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## **6.1 Executive Summary**

This Standard Operating Procedure provides information regarding the Family Educational Rights and Privacy Act (FERPA) and its application to records involving human subjects research. NC State faculty and staff should review this policy and the supporting guidance found in the Appendices to assist with making informed decisions when utilizing educational records for such research.

FERPA is a federal law that governs the privacy of student educational records. Educational records, under FERPA, are defined as records directly related to a student which contain personally identifiable information and are maintained by the university or a party acting on behalf of the university. The university's FERPA regulation may be found at [REG 11.00.01](#).

## **6.2. IRB Policy**

Investigators are responsible for complying with FERPA, human subject protection regulations at 45 CFR 46, and NC State University policy when accessing educational records for research purposes. If an institution denies an investigator access to information in an educational record, the NC State IRB cannot overrule the decision.

## **6.3. Standard Operating Procedure (SOP)**

IRB approval of the research project does not constitute institutional permission to access educational records. Researchers must have permission from the institution that holds the educational records in order to access the records for research purposes. Institutions (including NC State) may require researchers to sign written agreements that go beyond the requirements of the study exception, described in Appendix B, before accessing identifiable information from educational records.

In the IRB application, Principal Investigators must address issues related to FERPA and accessing educational records. Please see Appendix B for Guidance.

Principal Investigators must create a data security plan, in compliance with NC State University's data protection standards, in any research project that will use student education information protected by FERPA. The Principal Investigator must include the data security plan in the project IRB application.

## **6.4. IRB Responsibilities Regarding FERPA**

The NC State IRB considers FERPA compliance when reviewing research protocols that involve access to student educational records through one of the following avenues:

1. Parent or Student Consent. When research protocols propose to access educational records with parent or eligible student consent, the IRB will review and consider the following:
  - a. The Informed Consent document, which must include the following information:
    - i. Specific information about the records that may be disclosed

- ii. The purpose of the records disclosure
    - iii. The identity of the individual or group to which the records will be disclosed
    - iv. All other consent information required by 45 CFR 46
  - b. The manner in which participants are consented regarding sharing their records; and
  - c. The data protection plan in place for managing the records
- 2. No Parent or Student Consent Obtained. When research protocols propose to access educational records without parent or eligible student consent, the IRB will review and consider the following:
  - a. Whether the records access meets the criteria for a waiver of informed consent via the IRB regulations
    - i. The research involves no more than minimal risk to participants
    - ii. The waiver will not adversely affect the rights and welfare of the participants
    - iii. The research could not practicably be carried out without the waiver
    - iv. If appropriate, participants will be provided with additional pertinent information after participation (this usually applies to research involving deception in which full disclosure would compromise the research.)
  - b. If the access involves NC State student educational records, whether the records access complies with FERPA
- 3. Access to Internal NC State Data. Researchers, who have also served as an instructor for course or are in a role that can access educational information, AND want to access students' educational records (past or current) for research purposes must:
  - a. Get consent from the parent or eligible student; or
  - b. Qualify for a waiver of consent under the IRB Regulations and exception under FERPA
  - c. Demonstrate how the information will be de-identified before it is used as data for the research
  - d. Address any conflicts of interest related to accessing their own course's records for research.
- 4. Type of Review.
  - a. Protocols involving de-identified student educational record data will likely be reviewed by the IRB office via Administrative review for Exemption or undergo Limited IRB Review.
  - b. Protocols involving identifiable student information may be reviewed by the IRB office via Expedited review under the Common Rule, an Administrative Review, or Limited IRB review under the Final Rule. This can be with Consent from Individuals or without consent from individuals if the project meets the research exception of FERPA.

## Appendix A Definitions

**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. Each institution determines what is considered directory information. It includes, but is not limited to, the student's name, address, telephone listing, electronic mail address, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), 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.

**Disclosure** means to permit access to or the release, transfer, or other communication of Personally Identifiable Information contained in educational records to any party, by any means, including oral, written, or electronic means.

**Educational records** means records that contain information directly related to a student and that are maintained by an educational agency or institution or by a party acting for the agency or institution.

