

UNIVERSITY OF SOUTHERN MAINE
Office of Research Integrity & Outreach

Procedure #:	HRPP-051
AAHRPP	Element II.3.G., Element II.4.B., Element III.2.C.
Date Adopted:	
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Procedure Title:	Research Supported by the U.S. Department of Education

1.0 Objective

- 1.1. To describe the primary ethical and legal principles applied to human subject research supported by the U.S. Department of Education (ED), governed by the Family Educational Rights and Privacy Act (FERPA) (20 USC 1232g; 34 CFR 99) or The Protection of Pupil Rights Amendment (PPRA) (20 USC 1232h; 34 CFR 98), and covered by the University of Southern Maine (USM) Human Research Protection Program (HRPP).

2.0 Responsibility

- 2.1. It is the responsibility of the Institutional Official (IO), Office of Research Integrity and Outreach (ORIO), Research Compliance Administrator (RCA), and Institutional Review Board (IRB) to execute this SOP.

3.0 Limitations

- 3.1. The HRRP defers to the University of Maine System (UMS) and USM FERPA policies and procedures.
- 3.2. This SOP is limited only to areas of HRPP authority under [*HRPP-012 Authority of the Human Research Protection Program and Institutional Official*](#) and not otherwise covered by UMS or USM policies and procedures.
- 3.3. This SOP establishes HRPP-specific procedures and is intended to supplement, not replace, existing policies and procedures.

4.0 General Description

- 4.1. ED is a signatory to the Common Rule with regulations equivalent to 45 CFR 46 published under 34 CFR 97.

- 4.2. The USM IRB reviews research conducted or supported by ED in accordance with the Common Rule as described throughout its HRPP SOPs in addition to further requirements described in this SOP.

5.0 Reporting Requirements

- 5.1. ED requires reporting of alleged:

- 5.1.1. Unanticipated problems involving risks to subjects or others; and

- 5.1.2. Serious or continuing noncompliance with the Common Rule or Subpart D (protection of children in research).

- 5.2. Other mandated reports are submitted to ED instead of OHRP when the research is funded or sponsored by ED.

- 5.2.1. When applicable, USM will follow the directions for incident reporting provided on ED's Protection of Human Subjects in Research website.

6.0 Family Educational Rights and Privacy Act (FERPA)

6.1. General Description

- 6.1.1. FERPA governs the disclosure of personally identifiable information from education records.

- 6.1.1.1. FERPA applies to post-secondary institutions that receive federal funding through the U.S. Department of Education.

- 6.1.1.2. FERPA applies to the education records of persons who are or have been in attendance at USM, including students in cooperative, Early College, and online study programs and in any non-traditional educational delivery processes, such as distance learning, regardless of age.

- 6.1.1.3. FERPA does not apply to records of applicants for admission who are denied acceptance or, if accepted, never attend USM.

6.2. Definitions

- 6.2.1. **Student:** Any individual who has been in attendance at the University for whom the University maintains education records.

- 6.2.1.1. USM has established dates by which a person is considered a "student" and at which time FERPA applies.

- 6.2.1.1.1. For fall terms, any person enrolled on or after August 15 is considered a "student."

- 6.2.1.1.2. For spring terms, any person enrolled on or after January 1 is considered a “student.”
 - 6.2.1.1.3. For winter session, any person enrolled on or after December 15 is considered a “student.”
 - 6.2.1.1.4. For summer terms, any person enrolled on or after May 1 is considered a “student.”
- 6.2.2. **Legitimate Educational Interest:** The “need to know” of those University officials who need a student’s record or information to perform a function of their job.
- 6.2.3. **Personally Identifiable Information (PII):** Data or information which includes, but is not limited to:
- 6.2.3.1. The student’s name;
 - 6.2.3.2. The name of the student’s parent or other family members;
 - 6.2.3.3. The address of the student or student’s family;
 - 6.2.3.4. A personal identifier, such as the student’s social security number, student number, or biometric record;
 - 6.2.3.5. Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
 - 6.2.3.6. Other information that alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the University community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
 - 6.2.3.7. Information requested by a person who the University reasonably believes knows the identity of the student to whom the education record relates.
- 6.2.4. **Directory Information:** Information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.
- 6.2.4.1. USM directory information includes:
 - 6.2.4.1.1. Name
 - 6.2.4.1.1.1. If a student provides a preferred/chosen name, that will be considered Directory Information instead of the legal name.
 - 6.2.4.1.1.2. USM will use/release the legal name in cases where the legal name is required (e.g., State and Federal reporting, subpoenas, tax documents, etc.).
 - 6.2.4.1.2. Mailing Address
 - 6.2.4.1.2.1. Each student’s home address recorded at the time of admission will be, by default, used as

their “Mailing Address” for Directory Information purposes until/unless they provide a separate, specific “Mailing Address.”

