

Guidance: Additional Requirements for U.S. Department of Education (ED) Sponsored Research

1. Introduction

The U.S. Department of Education (ED) has adopted the Common Rule at [34 CFR 97](#) and has also published additional regulatory requirements that apply to research that is either a) funded by ED or b) conducted at educational institutions that receive ED funds.

2. Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) ([20 USC 1232g](#); [34 CFR 99](#)) governs, in pertinent part, the disclosure of personally identifiable information from “education records.” FERPA applies to all public elementary and secondary schools as well as to post-secondary institutions that receive federal funding through the U.S. Department of Education. The U-M is therefore subject to FERPA with respect to its students’ records.

“Education records” are generally defined under FERPA as records:

- Directly related to a student; and
- Maintained by an educational agency or institution or by a party acting for the agency or institution.

“Education records” generally do not include the following:

- Sole possession notes;
- Records maintained by law enforcement units;
- Employment records related to students in their capacity as employees, unless the employment is itself conditioned on student status;
- 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;
- 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.

“Student” means any individual who is or has been in attendance (as determined by the educational institution) at an educational agency or institution and regarding whom the agency or institution maintains education records.

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 name of the student’s parent or other family members;
- The address of the student or student’s family;
- A personal identifier, such as the student’s social security number, student number, or biometric record;
- Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;

- 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; or
- Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

Under FERPA, the ability to grant consent belongs to the parent, unless the student to whom the record pertains either a) has turned 18 or b) is attending (at any age) a postsecondary educational institution.

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. Note, that the “particular person” must be the individual who has the right under FERPA to consent to the disclosure.

2.2 Exceptions to Informed Consent Requirement

FERPA allows disclosure of personally identifiable information from education records without prior written consent in certain situations. Two exceptions to the requirement to obtain informed consent that are especially relevant in the research context are:

- Disclosure of directory information (the “directory information exception”); and
- 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 of 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, but must continue to abide by any previous opt-out.

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, email address, unickname, 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 <https://ro.umich.edu/records-registration/student-rights-records>.

b. Study Exception

An educational institution may disclose personally identifiable information from education records, without consent, to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

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

Researchers must use the data provided only for the above 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.

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

The institution disclosing the personally identifiable information must enter into a written agreement with the researcher conducting the study on its behalf that:

- Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;
- Requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement;
- Requires the organization to conduct the study in a manner that does not permit personal identification of parents and students, as defined in this part, by anyone other than representatives of the organization with legitimate interests; and
- Requires the organization to return or destroy all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be returned or 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

If education 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 also 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 the study exception (test development/validation, 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 personally identifiable information from education records.

IRB approval or determination of exemption does not constitute institutional permission to access education records, nor does FERPA itself require disclosure even if the requirements to the various consent exceptions are met. Moreover, institutions (including the U-M) may require researchers to sign written agreements even outside the context of the study exception 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 ED. This includes all public schools and most private schools. The PPRA does not apply to higher education institutions, regardless of receipt of ED funding.

PPRA affords certain rights to parents of elementary and secondary students with regard to the administration of a student survey, analysis, or evaluation that concerns sensitive information. The law also affords parents rights regarding marketing surveys, access to survey instruments, and the administration of certain physical examinations. The rights under PPRA transfer from the parents to the student when the student turns 18 years old or if the student is an emancipated minor under state law.

For the purposes of PPRA, a student is any elementary or secondary school student at a school that receives ED funding.

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 or beliefs of the student or parent;
2. Mental and psychological problems potentially embarrassing to the student and his/her

- 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).

3.2 Consent

For ED-funded research involving surveys, analysis, or evaluations that include one or more of the topics listed in 3.1, prior written consent is required, meaning:

- 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 not an adult or emancipated minor.

For non-ED-funded surveys, the PPRA permits the use of an opt-out (passive consent) process, meaning parents (or eligible student, as applicable) must be notified of any non-ED funded survey that reveals information concerning one or more of the topics listed in section 3.1 and given the opportunity to opt out of participation.

3.3 Policy Development

Schools are required to develop and adopt policies, in conjunction with parents, regarding the following (among other topics):

- The right of a parent of a student to inspect, upon the request of the parent, a survey instrument before the survey is administered or distributed by a school to a student; and
- 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.

3.4 Arrangements to Protect Student Privacy

Schools are required to make arrangements to protect student privacy in the event of the administration of a survey to students, including the right of parents to inspect, upon request, the survey instrument.

3.5 Research Involving Experimental Curricula or Teaching Methods

As with surveys, researchers and schools must make research-related/experimental instructional materials available for inspection by parents. These include teachers' manuals, films, tapes or other supplementary instructional material, which will be used in connection with any research or experimentation program. Schools are also required to develop and adopt policies regarding any applicable procedures for granting a request by a parent for reasonable access to instructional material received.

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.

3.6 Research Responsibilities

Researchers wishing to conduct surveys, test instructional materials or curricula, or administer physical examinations of students in elementary or secondary schools that receive ED funding should be aware of the following:

- First, those schools/districts should have developed policies regarding those activities that likely require a certain notice period as well as opportunity for inspection of the survey instrument or experimental instructional materials or curricula. The researcher would need to comply with those policies in the administration of the survey/physical examination or testing of the experimental curricula. The schools may also require written agreements with the researcher to set forth the terms by which the research may be conducted; these agreements may be with the school or with the school district, depending on district policy.
- Second, to the extent that the researcher wishes to conduct a survey involving one or more of the topics listed in Section 3.1, the researcher should be aware that under the PPRA, the consent requirements that would apply to the survey will differ depending on the source of the survey funding. That being said, the availability of an opt-out/passive consent process under the PPRA does NOT substitute for the IRB's own analysis of the applicable consent requirements under the Common Rule. The researcher must comply with whatever requirements the IRB deems appropriate for the research project, even if the PPRA would have imposed a different/lesser obligation.

References

General

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

[U.S. Department of Education Family Policy Compliance Office](#)

FERPA

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

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

[U.S. Department of Education, FERPA Information](#)

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](#)