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

**“For, or on behalf of, educational agencies or institutions”** means that the educational agency or institution has granted permission for the research to occur. 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.”

**“Legitimate educational interest”** means an activity that a school official, agent or contractor is undertaking in the name of the institution for which access to educational records is necessary or appropriate to fulfill that individual’s responsibilities for the university.

- The information requested is necessary for that official to perform appropriate tasks that are specified in their position description or by a contract agreement.
- The information is to be used within the context of official agency or school business and not for purposes extraneous to the official’s areas of responsibility or to the agency or school.
- The information is relevant to the accomplishment of some task or to a determination about the student.
- The information is to be used consistently with the purposes for which the data are maintained.

**Personally Identifiable Information (PII)** is the student’s (or family member’s) name, address, personal identifier, and personal characteristics or other information that would make the student’s identity easily traceable. It includes any information that alone or in combination with other information is linked or linkable to a specific person that would then allow a reasonable person to identify the student with reasonable certainty.

**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."

## Appendix B Guidance

Although the institution holding the education records has ultimate responsibility for FERPA compliance and disclosure of educational records, a researcher who seeks to use personally identifiable information from student education records must consider their FERPA responsibilities and the boundaries between where their role as a researcher begins and ends.

Researchers, who are affiliated with the educational institution disclosing the data, cannot automatically access personally identifiable information from educational records unless they are conducting specific types of studies for or on behalf of the educational institution or unless one of the exceptions to FERPA 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 exception applies, then the researcher needs to obtain individual consent (from the parent or eligible student, as appropriate) in order to view and use identifiable educational records.

Regardless of level of IRB review required for the research, FERPA regulations apply to the access of identifiable educational records and consent from parents, eligible students, or the educational institution is required unless the project meets a FERPA exception.

### FERPA and Consent

1. The default rule is that a student must give consent before “personally identifiable information” from a student’s education records can be disclosed.
2. 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.
3. 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.

### FERPA Exceptions to Consent

- a. There are a number of situations in which FERPA allows disclosure of personally identifiable information from education records without the student’s consent. A complete list of exceptions where prior consent of the student is not required for disclosure may be found at [34 C.F.R. § 99.31](#). Some exceptions relevant to research include:
  - b. Directory Information - The University may disclose directory information without a student’s consent. Under FERPA, each educational institution may designate certain items of information as directory information. A full listing of information designated as directory information at NC State may be found at [REG 11.00.01](#). FERPA gives students an opportunity to file a request to prevent disclosure of directory information, commonly known as “opting out”. An institution will not release any information on a student, even directory information, if a student has “opted out”. As a researcher, you should contact each institution from which you propose to access student records and follow that institution’s FERPA policy and procedures when accessing directory information.
  - c. School Official - The University may disclose a student’s educational record to school officials who have a legitimate educational interest in the record. This typically involves

faculty, support staff, volunteers, or independent contractors that may be assisting the lead researcher with research and needs access to the data to perform their intended services.

- d. Studies - The University may disclose a student's educational record to organizations conducting studies on behalf of the University, if the research study is to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction. Additionally, other requirements include:
  - i. Researchers must use the data in a way that would not permit the disclosure of personal identifiable information of students to individuals other than those that the lead researcher has designated as having a legitimate educational interest in assisting with the study;
  - ii. Any personal information used in the study must be destroyed when it is no longer needed for the purposes for which the study was conducted; and
  - iii. The designated representatives must enter into a written agreement with the lead researchers University following the requirements prescribed in [34 C.F.R. § 99.31\(a\)\(6\)](#).
  - iv. Unless a research project qualifies for an exception to consent under FERPA, the IRB cannot waive consent.