6.2.4.1.2.2. Once a student has done so, only that address will be used for Directory Information from that point forward.

6.2.4.1.3. University Email Address

6.2.4.1.4. Program of Study

6.2.4.1.5. Dates of Attendance

6.2.4.1.6. Degrees and Awards received (including dates)

6.2.4.1.7. Most recent previous educational institution attended

6.2.4.1.8. Participation in sports and activities

6.2.4.1.9. Class Level

6.2.4.1.10. Enrollment status (full/part-time)

6.2.4.1.11. Personal athletic statistical data

6.2.5. **Record:** Any information or data recorded in any medium (e.g. handwriting, print, tapes, film, microfilm, microfiche, database, or any form of electronic data storage, including emails).

6.2.6. **School Official:** Those members of the University who perform a service or function for or on behalf of the University.

6.2.6.1. These may include faculty, administration, clerical and professional employees, and other persons who manage or use student education record information, including student employees or agents.

6.2.3.2. The term also includes contractors, volunteers, and others performing institutional functions or services.

6.2.7. **Education Records:** Generally defined under FERPA as records:

6.2.7.1. Directly related to a student and

6.2.7.2. Maintained by an educational agency or institution or by a party acting for the agency or institution.

6.2.7.2.1. Education records generally do not include the following:

6.2.7.2.1.1. Sole possession notes;

6.2.7.2.1.2. Records maintained by law enforcement units;

6.2.7.2.1.3. Employment records related to students in their capacity as employees, unless the employment is itself conditioned on student status;

6.2.7.2.1.4. 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,

- 6.2.7.2.1.5. 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.

6.3. Informed Consent

6.3.1. Requirements

6.3.1.1. FERPA generally requires consent before “personally identifiable information” from a student’s education records can be disclosed.

6.3.1.1.1. Under FERPA, the ability to grant consent belongs to the parent unless the student to whom the record pertains either:

6.3.1.1.1.1. Has turned 18 or

6.3.1.1.1.2. Is attending (at any age) a postsecondary educational institution.

6.3.1.2. 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.

6.3.1.2.1. The FERPA regulations permit electronic consent as long as it is in a form that identifies and authenticates a particular person as the source of electronic consent.

6.3.1.2.1.1. The particular person must be the individual who has the right under FERPA to consent to the disclosure.

6.3.2. Exceptions

6.3.2.1. FERPA allows disclosing personally identifiable information from education records without prior written consent in certain situations.

6.3.2.1.1. Two exceptions to the requirement to obtain informed consent that are especially relevant in the research context are:

6.3.2.1.1.1. Disclosure of directory information (directory information exception); and

6.3.2.1.1.2. Disclosures to organizations conducting studies for, or on behalf of, educational agencies or institutions (study exception).

6.3.3. Directory Information Exception

- 6.3.3.1. 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.
 - 6.3.3.1.1. Some information, such as social security numbers, is considered too sensitive and may not be named as directory information.
 - 6.3.3.1.2. If a parent or eligible student does not opt out, the institution may disclose directory information without specific consent.
 - 6.3.3.1.3. 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.
- 6.3.3.2. While enrolled at a postsecondary institution, only the student at USM, and not the parents, has the right to opt out of disclosures of directory information.

6.3.4. Study Exception

- 6.3.4.1. 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:
 - 6.3.4.1.1. Develop, validate, and administer predictive tests;
 - 6.3.4.1.2. Administer student aid programs; or
 - 6.3.4.1.3. Improve instruction.
- 6.3.4.2. 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.
- 6.3.4.3. Any personal information used in the study must be destroyed when it is no longer needed for the study.
- 6.3.4.4. The institution disclosing the personally identifiable information must enter into a written agreement with the researcher conducting the study on its behalf that:
 - 6.3.4.4.1. Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;
 - 6.3.4.4.2. 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;
 - 6.3.4.4.3. 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

6.3.4.4.4. 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.

6.3.4.4.4.1. 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.

6.3.4.5. 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.”

6.4. De-identified Records

6.4.1. 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.

6.4.2. IRB approval or determination of exemption of the research project does not constitute institutional permission to access the requested records.

6.5. Researcher Responsibilities

6.5.1. 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.

6.5.1.1. 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.

