

Appalachian State University Research Protections and Institutional Review Board Standard Operating Procedures		
SOP #11	Human Subjects Research Subject to FERPA	Date Effective:
Approved by IRB Chair	<i>R. Andrew Shanely</i>	Date: 01/18/2025
Approved by RP Director	<i>Shante' Mathes</i>	Date: 01/22/2025

## **I. PURPOSE**

To describe the procedures for applying the Family Educational Rights and Privacy Act of 1974, as amended (“FERPA”) to human subjects’ research that involves access to or the generation of student education records.

## **II. AUTHORITY**

1. In accordance with [45 CFR 46.101](#), Institutional Review Boards (IRBs) reviewing research that is subject to 45.CFR.46 must comply with pertinent federal laws or regulations that provide additional protections for human subjects. This includes FERPA and all pertinent regulations, 20 U.S.C. § 1232g; 34 CFR Part 99.
2. In accordance with Appalachian State University (Appalachian or University) [Policy 105.3, Policy Statement on the Family Educational Rights and Privacy Act of 1974, as Amended \(or “Appalachian Policy 105.3”\), section 1.1](#), Appalachian endorses and seeks to comply with all provisions of FERPA. The Institutional Review Board (IRB) and Research Protections (RP) staff will adhere to all federal and University requirements regarding the use, storage, and disclosure of education records for research purposes.
3. In accordance with Appalachian [Policy 209](#), research proposals approved by the IRB or determined to be exempt by RP staff may be subject to further review by University officials. If the University denies an investigator access to information that is an education record, the Appalachian IRB cannot overrule this decision.

## **III. RESPONSIBILITY**

1. When accessing education records for research purposes, research personnel are responsible for complying with FERPA, the Federal Policy for Protection of Human Subjects at [45 CFR 46](#), and all other applicable Appalachian policies and standard operating procedures.
  - a. The University is the ultimate custodian of the student education records and is required by federal law to ensure it complies with FERPA in the use, storage and disclosure of education records from Appalachian.
  - b. The educational institution from which the student records are sought, is the ultimate custodian of the student education records and is required by

federal law to ensure it complies with FERPA in the use, storage and disclosure of their education records.

- c. Any investigator who seeks to use education records for research purposes must consider their FERPA responsibilities and the boundaries between where their role as a researcher begins and ends, inclusive of boundaries for researchers in the dual role of educator and researcher.
2. In accordance with [Appalachian Policy 209](#), RP staff, in consultation with the IRB Chair when necessary, are responsible for reviewing and issuing exemption determinations for human subject research protocols that are exempt from IRB review under [45 CFR 46.104](#). Exemption reviews for research protocols that may involve access to FERPA data will be conducted in accordance with [SOP #9](#) and includes the application of the requirements set forth in FERPA and Appalachian Policy 105.3.
  3. The IRB is also responsible for reviewing and approving non-exempt human subject research protocols that may involve generation of or access to FERPA information.
    - a. Protocol review and approval includes application of the IRB regulations at 45 CFR 46 and the requirements set forth in FERPA and [Appalachian Policy 105.3](#)
    - b. Should the IRB require interpretation of the requirements under FERPA or have questions regarding the application of FERPA, they will seek guidance from the Appalachian Registrar or the Office of General Counsel.

#### **IV. 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 and the information is designated, in advance, by the University in policy ([34 CFR 99.3](#)).

Directory Information is defined by the University in [Appalachian Policy 105.3, section 4.9.1](#).

##### **Disclosure**

FERPA defines disclosure to mean “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” ([34 CFR 99.3](#)).

## **Education Records**

Means any records that are 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](#)). Education Records is defined by the University in [Appalachian Policy 105.3, section 3.1](#).

1. Photos and Videos as Education Records: As with any other “education record,” a photo or video of a student is an education record, subject to specific exclusions, when the photo or video is directly related to a student; and maintained by an educational agency or institution or by a party acting for the agency or institution. FERPA regulations do not define what it means for a record to be “directly related” to a student. In the context of photos and videos, determining if a visual representation of a student is directly related to a student (rather than just incidentally related to them) is often context-specific.
  - a. A photo or video is considered an education record when the photo or video is directly identifiable and taken in an environment where there is an expectation of privacy (ex: in classroom spaces).
  - b. A photo or video would generally not be considered directly related if the student’s image is incidental or captured only as part of the background, or if a student is shown participating in school activities that are open to the public and without a specific focus on any individual.