## **Types of Researchers**

### **1. NC State Faculty and Staff**

- a. When prospectively collecting data for research, researchers must seek consent from eligible students or parents (if appropriate) to access educational records.
- b. When accessing existing information to use as data for research purposes
  - i. Faculty member's own course records: A faculty member may access their own course records and de-identify the records before using them as a dataset for analysis. Faculty members cannot share identifiable educational records with their research team. Where possible, a records request is suggested.
  - ii. Course records from other faculty members: The faculty member may de-identify their own course records in order to share a de-identified dataset with researchers. A faculty member cannot share identifiable records with others. Where possible, a records request is suggested.
  - iii. NC State Registration and Records is responsible for disclosing academic records on a larger scale and they will determine if it is appropriate to disclose the data to the researchers. NC State IRB cannot overturn their decision to disclose data.
  - iv. Researcher's Access to Information due to Role: Researchers may be in a role where they have access to multiple educational records that they would like to use for research purposes must:
    1. Qualify for a waiver of consent under the IRB Regulations and exception under FERPA; or
    2. Demonstrate how the information will be de-identified before it is used as data for the research; or
    3. Receive a letter from a supervisor with authority to grant permission to access information to use as data for research on behalf of the NC State.
    4. Address any conflicts of interest related to accessing their own courses records for research.

## 2. K-12 Educators

- a. For K-12 educators, all school officials or teachers are beholden to following FERPA as regulated by their educational institution or agency. In order to access educational records, the educator must seek permission from the educational institution or agency, or directly from the parents or eligible students.
  - i. When K-12 teachers are disclosing educational records data, NC State is not responsible for that disclosure as the educator or school official is acting on behalf of that educational agency/institution and not NC State.
  - ii. When prospectively collecting data for research, researchers must seek consent from parents or eligible students to access educational records.
    1. When accessing existing information to use as data for research purposes, NC State suggests getting permission from a school official in order to access educational records to de-identify and use for research purposes. Examples of this person can be a principal, a superintendent, the person at the school tasked with managing FERPA information requests.

## 3. General Researchers

- a. When prospectively collecting data for research, researchers must seek consent from parents or eligible students to access educational records.
- b. When accessing existing information to use as data for research purposes, researchers not affiliated with the educational agency or institution disclosing the records must get permission from an appropriate school official who can determine FERPA disclosures.

## 4. Researchers not associated with the educational institution or agency

- a. Researchers who are not employed by the agency or school may be authorized to conduct data processing or research and evaluation studies through contractual arrangements. If these efforts are initiated by and performed on behalf of the agency or school, researchers may be considered school officials who have a legitimate educational interest.
- b. Researchers outside the agency or school often request individual information (which may or may not be personally identifiable) for their own research agendas. More often than not, the requested information includes more than one data item from the education records or student database. These requests are often handled on a case-by-case basis by the educational institution.
- c. In general, the release of data to researchers outside the agency should be considered as a loan of data (i.e., recipients do not have ownership of the data). Agencies or schools could request that these data be returned or copies destroyed when the researchers complete their work. Agencies likely have written guidelines and procedures to allow the on-site access or off-site loan of personally identifiable data by appropriate individuals or organizations

## **Obtaining Educational Record Data**

1. The researcher may contact and obtain written consent for each individual whose records will be accessed for research purposes. This consent could be for the use of existing data or for prospective collection of data. This consent must include information about the records to be disclosed, the purpose of the disclosure, and the person or class of persons to whom the disclosure may be made. This consent must be written, signed, and dated. If electronic consent is sought the parent or eligible student must be identifiable and the consent process must authenticate a particular person as the source of the electronic consent.

