

**Guidance: Additional Requirements for Research involving the
U.S. Department of Education (ED)
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1. Introduction

The U.S. Department of Education (ED) has adopted the Common Rule at [34 CFR 97http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr99_main_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr99_main_02.tpl). Additional regulatory requirements apply to research funded by ED or conducted at K-12 schools as well as colleges and universities that receive ED funds.

2. Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) ([20 USC 1232g](http://www.usdoj.gov/oea/ferpa/20 USC 1232g); [34 CFR 99](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr99_main_02.tpl)) governs the disclosure of personally identifiable information from “education records” and access to education records by parents and eligible students. FERPA applies to all public elementary and secondary schools as well as post-secondary institutions that receive federal funding through the U.S. Department of Education. The U-M is subject to FERPA.

“Education records” are defined under FERPA as records that directly relate to a student and that are maintained by an educational agency or institution, or a third party on the institution’s or agency’s behalf. “Education records” generally do not include the following: records maintained by law enforcement units; employment records related to students in their capacity as employees; medical records made by a physician, psychiatrist, psychologist, or other health professional for treatment of the student and disclosed only to individuals providing the treatment; and records created or received by an institution or agency after an individual is no longer a student at the institution and that are not directly related to the individual’s attendance as a student.

2.1 Informed Consent Requirement

FERPA generally requires consent before “personally identifiable information” from a student’s education records can be disclosed. “Personally identifiable information” includes the student’s name; the student’s or parent’s name or address; the student’s social security or student identification number; or other direct or indirect identifiers (such as birth date, place of birth, or mother’s maiden name) that could permit identification of the student. Consent must be provided by either the parent or, if the student is 18 or older or is attending a postsecondary educational institution, by the “eligible student.”

Under FERPA, for consent to be valid, it must be written, signed, and dated, and must specify the records to be disclosed, the purpose of the disclosure, and the person or class of persons to whom the disclosure may be made. The FERPA regulations permit electronic consents, as long as they are in a form that identifies and authenticates a particular person as the source of the electronic consent.

2.2 Exceptions to Informed Consent Requirement

There are a number of situations in which FERPA allows disclosure of personally identifiable information from education records without prior written consent. Two exceptions are especially relevant in the research context: disclosure of directory information (the “directory information exception”) or disclosures to organizations conducting studies for, or on behalf of, educational agencies or institutions (the “study exception”).

a. Directory Information Exception

An educational institution may disclose directory information without specific consent if it has given public notice to parents and eligible students of the types of information included in the institution’s definition of “directory information” and the right to opt out of disclosure of any or all types of directory information. (Some information, such as social security number, is considered too sensitive and may not be named as directory information.) If a parent or eligible student does not opt out, then the institution may disclose directory information without specific consent. An institution may also disclose the directory information of former students without notification or consent.

As a postsecondary institution, at the U-M, only the student, and not the parents, has the right to opt out of disclosures of directory information. The U-M has defined “directory information” to include name, address and telephone number, UM school or college, class level, major field, dates of attendance at the U-M, current

enrollment status, degree(s) received and date(s) awarded, honors and awards received, participation in recognized activities, previous school(s) attended, and height and weight of members of intercollegiate athletic teams. More information can be found on the Office of the Registrar's website at <http://ro.umich.edu/ferpa/>.

b. Study Exception

The exception permitting disclosure of personally identifiable information from education records for certain research activities conducted on behalf of educational institutions is limited. First, the exception applies only to research to develop, validate, and administer predictive tests; to administer student aid programs; or to improve instruction.

Second, researchers must use the data provided only for these stated research purpose(s) and must do so in a way that would not permit personal identification of parents or students by individuals other than the researcher and those on the study team with legitimate interests in those data.

Third, any personal information used in the study must be destroyed when it is no longer needed for the study.

Finally, per 34 CFR 99.31 (a)(6)(iii)(C), the institution disclosing the personally identifiable information must enter into a written agreement with the researcher conducting the study on its behalf that commemorates the points above, as well as:

- specifies the purpose, scope, and duration of the study;
- specifies the information to be disclosed; and
- sets forth "the time period in which the information [provided] must be destroyed."

