA applies when researchers obtain student records or personal education information from an education program as defined as any program principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education.
- Exceptions to parental or student consent to release student records for research may be granted by the IRB.
    - An educational agency or institution may disclose personally identifiable information from an education record of a student without consent if the disclosure is part of an agreement between organizations or researchers conducting studies for, or on behalf of, educational agencies or institutions to:
        - Develop, validate, or administer predictive tests.
        - Administer student aid programs.
        - Improve instruction.
    - A school district or postsecondary 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 current requirements in ED regulations on redisclosure 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.
    - 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 or student number.
        - 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; and 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.

For prospective participants who cannot give consent of whose decision-making capacity is in question, the consent process

- Will comply with the Protection of Pupil Rights Amendment. The IRB will determine if the process described by the Researcher complies with the Amendment.
    - For certain types of research projects directly funded by the U.S. 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 means:
        - Prior consent of the student, if the student is an adult or emancipated minor.
        - Prior written consent of the parent or guardian, if the student is not an emancipated minor.
- For certain types of research projects not directly funded by ED and conducted in a school that receives funding from ED, compliance with ED regulations that schools are required to develop and adopt policies in conjunction with parents regarding the following is verified:
    - 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.
        - Any applicable procedures for granting a request by a parent for reasonable access to such survey within a reasonable period of time after the request is received.
    - Arrangements to protect student privacy that are provided by the agency 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 inspect, upon the request of the parent, any instructional material used as part of the educational curriculum for the student.
        - Any applicable procedures for granting a request by a parent for reasonable access to instructional material received.
    - The 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.

Researchers and Research Staff are knowledgeable about and follow all regulatory requirements, including

- For research funded by ED, access to instructional material used in a research or experimentation program is required.
  - All instructional material--including teachers' manuals, films, tapes, or other supplementary instructional material--which will be used in connection with any research or experimentation program or project must be available for inspection by the parents or guardians of the children engaged in such research.
  - 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.

Resources

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99)-see below

Protection of Pupil Rights Amendment (PPRA) - Statute: 20 U.S.C. § 1232h. Regulations: 34 CFR Part 98- see below

AAHRPP Elements: II.1.E., II.3.G., II.4.B., III.2.C.

Family Educational Rights and Privacy Act

(https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=rn)

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. 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. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.

- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
    - School officials with legitimate educational interest;
    - Other schools to which a student is transferring;
    - Specified officials for audit or evaluation purposes;
    - Appropriate parties in connection with financial aid to a student;
    - Organizations conducting certain studies for or on behalf of the school;
    - Accrediting organizations;
    - To comply with a judicial order or lawfully issued subpoena;
    - Appropriate officials in cases of health and safety emergencies; and
    - State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

For additional information, you may call 1-800-USA-LEARN (1-800-872-5327) (voice). Individuals who use TDD may use the Federal Relay Service.

Or you may contact us at the following address:
Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520

Protection of Pupil Rights Amendment (http://familypolicy.ed.gov/ppra?src=ferpa)

Protection of Pupil Rights Amendment (PPRA) - Summary of Requirements
(http://familypolicy.ed.gov/content/ppra-requirements)

Statute: 20 U.S.C. § 1232h. Regulations: 34 CFR Part 98.

PPRA applies to the programs and activities of a State educational agency (SEA), local educational agency (LEA), or other recipient of funds under any program funded by the U.S. Department of Education. It governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following eight protected areas:

1. political affiliations or beliefs of the student or the student's parent;
2. mental or psychological problems of the student or the student's family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or student's parent; or,

8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

PPRA also concerns marketing surveys and other areas of student privacy, parental access to information, and the administration of certain physical examinations to minors. The rights under PPRA transfer from the parents to a student who is 18 years old or an emancipated minor under State law.

LEAs must provide parents and eligible students effective notice of their rights under PPRA. The notice must explain that an LEA is required to obtain prior written consent from parents before students are required to submit to a survey that concerns one or more of the eight protected areas listed above, if the survey is funded in whole or in part by Department funds. For surveys that contain questions from one or more of the eight protected areas that are not funded in whole or in part with Department funds, LEAs must notify a parent at least annually, at the beginning of the school year, of the specific or approximate date(s) of the survey and provide the parent with an opportunity to opt his or her child out of participating. LEAs must also notify parents that they have the right to review, upon request, any instructional materials used in connection with any survey that concerns one or more of the eight protected areas and those used as part of the educational curriculum.