2. A school official with legitimate access (other than the researcher) may remove any identifying information from the records and provide the de-identifiable data to the researcher to use for research purposes.
3. Related to research, FERPA allows the institution the right to disclose identifiable student records without the parent or eligible student's consent if it meets the criteria for an exception.
  - a. The exceptions that may be used for research are:
    - i. If the school official or institution has determined there to be a legitimate educational interest for releasing the data to the researcher. Note, the school official may not give permission to disclose data to themselves for research purposes.
    - ii. Researchers conducting studies for, or on behalf of, the educational agency or institution that is disclosing the data in order to
      1. develop, validate, and administer predictive tests
      2. administer student aid programs
      3. improve instruction, provided that individual identity of students is not made.
  - b. If an exception is granted, a FERPA exception letter should be submitted to the Institutional Review Board (IRB) along with the IRB application OR an appropriate statement addressing FERPA issues must be present in the IRB application.
    - i. The exception letter for educational records for K-12 education should come from the school district's superintendent or the individual school's official managing FERPA disclosures.
    - ii. The exception letter for educational records for universities should come from the University Registrar or the individual institutional official managing FERPA disclosures.
    - iii. The exception letter submitted to the IRB should include the following information:
      1. The determination regarding the exception.
      2. The purpose, scope, and duration of the study.
      3. That information from the released education records may only be used to meet the purposes of the specific study or repository
      4. That personal identification of parents and students by anyone other than the researchers is not possible once published.
      5. That when the information is no longer needed, that the researcher is required to destroy all personally identifiable data within a certain time frame.
    - iv. If no exception letter is provided, a statement in the IRB application that addresses the release of the data from the institution to the researcher must be present. The release of the data by the institution to the researcher is enough for consideration. This statement may not be used if the researcher is in a dual role where one of the roles permits them to release FERPA information on behalf of an institution and the other is as a researcher receiving that same FERPA information to use as data. This is a conflict of interest. In this case, permission from a supervisor would suffice.

## **Appendix C Resources**

Family Educational Rights and Privacy Act (FERPA): <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

National Center for Education Statistics – Release to Researchers: [https://nces.ed.gov/pubs2004/privacy/section\\_6e.asp](https://nces.ed.gov/pubs2004/privacy/section_6e.asp)

NC State University Registration and Records Data Request: <https://registrar.ncsu.edu/reports-and-security/data-request/>

NC State University's FERPA Policy: <https://policies.ncsu.edu/regulation/reg-11-00-01/>

Photos and Videos under FERPA: <https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa>

Protecting Student Privacy: <https://studentprivacy.ed.gov/resources>

Protection of Pupil Rights Amendment: <https://www2.ed.gov/policy/gen/guid/fpco/ppra/index.html>

## Appendix D Worksheet for IRB Reviewers

<b>Requirements for Disclosure</b> <b>One of the following categories must be met</b>	
<input type="checkbox"/>	<p>The parent or eligible student will provide a signed and dated written consent that discloses:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The records that may be disclosed;</li> <li><input type="checkbox"/> The purpose of the disclosure</li> <li><input type="checkbox"/> The party or class of parties to whom the disclosure may be made</li> <li><input type="checkbox"/> If a parent or adult student requests, the school will provide him or her with a copy of the records disclosed</li> <li><input type="checkbox"/> If the parent of a student who is not an adult so requests, the school will provide the student with a copy of the records disclosed.</li> </ul>
<input type="checkbox"/>	<p>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; or Improve instruction. Where:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 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;</li> <li><input type="checkbox"/> The information is destroyed when no longer needed for the purposes for which the study was conducted</li> <li><input type="checkbox"/> The school enters into a written agreement with the organization that: <ul style="list-style-type: none"> <li><input type="checkbox"/> Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed</li> <li><input type="checkbox"/> 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;</li> <li><input type="checkbox"/> 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</li> <li><input type="checkbox"/> Requires the organization to destroy or return to the school 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</li> </ul> </li> </ul>
<input type="checkbox"/>	<p>The disclosure is information the school has designated as “directory information”, under the conditions described in §99.37.</p>
<input type="checkbox"/>	<p>The disclosure is of records in which the school or other party 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. “Not personally identifiable” means information that includes none of the following:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Student's name and other direct personal identifiers, such as the student's social security number or student number.</li> <li><input type="checkbox"/> 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.</li> <li><input type="checkbox"/> 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.</li> <li><input type="checkbox"/> 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.</li> </ul>
<input type="checkbox"/>	<p>The disclosure is of records which are de-identified student-level data from education records for the purpose of education research by attaching a code to each record that may allow the recipient to match information received from the same source, provided that:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The school or other party that releases de-identified data does not disclose any information about how it generates and assigns a record code, or that would allow a recipient to identify a student based on a record code;</li> <li><input type="checkbox"/> The record code is used for no purpose other than identifying a de-identified record for purposes of education research and cannot be used to ascertain personally identifiable information about a student; and</li> <li><input type="checkbox"/> The record code is not based on a student's social security number or other personal information.</li> </ul>