Michigan State University
Human Research Protection Program

Subject: U.S. Department of Education

Section: 2-2-D | This policy and procedure supersedes those previously drafted.

Approved by: Vice President of Research and Graduate Studies, 7-19-2011.

Related Sections:

This policy describes the requirements provided by the U.S Department of Education Family Educational Rights and Privacy Act, the Protection or Pupil Rights Amendment, and 34 CFR 356 as applicable to human subject research.

**Family Educational Rights and Privacy Act**
The Family Educational Rights and Privacy Act (FERPA) of 1974 (as amended) is a federal law that sets forth requirements for the protection of privacy of students’ educational records. This policy addresses the applicability of FERPA to human subject research reviewed by the Michigan State University (MSU) Institutional Review Boards (IRB).

FERPA applies to educational agencies or institutions to which funds have been made available under any program administered by the Secretary of the U.S. Department of Education if the institution provides educational services or instruction to students and is authorized to direct and control public elementary, secondary, or post-secondary educational institutions. 34 CFR 99.1(a). Funds include those provided to the institution by grant, cooperative agreement, contract, subgrant, or subcontract or if funds are provided to the students attending the institution. If there is a question about the applicability of FERPA to an educational institution, 34 CFR 99.1 should be reviewed. The education records protected by FERPA are those records that directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR 99.3. See the “Definitions” section below for further information on what is not considered an education record and for other relevant definitions. When FERPA is applicable, consent from the parent or student is required in order for the educational institution to disclose the education record or the disclosure must meet an exception criteria found in 34 CFR 99.31. Such disclosures may be requested to obtain student records as part of a human subject research study.

At MSU, requests for MSU student records protected by FERPA are subject to the MSU Registrar Office’s policy on “Michigan State University Access to Student Information.” Such requests for use in research must be submitted to the Registrar Office via the Registrar’s Office Data Request form. The Registrar office will evaluate such requests, including any exceptions to parental permission and student consent, for compliance with FERPA requirements. Such exceptions will also be reviewed by the IRB in accordance with HRPP Manual 6-4-B “Waiver or Alteration of Informed Consent.” When an investigator proposes obtaining MSU student records, notification will be provided to the PI and the Registrar Office to alert them of the proposed research.
Research requests for student records subject to FERPA made to a non-MSU educational institution are reviewed by the applicable non-MSU educational institution (e.g., school district) in accordance with local district requirements and FERPA requirements.

Unless the request meets an exception in 34 CFR 39.31, signed and dated written consent must be obtained from the parent or eligible student before the educational institution discloses the personally identifiable information. 34 CFR 99.30(a). Written consent must include the following elements (34 CFR 90.30(b)):

1. Specify the records that may be disclosed
2. State the purpose of the disclosure; and
3. Identify the party or class of parties to whom the disclosure may be made

If the request involves an exception to parental permission or student consent, the request must meet an exception provided in 34 CFR 99.31(a). The exceptions relevant to research include 34 CFR 99.31(a)(6) or 34 CFR 99.31(11). Such exceptions to informed consent must also be reviewed and approved by the IRB in accordance with HRPP Manual 6-4-B “Waiver or Alteration of Informed Consent.”

The exception under 34 CFR 99.31(11) permits educational institutions or agencies to release “directory information” from students without consent so long as the conditions under 34 CFR 99.37 are met. A researcher may receive directory information from an educational institution without student or parental consent as required by FERPA. If a student’s social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student’s records, informed consent must be obtained. 34 CFR 99.37(d)

The exception under 34 CFR 99.31(6) allows release of confidential student records for use in research without consent under specified conditions. These requirements include restrictions placed on the MSU researchers, including limitations on personal identification of parents and students, destruction of data, and a written agreement between the educational agency or institution and MSU or the researcher.

