



FERPA & IRB: Navigating Student Data in Research

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Purpose & Objectives

- Introduction: What is FERPA & Why UCR Cares?
- The "Hats": Faculty vs. Researcher
- The Data: Defining Education Records
- FERPA & IRB Intersection
- The Mechanics: Written Consent vs. Exceptions
- Best Practices & Common Pitfalls



Introduction: What is FERPA & Why UCR Cares?



- FERPA (Family Educational Rights and Privacy Act) is a federal law that protects the privacy of student education records.
- FERPA comes from the Department of Education and **non-compliance can lead to a withdrawal of federal funding.**
- The **University Registrar** is the FERPA Compliance Officer and the steward of the student academic record.
 - **Approver** in the IRB Protocol process for FERPA requirements.

Who has FERPA Rights at UCR?

THE STUDENT AND ONLY THE STUDENT

- Any student attending UCR (institution of higher education) regardless of age.
- All students for whom records are maintained, regardless of type of record.
- Parents lose FERPA rights when the student attends UCR, regardless of age. This is a transition for parents because throughout K-12 they have equal rights as the student.
- Student retains all FERPA rights until they are deceased.

Student Rights

- Inspect and review educational records;
- Seek amendment of educational records;
- **Consent to the disclosure of educational records;**
- Obtain a copy of the school's FERPA policy;
 - UCR FERPA policy:
<https://registrar.ucr.edu/resources/ferpa/UCR-policy>
- File a complaint with the FERPA office in Washington, D.C.



The "Hats": Faculty vs. Researcher



Faculty

- You have access under the “legitimate educational interest” component of FERPA.
- “Built-in” permission based on your need to instruct, grade and help students within your class.
- DOES NOT allow you to download those grades into an Excel sheet for a journal article.



Researcher

- Does not fall under “legitimate educational interest”.
- You are seen more as a third party to the data and must follow different rules.
- Consent is not by default but must be granted.

These are distinct separate “hats” you wear and just because you are a faculty member doesn’t translate to you having access to student data for research. Students have the right to govern the use/release of their data.

The Data: Defining Education Records

Any information maintained by the institution and related to the student is an educational record, except ...

- Law enforcement records, unless disclosed to others on campus outside of UCPD (i.e., SCAIP)
- Treatment/medical records
- Alumni records (created after attendance has concluded and degree awarded)
- Employment records, unless the requirement for the job is that you are a student (i.e., TA, student worker, etc.)
- Sole possession records (i.e., personal note not shared with any other individual)

The Data: Defining Education Records

Directory Information

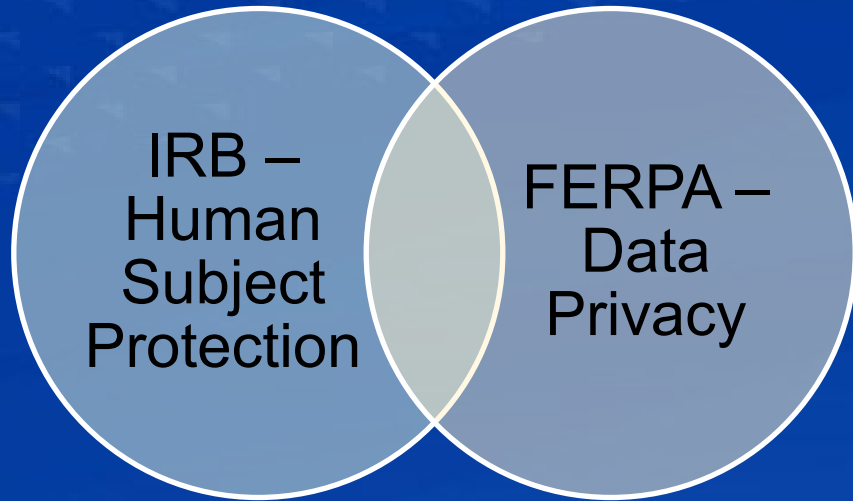
Information the university **may** release without the written consent of the student.

Students **must** have a dynamic way to opt-out. At UCR this is through R'Web.

Data being defined as directory information **does not** give automatic access for research.