If a researcher violates these requirements, the educational institution that had disclosed personally identifiable information to that researcher may not allow that researcher to access personally identifiable information from education records for at least five years.

Although the study exception is framed as requiring the research to be undertaken "for, or on behalf of," the disclosing institution, the FERPA regulations (34 CFR 99.31(a)(6)(iv)) make clear that the educational institution authorizing the study "is not required to initiate a study or [to] agree with or endorse the conclusions or results of the study."

2.3 De-identified Records

The records are de-identified by the removal of all personally identifiable information, and the educational institution "has made a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information," (34 CFR 99.31(b)(1)), then FERPA no longer applies, and the de-identified information can be released without specific consent. However, many institutions, including the U-M, still require researchers to sign written agreements before accessing even de-identified information from education records. IRB approval or determination of exemption of the research project does not constitute institutional permission to access the requested records.

2.4 Researcher Responsibilities

Although the institution holding the education records has ultimate responsibility for FERPA compliance, a researcher who seeks to use personally identifiable information from student education records must consider FERPA. Even researchers who are affiliated with the educational institution cannot automatically access personally identifiable information from education records unless they are conducting specific types of studies for or on behalf of the educational institution or unless one of the other exceptions to FERPA's general consent requirements applies.

If the research project does not fall into one of the three permitted categories of study (test development, student aid programs, improved instruction), and no other FERPA consent exception pertains, then the researcher needs to obtain individual consent (from the parent or eligible student, as appropriate) in order to view identified files.

IRB approval of the research project does not constitute institutional permission to access education records. Moreover, institutions (including the U-M) may require researchers to sign written agreements that go beyond the requirements of the study exception, described above, before accessing identifiable information from education records.

3. The Protection of Pupil Rights Amendment (PPRA)

The Protection of Pupil Rights Amendment (PPRA) ([20 USC 1232h](#); [34 CFR 98](#)) applies to school districts and K-12 schools that receive funding from the U.S. Department of Education (ED). This includes all public schools and most private schools.

3.1 Sensitive Survey Topics (Protected Information Surveys)

PPRA imposes additional requirements when a survey conducted in a school contains questions involving the following topics:

1. Political affiliations;
2. Mental and psychological problems potentially embarrassing to the student and his/her family;
3. Sex behavior and attitudes;
4. Illegal, anti-social, self-incriminating, and 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).

3.2 Parental Permission

For ED-funded research surveys including any of the 8 Protected Information topics, written parental permission is required in order for a child to participate in the research.

For non-ED-funded surveys, the PPRA permits the use of a parental opt-out consent process.

3.3 Inspection of Surveys

Surveys containing the 8 Protected Information topics must be made available at the school for review by parents.

3.4 Research Involving Experimental Curricula or Teaching Methods

For the purpose of the PPRA, a research or experimentation program is defined as one that is designed to explore or develop new or unproven teaching methods or techniques. Children are defined as persons under the age of 21 who are enrolled in a K-12 school.

As with surveys, researchers and schools must make instructional materials available for inspection by parents, if those materials will be used in connection with an ED-funded survey, analysis, or evaluation in which their children participate. These include teachers' manuals, films, tapes or other supplementary instructional material which will be used in connection with any research or experimentation program.

References

General

[34 CFR 97](#), Protection of Human Subjects

U.S. Department of Education Family Policy Compliance Office,
<http://www2.ed.gov/policy/gen/guid/fpco/index.html>

FERPA

[20 USC 1232g](#), Family Educational and Privacy Rights

[34 CFR 99](#), Family Educational Rights and Privacy

U.S. Department of Education, FERPA Information,
<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

PPRA

[20 USC 1232h](#), Protection of Pupil Rights

[34 CFR 98](#), Student Rights in Research, Experimental Programs and Testing

U.S. Department of Education, PPRA Information,
<http://www2.ed.gov/policy/gen/guid/fpco/ppra/index.html>