## **Eligible Student**

Means any enrolled student of Appalachian State University or the educational institution from which the records are requested ([34 CFR 99.3](#)).

## **“For or on behalf of an educational entity”**

Means a party that is designated by an educational authority or agency to act on behalf of the institution. This includes parties that conduct audits, evaluations, compliance, or enforcement activities for federally or state-supported education programs and employees performing research within the scope of their employment at an educational entity. Private research done outside of employment with an educational entity would not meet the definition of “for or on behalf of an educational entity” even if the individual is also a faculty member or employee of an educational entity.

## **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 education records is necessary or appropriate to fulfill

that individual's responsibilities for the university. Legitimate Educational Interest is defined by the University in [Appalachian policy 105.3, section 4.7.3](#).

### **Personally Identifiable Information (PII)**

Includes but is not limited to the student's name, the name of the student's parent or other family members, the student or family member's address, any personal identifiers such as a student's social security number, student id number (banner ID), or biometric record, or any indirect identifiers such as the student's date of birth, place of birth or mother's maiden name ([34 CFR 99.3](#)).

2. PII also includes any 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
3. information requested by a person who the university reasonably believes knows the identity of the student to whom the education record relates.

### **V. FERPA PERMISSION REQUIREMENTS AND FERPA EXCEPTIONS**

1. In accordance with [34 CFR 99.30\(a\)](#), an eligible student or their authorized representative must provide written permission before a student's education records can be disclosed, unless the disclosure meets one or more of the exceptions listed in [34 CFR 99.31](#).
2. Permission to access FERPA Records for research purposes can be combined with the Informed Consent for Research form. Under FERPA, valid permission for the disclosure of a student's education records requires that:
  - a. The permission must be presented as a written document (electronic forms signed by software with identity authentication).
  - b. The permission contains the following information:
    - i. What records are being disclosed.
    - ii. The purpose for which the records are being disclosed.
    - iii. To whom the records are being disclosed and their role.
    - iv. The date range for which the records will be accessed.
  - c. The permission must be signed by the eligible student or their authorized representative.
    - i. In accordance with [34 CFR 99.30\(d\)](#), electronic signatures by software with identity authentication, provided that the electronic

record identifies and authenticates the source of the electronic consent and indicates this person's approval of the information contained in the electronic consent document.

- d. The permission must be dated by the eligible student or their authorized representative.
3. In accordance with [34 CFR 99.31\(a\)\(6\)\(i\)](#), written permission is not generally required for the disclosure of PII from a student's education record when:
    - a. The disclosure is to organizations conducting studies that are for, or on behalf of, educational agencies or institutions; and
    - b. The activities are intended to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction.
    - c. Educators acting "out of the scope of their role as an educator" to complete research activities (for example for their dissertation or independent research endeavors) must seek permission to access FERPA records from either a FERPA records holder, supervisor, or directly from the eligible student or their authorized representative.
  4. In accordance with [34 CFR 99.31\(a\)\(6\)\(iii\)](#), disclosure of non-directory information may only occur without student permission (or parental permission, if applicable) if all of the following conditions are met:
    - a. The study is conducted in a manner that does not permit personal identification of students or their family members by individuals other than representatives of the organization that have a legitimate educational interest in the information;
    - b. The information is destroyed when no longer needed for the purposes for which the study was conducted; and
    - c. The agency or institution disclosing the non-directory information enters into a written agreement (as appropriate) that contains the information required under [34 CFR 99.31\(a\)\(6\)\(iii\)\(C\)](#).
  5. In accordance with [34 CFR 99.31\(a\)\(11\)](#) and [Appalachian Policy 105.3 section 4.9.1](#), written permission is not required for the disclosure of directory information. For all other educational institutions for which directory information is requested, the researcher must adhere to the policies and regulations of that educational institution.