The disclosure must be to an organization (MSU) conducting studies for, or on behalf of, educational agencies or institutions to:

A. Develop, validate, or administer predictive tests;
B. Administer student aid programs; or
C. Improve instruction

In order for the student records to be disclosed, MSU or the researcher on behalf of MSU must enter into a written agreement with the educational agency or institution. The written agreement must contain the following elements (34 CFR 99.31(6)(ii)(C)):

1. Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed
2. 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
3. Requires the organization to conduct the study in a manner that does not permit personal identification of parents and students by anyone other than representatives of the organization with legitimate interests
4. Requires the organization to destroy or return to the educational agency or institution 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

The researcher should submit a copy of the written agreement with the IRB application. The written agreement should be consistent with the project as submitted in the IRB application and as described in the consent document. Situations in which the educational agency or institution will not enter into the agreement until IRB approval is obtained will be handled on a case by case basis by the IRB administrator.

Once the information is disclosed to the MSU researchers, the limitations outlined in the written agreement on use of the student data must be followed. 34 CFR 99.31(6)(ii). These include:

1. The data can only be used to meet the purposes or purposes of the study as stated in the written agreement
2. The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of MSU that have legitimate interests in the information.
3. The information must be destroyed when no longer needed for the purposes for which the study was conducted

FERPA Definitions (34 CFR 99.3)

Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

(a) Directory information includes, but is not limited to, the student’s name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

(b) Directory information does not include a student’s—
   (1) Social security number; or
   (2) Student identification (ID) number, except as provided in paragraph (c) of this section.

(c) Directory information includes a student ID number, user ID, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the authorized user.
Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

Education records.  
(a) The term means those records that are:
   (1) Directly related to a student; and
   (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.
(b) The term does not include:
   (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
   (2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8.
   (3)(i) Records relating to an individual who is employed by an educational agency or institution, that:
        (A) Are made and maintained in the normal course of business; 
        (B) Relate exclusively to the individual in that individual’s capacity as an employee; and 
        (C) Are not available for use for any other purpose.
        (ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.
   (4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:
        (i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity; 
        (ii) Made, maintained, or used only in connection with treatment of the student; and 
        (iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, “treatment” does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and 
   (5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual’s attendance as a student.
   (6) Grades on peer-graded papers before they are collected and recorded by a teacher.

Educational agency or institution means any public or private agency or institution to which this part applies under § 99.1(a).

Eligible student means a student who has reached 18 years of age or is attending an institution of postsecondary education.

Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

Personally Identifiable Information. The term includes, but is not limited to—
(a) The student’s name;
(b) The name of the student’s parent or other family members;
(c) The address of the student or student’s family;
(d) A personal identifier, such as the student’s social security number, student number, or biometric record;
(e) Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
(f) 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
(g) 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.

*Biometric record,* as used in the definition of *personally identifiable information,* means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

*Record* means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

**FERPA Regulatory Requirements**

34 CFR 99.31(a). An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

34 CFR 99.31(6)

(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:
   (A) Develop, validate, or administer predictive tests;
   (B) Administer student aid programs; or
   (C) Improve instruction.

(ii) An educational agency or institution may disclose information under paragraph (a)(6)(i) of this section only if—
   (A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization that have legitimate interests in the information;
   (B) The information is destroyed when no longer needed for the purposes for which the study was conducted; and
   (C) The educational agency or institution enters into a written agreement with the organization that—
      (1) Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;
      (2) 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;
      (3) 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
      (4) Requires the organization to destroy or return to the educational agency or institution 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.

(iii) An educational agency or institution is not required to initiate a study or agree with or endorse the conclusions or results of the study.

(iv) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(v) For the purposes of paragraph (a)(6) of this section, the term organization includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

34 CFR 39.31(11). The disclosure is information the educational agency or institution has designated as “directory information”, under the conditions described in § 99.37.

Protection of Pupil Rights Amendment
The Protection of Pupil Rights Amendment (PPRA) is a federal law that sets forth additional requirements in elementary and/or secondary public schools when certain activities are conducted (e.g., survey, analysis, physical examinations) or if funded by the Department of Education (e.g., surveys, analysis, or evaluation). As a result, these requirements can impact MSU human subject research if the research involves activities subject to PPRA. PPRA requirements are applicable regardless of the level of IRB review (e.g., exempt). When the PPRA is applicable, the researcher should address in the IRB application the PPRA requirements as appropriate. The IRB will review the project to determine that the researcher has addressed the PPRA requirements as appropriate (e.g., parental permission as required). In some instances as described in this policy, parental permission must be obtained and cannot be waived by the IRB, even if the criteria in HRPP Manual 6-4-B “Waiver or Alteration of Informed Consent” are met.

