

## **25.13 Department of Education: The Protection of Pupil Rights Amendment (PPRA) and the Family Educational Rights and Privacy Act (FERPA)**

Research funded through the Department of Education must comply with additional regulatory requirements under 34 CFR 98.3, 34 CFR 98.4, 34 CFR 99, 34 CFR 356.3

### **25.13.1 Protection of Pupil Rights Amendment (PPRA)**

The Protection of Pupil Rights Amendment (PPRA) (20 U.S.C. § 1232h; 34 CFR Part 98) applies to programs that receive funding from the U.S. Department of Education (ED). PPRA is intended to protect the rights of parents and students.

No student shall be required, as part of any research project, to submit without prior consent (parental permission and assent) 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
- Mental and psychological problems potentially embarrassing to the student or his or her family
- Sex behaviors and attitudes
- Illegal, anti-social, self-incriminating and demeaning behavior
- Critical appraisals of other individuals with whom the student has close family relationships
- Legally recognized privileged & analogous relationships, such as those of lawyers, physicians & 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 a program

Prior consent means:

- Prior consent of the student, if the student is an adult (age 18 or older) or emancipated through a court order
- Prior written consent (permission) of the parent or legal guardian, if the student is an un-emancipated minor.

The University of Virginia IRB does not consider waivers under PPRA.

PPRA also requires parental notification and the opportunity to opt their child out of any non-emergency, invasive physical exam or screening required as a condition of attendance, administered by the school or its agent, and not necessary to protect the immediate health and safety of the student. There is an exception for State mandated exams.

For certain research not directly funded by the ED and conducted in a school that receives funding from the ED: The IRB must verify compliance with the ED regulations that schools are required to develop and adopt policies in conjunction with parents regarding the following:

- 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 including 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 topics covered under PPRA.
- 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.

PPRA also requires parental notification and the opportunity to opt their child out of any non-emergency, invasive physical exam or screening required as a condition of attendance, administered by the school or its agent, and not necessary to protect the immediate health and safety of the student. There is an exception for State mandated exams.

### **25.13.2 Family Educational Rights and Privacy Act (FERPA)**

The Family Educational Rights and Privacy Act (FERPA) 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."

### **25.13.3 Conditions for Which Student Records Can Be Disclosed without Consent for Research Purposes**

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 research purposes, FERPA allows schools to disclose students' educational records, without consent, to the following parties or under the following conditions (34 CFR § 99.31),

- The Researcher will receive a completely de-identified data set from the educational institution. Personal identifiers include:
  - 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; 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.
- An educational agency or institution may disclose personally identifiable information from an education record of a student without consent if the disclosure is to organizations 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 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.

#### **25.13.4 Requests for Waivers of Consent**

It is important that researchers apply FERPA and human subject protection regulations when accessing educational records. Generally FERPA and IRB requirements are met if a student or parent signs a consent form to participate in a study and authorizes release of his/her educational records for research purposes. In instances where a researcher requests to waive the informed consent process, the following conditions must be met:

#### **25.13.4.1 Research on University of Virginia Student Records**

- If records are being requested from the University of Virginia, the researcher must secure the appropriate approvals from the University Registrar, the Office of Institutional Research and Analytics, or Student Health. This permission must be attached be submitted with the IRB protocol application. The University Registrar or the Office of Institutional Research and Analytics will make the final determination if the study meets the FERPA criteria to release educational information without a signed consent form.

#### **25.13.4.2 Research on Student Records at Institutions other than the University of Virginia**

Where researchers are conducting a study on behalf of the school district or other educational institution or setting to improve instruction or to develop or validate a predictive test, the school district may provide FERPA protected records without consent under specific conditions and pursuant to a written agreement between the school district and the researcher. If researchers are proposing to access student records at institutions other than the University of Virginia, utilizing a waiver of consent then the researchers should contact that institution and follow that institution's FERPA policy.

Researchers must provide the school district with a copy of their research proposal outlining all research procedures. Written permission must be secured by the researcher from the proper authority such as the District Superintendent or Head of School. This permission must be uploaded with the IRB protocol application.

Additional considerations include:

- In accordance with FERPA, an educational institution has the authority to determine what information may be accessed from an educational record. If an institution denies an investigator access to information in an educational record, the IRB cannot overrule the decision.
- According to the IRB federal regulations, for non-exempt studies, an IRB cannot waive informed consent or documentation of informed consent unless specific conditions are met. Consequently, researchers should include rationale for waiver requests in the IRB application even in circumstances where FERPA allows access without prior consent.
- FERPA and the Health Insurance Portability and Accountability Act (HIPAA) regulations provide conflicting requirements for medical records. In some situations FERPA is more restrictive than HIPAA for researchers. Researchers should contact each educational institution and follow that institution's applicable policies, whether FERPA and/or HIPAA policy when accessing student medical records.

#### **25.13.5 Other Department of Education Requirements:**

For research funded by the Department of Education, the researcher must allow access to instructional material used in a research or experimentation program 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.

### **25.13.6 Definitions:**

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 or majority as determined under state law.