This document provides a brief summary of the Family Educational Rights and Privacy Act (FERPA; 20 U.S.C. § 1232g; 34 CFR Part 99) regulations and gives guidance for researchers and IRB members about accessing educational records. Note that medical records may be governed by both FERPA and HIPAA.

Summary of the FERPA Regulations

FERPA is a federal law that protects the privacy of personally identifiable information contained in a student’s educational record. FERPA applies to all schools (K-12 and postsecondary institutions) that receive funds under various programs from the US Department of Education (DoED).

FERPA defines “educational records” as records containing information in any medium—paper, electronic, microfilm, etc.—that directly relate to a student and are maintained by an educational institution or by a party acting for the institution.

The information listed below is not considered part of an educational record and thus is not regulated by FERPA. However, the information may be regulated or protected by other federal and state laws.

Items not considered part of an educational record include:

1. Records kept in sole possession of the maker that are not accessible or revealed to any other person except as a temporary substitute;
2. Certain law enforcement records’
3. Employment records that relate exclusively to the individual as an employee;
4. Record that contain only information about an individual after s/he is no longer a Student, e.g., information about student employment or accomplishments after graduation.

Conditions for which Student Records Can Be Disclosed Without Consent

Generally, schools must have written permission from the student (or parent, if the student is a minor) in order to release any information from a student’s education record. However, FERPA allows schools to disclose educational records without consent under special circumstances. The US Department of Education’s summary of the FERPA regulations lists the following conditions under which student records can be disclosed without consent:

1. School officials with legitimate educational interest;
2. Other schools to which a student is transferring;
3. Specified officials for audit or evaluation purposes;
4. Appropriate parties in connection with financial aid to a student;
5. Organizations conducting certain studies for or on behalf of the school;
6. Accrediting organizations;
7. To comply with a judicial order or lawfully issued subpoena;
8. Appropriate officials in cases of health and safety emergencies; and
9. State and local authorities within a juvenile justice system, pursuant to specific state law.

10. Directory information. FERPA’s definition of “directory information” is information contained in a student’s education record that would not generally be considered harmful or an invasion of privacy if disclosed. FERPA provides guidance on what may be considered directory information; however, each institution is free to designate less information as directory information. FERPA permits the following to be designated as directory information: the student’s name, address, and telephone listing; electronic mail address; photograph; date and place of birth; major field of study; dates of attendance; grade level; enrollment status (e.g. undergraduate or graduate, full- or part-time); participation in officially recognized activities and spots; weight and height of members of athletic teams’ degrees, honors, and awards received and the most recent educational institution attended.

UA’s definition of directory information is: Name; local and permanent addresses and phone numbers; UA e-mail address; full or part-time enrollment status; class/level (rank); UA school or college; major(s) or degree program(s); degree(s) earned and date(s); academic awards and honors; prior postsecondary institution(s) attended; dates of attendance; participation in officially recognized activities and sports (or in intercollegiate athletic teams); and weight and height of members of intercollegiate athletic teams.

For more information go to http://www.registrar.ua.edu/ferpa_fact_sheet.html.

Researchers should note that the following are never designated as directory information: student social security numbers, citizenship, gender, religious preference, grades, and grade point average (GPA).

Under FERPA students are also given the opportunity to file a request to prevent disclosure of directory information ("opting out"). If a student opts out, the university will not release any information on a student.

GUIDANCE FOR INVESTIGATORS AND IRB MEMBERS

Investigators must always apply FERPA and human subject protection regulations when accessing educational records. Generally, FERPA and IRB requirements are met if a student signs a consent form to participate in a study and authorizes release of educational records for research purposes.

If an investigator to requests to waive the informed consent process, the following conditions must be met:

1. Generally, investigators can access and release information in an educational record for any of the items listed earlier under **Conditions for which Student Records Can Be Disclosed Without Consent**. However, the Office for Research Compliance will forward any request to access information without a consent form or with a waiver of consent to UA legal counsel, who will make the final determination of
whether the study meets criteria to release educational information without a signed consent form.

2. Investigators must have permission from the UA Registrar to access educational records at UA. Contact http://www.registrar.ua.edu/, phone (205) 348-7219, or e-mail registrar@ua.edu.

3. If investigators propose to access student records at other institutions than UA, they should contact each institution and follow that institution’s FERPA policy for accessing directory information. Directory information varies at different places.

4. In accordance with FERPA, each educational institution has the authority to determine what information may be accessed from an educational record. If an institution denies an investigator access to information, their decision is final. UA cannot overrule them.

5. According to the IRB federal regulations for non-exempt studies, an IRB cannot waive informed consent or documentation of informed consent unless specific conditions are met. See GUIDANCE: REQUEST FOR WAIVER OF CONSENT OR WAIVER OF WRITTEN DOCUMENTATION OF CONSENT and explain the rationale for the waiver request and how the necessary conditions are met. This is necessary even in circumstances where FERPA allows access to information without prior consent.

6. FERPA and the Health Insurance Portability and Accountability Act (HIPAA) regulations provide conflicting requirements for disclosure of medical records. In some situations FERPA is more restrictive than HIPAA for investigators. Investigators should contact each educational institution and follow its applicable policies, whether FERPA and/or HIPAA regulations for medical records.

7. Educational records of medical students at UA must be accessed through the University of Alabama at Birmingham Medical School.

8. Health records of UA students at the University Student Health Service or patients at the University Medical Center must be accessed through Ms. Jan Chaisson, Director of University Medical Center and Student Health Service Records. Investigators must complete their protocol which involves several university departments and signatures. Contact Ms. Chaisson at (205) 348-1231 or at jchaisson@cchs.ua.edu.

9. Investigators must not use information obtained from student records for any other purpose than the approved research.

10. Investigators must describe how they will protect privacy, confidentiality, and security of data in their IRB applications.

For Additional Information:
For questions about UA FERPA regulations, contact Registrar Michael George at (205)348-7219 or at Michael.george@ua.edu.
If you have questions about privacy issues of your proposed research (HIPAA) with any university records, contact Ms. Jan Chaisson, UA Privacy Officer, at (205) 348-1231 or jchaisson@cchs.ua.edu.