PPRA: Research Funded by the Department of Education
Additional requirements apply to surveys, analysis, or evaluation that is funded by the U.S. Department of Education (i.e., any program administered by the Secretary of Education). These requirements include requirements for parental permission when the survey, analysis, or evaluation involves certain topics and a right of parental inspection of certain materials involved in the research.

All instructional materials, including teacher’s manuals, films, tapes, or other supplementary material which will be used in connection with any survey, analysis, or evaluation as part of any applicable program shall be available for inspection by the parents or guardians of the children. 20 USC 1232h(a)
Prior written consent of the parent (or the student if the student is an adult or emancipated minor) is required when the survey, analysis, or evaluation reveals information concerning the following “protected topics”:\(^1\):

1. Political affiliations or beliefs of the student or the student’s parents
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 [students] 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 parents
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: Research Conducted in Elementary and Secondary Public Schools
In addition, each local educational agency (LEA) that receives funds under any applicable program (i.e., funds from U.S. Department of Education) are required to adopt policies that address right of inspection, parental notification of the policies, and a right of a parent to “opt” their student out of participation in certain activities. When research will be conducted in a school subject to PPRA, the researcher should review the applicable LEA policies and procedures to assure compliance and to address such procedures in the application to the IRB (e.g., consent process).

Each LEA policy is likely to vary in how the requirements are addressed, but the PPRA requires at a minimum that the policy must contain the following:

1. Right of a parent to inspect, upon request of the parent, a survey created by a third party 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.
2. LEA arrangements to protect student privacy when administering or distributing a survey to student containing one or more of the “protected items.” This includes the right of a parent to inspect, upon request of the parent, any survey containing “protected items.”
3. Right of a parent to inspect, upon request of parent, any instructional material used as part of the educational curriculum for the student and procedures for granting a request by a parent for reasonable access to instructional material within a reasonable period of time after the request is receive.
4. Administration of physical examinations or screenings that the school or LAE may administer to the student.
5. 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

\(^1\)“Protected topic” is not defined in the law; however, this title will be used in this policy to mean the (1) – (8) categories provided in PPRA to avoid repetition throughout the policy.
student privacy that are provided by the agency in the event of such collection, disclosure, or use. Right to inspect instrument used in collection before instrument is administered or distributed to student and any applicable procedures for granting a request by a parent for reasonable period of time after the request is received.

The LEA must provide reasonable notice of the policy at least annually, at the beginning of the school year. Additional notification is required when the following activities will be conducted:

1. Administration of any survey containing “protected topics”
2. Activities involving the collection, disclosure, or use of personal information collected from students for purpose of marketing or selling that information (or otherwise providing that information to others for that purpose)
3. Any nonemergency, invasive physical examination or screening that is i) required as a condition of attendance, ii) administered by school and scheduled by school in advance, and iii) not necessary to protect the immediate health and safety of the student or other students.

For each of the activities described above, the LEA must offer an opportunity for the parent to opt the student out of participation. At least annually, at the beginning of the school year, the LEA must also notify the parent of a student of the specific or approximate dates during the school year when the activities are scheduled, or expected to be scheduled.

34 CFR 356
For research awarded funds under 34 CFR 356 by the U.S. Department of Education for fellowships involving disability and rehabilitation research, the protection of human subjects 34 CFR 97 is applicable subject to an additional requirement. That requirement specifies that when an IRB reviews research that purposefully requires inclusion of children with disabilities or individuals with mental disabilities as research subjects, the IRB must include at least one person primarily concerned with the welfare of these research subjects. 34 CFR 356.3(c)(1) and 34 CFR 356.3(c)(2). When a MSU University IRB application is submitted and is funded by a fellowship awarded under 34 CFR 356 (Merit Fellowship, Distinguished Fellowship), the IRB administrator or IRB chair will determine if the research purposefully requires inclusion of children with disability or individuals with mental disabilities as research subjects, that an IRB member primarily concerned with the welfare of these research subjects will be included in the review of the research.