

## **Guidance: Research with FERPA Protected Educational Records**

Student records that faculty members/instructors personally hold (e.g., tests, journals, written assignments, etc.) are considered part of a student's education record. The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records. FERPA governs the disclosure and access of education records maintained by the University. *Education records* are defined as any record that is directly related to a student and maintained by Wright State University.

Education records include, but are not limited to:

- Grades, graded coursework, and/or transcripts
- Class observations and/or portal discussions
- Class lists and/or student course schedules
- Student financial information and/or scholarship applications
- Student conduct files
- Family information

When conducting research, faculty members/instructors may not know that they may not be able to use education records they otherwise handle on a regular basis as a faculty member/instructor. When conducting research, an educator may not be considered to have a legitimate educational interest in the education records they otherwise handle on a regular basis. If a faculty member/instructor wants to use student data for research purposes, FERPA applies. Generally, Education Records cannot be released or used unless the University has the student's prior written consent or unless an exception to the written consent requirement applies. If the University (e.g., the Registrar's Office) denies a researcher access to information in an Education Record, the IRB cannot overrule the decision. Wright State Researchers are responsible for maintaining compliance with FERPA, in addition to human research regulations, when accessing Education Records for the purpose of research.

The IRB discourages faculty from using their own students and/or student materials in human subjects' research unless there is a compelling and legitimate justification for its use. If one's own students are to be used in research, then the researcher must take all due precautions to protect the safety, rights, and welfare of the participants, ensure the proper privacy and security of the research data and comply with all applicable University policies for the protection of students and student information.

There are four methods to access Education Records for research purposes.

### **Method 1 – Signed Consent Form:**

FERPA and IRB requirements are usually met if an Eligible Student (or parent of a minor if not enrolled in an institution of higher education), signs a research consent form to participate in a project and authorizes release of their Education Records for research purposes.

The consent form must include:

- The purpose of the disclosure, and
- The records that will be disclosed (must be very specific), and
- State how often the records will be disclosed (one time, each semester, etc.), and
- The identity of the party whom the records will be disclosed, and
- Include a dated signature.

The signed consent form, which is provided to the University Registrar (or other record holder), can be either a pdf of the original signed form or an actual paper copy of the original signed form. At this time, the Wright State Registrar only accepts electronic signatures via DocuSign, REDCap and Qualtrics. In Qualtrics researchers must use the Signature Question field as it collects an image of the signature (made via finger or mouse), not just a typed name. Researchers should use the individual survey link type and only send emails to Wright State e-mail addresses.

### **Method 2 - Directory Information:**

FERPA allows schools to designate and disclose, without a student's written consent, certain items of information as "directory information." Each educational institution designates what information is considered directory information. Therefore, the researcher should contact each institution from which they propose to access student records and follow that institution's FERPA policy and procedures when accessing directory information.

#### **Wright State Directory Information:**

Wright State University defines directory information as the following: student's name, address, e-mail address, telephone listings, major field of study, dates of attendance, full or part-time status, and number of hours registered. It also includes special honors and awards, degrees awarded, total hours earned, participation in officially recognized activities and sports, most recent previous educational agency or institution attended by the student, class standing, and weight and height of members of athletic teams. To obtain directory information a request should be submitted through the [Office of Institutional Research & Effectiveness](#).

### **Method 3 – Deidentified Information**

A researcher can also gain access to Education Records without consent if a school official with legitimate access (other than the researcher) strips the records of any identifying information prior to release of that information. For example, an internal data request submitted to Institutional Research and Effectiveness (IR&E) is provided to the researcher de-identified. This may include coded data if there is an agreement between IR&E and the investigator that the code will not be shared with the investigator.

Note: Research projects utilizing this method may not meet the definition of human subjects' research per 45CFR46. Please reference the [Determination that Project is Not Research or Does Not Involve Human Subjects](#) policy for more information.

#### **Method 4 – Research on Behalf of the University**

Personally identifiable information from student education records may be disclosed by the University, without the students’ written consent, when the disclosure is to researchers and/or organizations conducting studies for, or on behalf of the University: to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction. If information from student Education Records will be disclosed to an organization or researcher under this exception, the researcher must enter into a written agreement with the educational institution (e.g., Wright State University) that contains specific assurances on data confidentiality. At Wright State University, researchers will need to submit the *FERPA Studies Exception Agreement* to the Registrar.

When using education records at other schools and universities, an exception letter should be submitted to the IRB along with the IRB documents. In most cases involving Education Records held by elementary and secondary schools, the letter should come from the school district’s superintendent. When working with another university, the letter should come from the university’s Registrar.

When using the Studies Exception under FERPA for the use of Education Records, the holder of the records must enter into an agreement with the researcher, which includes the following:

- The purpose, scope, and duration of the research.
- The information to be disclosed.
- That information from education records may only be used to meet the purposes of the research stated in the written agreement and must contain the current requirements in 34 CFR § 99.31(a)(6) on re-disclosure.
- That the research will be conducted in a manner that does not permit personal identification of parents and students by anyone other than representatives of the organization with legitimate interests.
- That the organization is required to destroy or return all personally identifiable information when no longer needed for the purposes of the research.
- The time period during which the organization must either destroy or return the information.

#### **Unknown Future Research Projects:**

Many educators desire to engage in pedagogical research after many years of teaching. They often find they are unable to locate former students to obtain written permission for use of graded classroom materials to meet FERPA requirements. The IRB recommends that Wright State course instructors include as part of their course syllabus a “*Permission for Use of Classroom Materials for Future Research Projects*” syllabus insert. This insert meets FERPA requirements for release of Educational Records normally encountered during routine classroom instruction. The IRB staff can provide additional guidance for studies of this nature.