PPRA requires LEAs to work with parents to develop and adopt policies on the following items, unless the LEA or SEA had established comparable policies on or before January 8, 2002:

- The right of parents to inspect, upon request, a survey created by a third party before the survey is administered or distributed by a school to students and the procedure for granting a request by a parent for such access;
- Arrangements to protect student privacy that are provided by the LEA in the event of the administration of a survey to students containing one or more of the eight protected items of information noted above (including the right of parents to inspect, upon request, a survey that concerns one or more of the eight protected items of information);
- The right of parents to inspect, upon request, any instructional material used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access;
- Administration of physical exams or screenings of students;
- The collection, disclosure, or use of personal information (including items such as a student's or parent's first and last name, address, telephone number or social security number) collected from students for marketing purposes, or to sell or otherwise provide the information to others for marketing purposes, including the LEA's arrangements for protecting student privacy in the event of collection, disclosure, or use of information for these purposes; and
- The right of parents to inspect, upon request, any instrument used in the collection of personal information for marketing or sales purposes before the instrument is administered or distributed to a student and the LEA's procedure for granting a parent's request for such access.

LEAs must notify parents of their rights under PPRA and of these policies at least annually at the beginning of the school year. LEAs must also notify parents within a reasonable period of time if any substantive change is made to the policies. (This notification requirement may be included in the general notification of rights under PPRA.) An LEA is not required to develop and adopt new policies if the SEA or LEA had in place on January 8, 2002, policies covering the requirements set forth in this law. However, the LEA must still provide annual notice of these policies to parents.

In addition, an LEA must "directly" notify, such as through U.S. Mail or email, parents of students who are scheduled to participate in the specific activities or surveys listed below and provide an opportunity for parents to opt their child out of participation in the specific survey or activity. The notification must be

provided at least annually at the beginning of the school year and must provide the specific or approximate dates during the school year when activities described below are scheduled, or expected to be scheduled. If the LEA is unable to identify the specific or approximate dates of the activities or surveys requiring specific notification at the beginning of the school year, it must provide this notification to parents once the activity or survey is scheduled. Parents should be provided reasonable notification of the planned activities and surveys and be provided an opportunity to opt their child out, as well as be provided with an opportunity to review any pertinent surveys. A model specific notification for use by LEAs is attached and may also be obtained on the Web site noted at the end of this guidance. LEAs must offer an opportunity for parents to opt their child out of participating in the following activities:

- The administration of any survey concerning one or more of the eight protected areas listed above if it is not funded in whole or in part with Department funds. (LEAs must obtain active consent, and may not use an opt-out procedure, if the survey is funded in whole or in part with Department funds);
- Activities involving the collection, disclosure, or use of personal information collected from students for marketing purposes, or to sell or otherwise provide the information to others for marketing purposes; and
- Any non-emergency, invasive physical examination or screening that is 1) required as a condition of attendance; 2) administered by the school and scheduled by the school in advance; and 3) not necessary to protect the immediate health and safety of the student, or of other students. This law does not apply to any physical examination or screening that is permitted or required by State law, including physical examinations or screenings permitted without parental notification.

PPRA does not preempt applicable provisions of State law that require parental notification. Also, requirements concerning activities involving the collection and disclosure of personal information from students for marketing purposes do not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for or to students or educational institutions, such as the following:

1. College or other postsecondary education recruitment, or military recruitment;
2. Book clubs, magazines, and programs providing access to low-cost literary products;
3. Curriculum and instructional materials used by elementary schools and secondary schools;
4. Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other statistically useful data for the purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments;
5. The sale by students of products or services to raise funds for school-related or education-related activities; and
6. Student recognition programs.

Definitions of some terms used in PPRA:

"Instructional Material" – instructional content that is provided to a student, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments.

"Invasive Physical Examination" – any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

"Personal Information" – individually identifiable information including –

1. a student's or parent's first and last name;
2. a home or other physical address (including a street name and the name of a city or town);
3. a telephone number; or,
4. a social security number.