## **VI. RESEARCHER ACCESS TO FERPA DATA WHEN THERE IS A DUAL ROLE**

1. If researchers already have access to FERPA records due to their professional role (e.g., professor, administrator, teacher, instructor, principal, advisor, student teacher, etc.) and they want to use those FERPA records as data for research, they must do all of the following:
  - a. Obtain written FERPA permission in accordance with this SOP from each eligible student or their authorized representative or qualify for an exception to the FERPA requirement for written permission.
  - b. Address all applicable requirements for obtaining informed consent for participation in research.
    - i. For non-exempt research, consent from each student (and/or parental consent if applicable) to participate in research must be obtained and documented in accordance with [45 CFR 46.116](#) and [.117](#), unless the IRB grants a waiver of consent.
    - ii. For research that is exempt from IRB review under [45 CFR 46.104](#), consent from each student (and/or parental permission if applicable) to participate in research must be obtained in accordance with the requirements set by RP Staff.
    - iii. For both exempt and non-exempt research, consent from each student (and/or parental consent if applicable) must be obtained using the exact procedures and consent materials contained in the approved or exempt IRB application.
  - c. Seek site permission or records release from the appropriate authority:
    - i. Before seeking direct permission from individuals to access their FERPA information, the researcher must first seek and obtain any required site permission to complete the research from an appropriate authority such as a direct supervisor, department head, chair, dean, or principal.
    - ii. If not seeking direct permission from individuals to access their FERPA information, the researcher must obtain permission from an appropriate authority such as a direct supervisor, department head, chair, dean, registrar, or principal to release the FERPA information to the researcher to be used for research purposes. The appropriate authority makes the records release determination.

- iii. Where applicable, in research involving K-12 schools all established policies and procedures for obtaining permission from the school and/or school district must be followed prior to commencing research within that district.
  1. This includes contacting the school district to determine the appropriate authority from whom to request site permission.
  2. If a school district and/or the appropriate authority for the research site refuses permission for the investigator to conduct a particular research study, the IRB cannot overrule this decision.

## **VII. IRB APPROVAL AND EXEMPTION FOR RESEARCH INVOLVING FERPA DATA**

1. The following must be included in the IRB application for any research that involves accessing identifiable student education record(s) for research purposes:
  - a. Provisions for obtaining FERPA permission from an eligible student or their authorized representative to access student records can be combined with IRB informed consent documentation.
    - i. For all FERPA records permission sought from Appalachian State University students, the researchers must use Appalachian's IRB template for Informed Consent that includes the University's IRB's language for FERPA records permission.
    - ii. For all FERPA records permission sought from non-Appalachian State University students, researchers should use Appalachian' IRB template for Informed Consent that includes the IRB's language for FERPA records permission, but this can be adapted to meet the requirements from the records sharing institution as long as the permission does not include exculpatory language.
  - b. Abbreviated consent information may be combined with complete FERPA permission for studies that qualify for exemption under [45 CFR 46.104\(d\)\(1\)](#).
  - c. Provisions for obtaining informed consent in accordance with [45.CFR.46.116](#) and all applicable IRB standards and procedures for non-exempt research, or a request for a waiver of informed consent for non-exempt research ([45.CFR.46.116\(f\)](#)) may occur, when the study also qualifies for a FERPA exception.
  - d. Any conflicts of interest related to the research including a description of how the conflicts of interest have been or will be addressed, must be

included. This includes when faculty or staff want to access their own students' FERPA records for research purposes.

- e. A statement that indicates that the research team will access, secure, transfer, and delete the FERPA information in accordance with the secure data storage and sharing standards set by Appalachian's Office of Information Security and will seek assistance from this office as appropriate to researcher skill level and [data sensitivity](#).
2. Human subjects' research protocols subject to FERPA may be approved or determined to be exempt under the following review categories:
    - a. Exemption category [45 CFR 46.104\(d\)\(1\)](#).
    - b. Exemption category [45 CFR 46.104\(d\)\(4\)\(ii\)](#).
    - c. Expedited [Category 5](#)
    - d. Full IRB Review
  3. If the access to, receipt of, and use of education records is one part of the proposed protocol where other data collection methods take place, other aspects of the study are considered when determining the proper level of review.

## **X. SUPPORT PROCESSES AND PROCEDURES**

SOP #1  
SOP #2  
SOP #5  
SOP #6  
SOP #9

## **X. REFERENCES**

34 CFR 99  
45 CFR 46  
Appalachian Policy 105.3  
Appalachian Policy 209