- Telephone Number
- Date of Birth
- Place of Birth
- Email Address
- Dates of Attendance
- Honors
- Previous Schools Attended
- Degrees Awarded
- Participation in official activities and/or sports
- Height and weight (of athletes)
- Field of Study (including major, minor, concentration, specialization, and similar designations)
- Grade Level
- Enrollment Status (e.g., full time or part time)
- Number of Units in which Enrolled

FERPA & IRB Intersection



- This is not an either/or requirement
- An exception from one is not an exception from the other
- You must meet **BOTH** the “Ethics” side (IRB) and the “Privacy” side (FERPA)
- You can have a signed IRB consent form that doesn’t meet the specific legal “written consent” requirements for FERPA.

The Mechanics: Written Consent

Requirements for a Written Consent (MUST be an OPT-IN Authorization)

- Student Name
- Specific student records to be disclosed
- Purpose of the disclosure
- Party to whom the disclosure will be made
- Length of time data will be released
- Signature and Date



Digital signatures are allowed if you have made a “good faith” to ensure the student is the one who signed the document.

- Use of tools that are behind MFA

The Mechanics: Exceptions

Studies Exception

Due to the complexities of various federal and state privacy laws, it is best practice to always receive signed authorization.

Should be interpreted as within the boundaries of UCR.



If the research will be more broadly shared to benefit education outside of the UCR campus, the exception does not apply, and authorization must be received.

The Mechanics: Exceptions

De-Identified Datasets

Due to the complexities of various federal and state privacy laws, it is best practice to always receive signed authorization.

At no time would there be any student specific data being collected (i.e. surveys, homework assignments, etc.)



Data would come from ITS or IR directly with data already de-identified

Sample size is significant enough that no student would be able to be re-identified

Best Practices & Common Pitfalls

- Easiest way to get consent is to include FERPA required information in the IRB Informed Consent. **Two in one can work!**
 - **Common pitfall:** Forget to include the specific course involved.
- Utilize common UCR tools for authorization (MFA required and controlled by UCR security).
 - **Common pitfall:** Use of personal student email.
- De-identified data is not always safe and doesn't always prevent required consent.
 - **Common pitfall:** Small cell sizes can allow a student to be identified by a faculty member.
- Ensure there is an established retention schedule, and it is articulated in the protocol.
 - **Common pitfall:** Data is kept longer than necessary; increasing institutional liability.

Worth Revisiting ... FERPA guiding principles for IRB application review – UCR Legal

- Authorization for FERPA **must be a signed authorization for opt-in**; Opt-out approaches are not appropriate.
- **The HHS exception does not pre-empt FERPA**; both must apply equally and at the same time. Therefore, research that includes students must adhere to FERPA.
- A faculty member in charge of a course doesn't automatically have access to the course information to do research. Therefore, **even if the faculty member is the only researcher involved, they must receive consent.**
- **FERPA exception for instructional improvement should be interpreted as within the boundaries of UCR** instructional improvement. If the research will be more broadly shared to benefit education outside of the UCR campus, the exception does not apply, and authorization must be received.
- Due to the complexities of various federal and state privacy laws, it is **best practice to always receive signed authorization.** Extensive review of the research proposal would need to occur to understand all the facts of the research and potential touch points of all privacy laws to allow for an exception to the authorization.

What should you do if you think a FERPA violation occurred?

REPORT IT!

- Report it to the University Registrar who is the FERPA Compliance Officer.
- The UCR FERPA Incident Response Procedure is published on the Registrar's website as Appendix B to the policy.
- Please do not:
 - Blast an email to all involved about the breach
 - Spin or propagate unsubstantiated facts
 - Communicate that there is a breach to individuals outside of the incident response decision makers

Consequences

We understand that we are all human, but with that said, FERPA and the privacy of our student records is the utmost importance to us. The Department of Education expects that all institutions will adhere to FERPA and if the institution is found to not be complying, there is risk of the university losing funding under any applicable Department of Education program.

At UCR, consequences can range from:

- Retraining
- Student Record Access Removal
- Student Conduct
- Employment Impact



FERPA Resources

- Registrar's Office website – this has a lot of good information for UCR Employees and students.
 - UCR Employee resources - <https://registrar.ucr.edu/resources/ferpa/staff>
 - UCR FERPA Policy - <https://registrar.ucr.edu/resources/ferpa/UCR-policy>
- University of California FERPA 101 - <https://www.ucop.edu/uc-legal/files/ed-affairs/ferpa101.pdf>
- UC Learning Center – Additional online tutorial
 - [FERPA: How to Protect Student Records](#)

When it doubt ask

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