- 6.5.2. Investigators must provide the IRB with information describing how they will ensure compliance with FERPA.
 - 6.5.2.1. A letter of support or other documentation from the school supporting the conduct of the research should be provided.
 - 6.5.2.2. The IRB will review the information provided to verify compliance, including verification that permission for the use of the records will be obtained or that it is not required under an allowed use or exception.
 - 6.5.2.2.1. 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.
- 6.5.3. 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 of the various consent exceptions are met.
- 6.5.4. Institutions may require researchers to sign written agreements even outside the context of the study exception before accessing identifiable information from education records.

7.0 The Protection of Pupil Rights Amendment (PPRA)

7.1. General Description

- 7.1.1. 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.
 - 7.1.1.1. This includes all public schools and most private schools.
 - 7.1.1.2. The PPRA does not apply to higher education institutions, regardless of receipt of ED funding.
- 7.1.2. 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.
 - 7.1.2.1. The law also affords parents rights regarding marketing surveys, access to survey instruments, and the administration of certain physical examinations.

- 7.1.2.2. 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.

7.2. Definitions

- 7.2.1. **Student:** A student is any elementary or secondary school student at a school who receives ED funding.

- 7.2.2. **Prior Consent:**

- 7.2.2.1. Prior consent of the student if the student is an adult or emancipated minor; or
- 7.2.2.2. Prior written consent of the parent or guardian if the student is an un-emancipated minor.
 - 7.2.2.2.1. Schools and contractors obtain prior written parental consent before minor students are required to participate in any ED-funded survey, analysis, or evaluation.

- 7.2.3. **Sensitive Survey Topics:** Topics where the primary purpose is to reveal information concerning one or more of the following:

- 7.2.3.1. Political affiliations or beliefs of the student or parent;
- 7.2.3.2. Mental and psychological problems potentially embarrassing to the student and their family;
- 7.2.3.3. Sex behavior or attitudes;
- 7.2.3.4. Illegal, anti-social, self-incriminating, or demeaning behavior;
- 7.2.3.5. Critical appraisals of other individuals with whom respondents have close family relationships;
- 7.2.3.6. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- 7.2.3.7. Religious practices, affiliations, or beliefs of the student or student's parent; or
- 7.2.3.8. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such programs).

- 7.2.4. **Research or Experimentation Program:** A program designed to explore or develop new or unproven teaching methods or techniques.

7.3. Informed Consent

- 7.3.1. For research directly funded by the ED, prior written consent is required for research involving surveys, analysis, or evaluations that include one or more Sensitive Survey Topics.

- 7.3.2. For research not funded by the ED, 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 Sensitive Survey Topics.

7.4. School Requirements

7.4.1. Policy Development

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

- 7.4.1.1.1. 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

- 7.4.1.1.2. Any applicable procedures for granting a request by a parent for reasonable access to such a survey within a reasonable period of time after the request is received.

7.4.2. Arrangements to Protect Student Privacy

- 7.4.2.1. 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.

7.5. Research Involving Experimental Curricula or Teaching Methods

- 7.5.1. As with surveys, researchers and schools must make research-related/experimental instructional materials available for inspection by parents.

- 7.5.1.1. These include teachers' manuals, films, tapes or other supplementary instructional material, which will be used in connection with any research or experimentation program.

- 7.5.1.2. 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.

7.6. Researcher Responsibilities

- 7.6.1. 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:

- 7.6.1.1. 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.

7.6.1.1.1. The researcher would need to comply with those policies in the administration of the survey/physical examination or testing of the experimental curricula.

7.6.1.1.2. 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.

7.6.1.2. To the extent that the researcher wishes to conduct a survey involving Sensitive Survey Topics, 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.

7.6.1.2.1. The availability of an opt-out/passive consent process under the PPRA does NOT substitute for the IRB's analysis of the applicable consent requirements.

7.6.1.2.2. 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.

7.6.2. Investigators must review the school's PPRA policies.

7.6.3. Investigators must provide the IRB with information describing how they will ensure compliance with PPRA and the school's policies.

7.6.3.1. A letter of support or other documentation from the school supporting the conduct of the research and its compliance with PPRA should be provided.

7.6.3.2. The IRB will review the information provided to verify compliance.

8.0 References

8.1. [University of Maine System FERPA Policy and Procedure](#)

8.2. [34 CFR 97](#) Federal Policy for the Protection of Human Subjects (Basic ED Policy for Protection of Human Research Subjects)

8.3. [34 CFR 98](#) Student Rights in Research, Experimental Programs, and Testing

8.4. [34 CFR 99](#) Family Educational Rights and Privacy

8.5. [20 USC 1232g](#) Family educational and privacy rights

8.6. [20 USC 1232h](#) Protection of pupil rights