**Family Educational Rights and Privacy Act (FERPA) Guidance**

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

As a general rule, schools must have written permission from the eligible student (i.e., a student either of 18 years of age or matriculated into a postsecondary institution), or the parent of a minor student in a primary institution, to release information from a student's education record. Unless the research, involving the use or disclosure of PHI contained with an education record, qualifies for an exception under FERPA, the IRB cannot waive consent.

FERPA defines “education 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.* DU has declared itself a hybrid entity under the HIPAA privacy rule. Therefore, students’ health or treatment records maintained by Health and Counseling or other specifically-declare clinics may be governed by the HIPAA Privacy Rule. If these records are
used or disclosed for any purpose other than treatment or by other departments, these records become “education records” and must follow the rules for use and disclosure under FERPA.

Under FERPA, the term personally identifiable information (PII) includes but is not limited to:

* Student’s name and other direct personal identifiers, such as the student’s social security number or student identification number;
* 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;
* 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;
* 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; and
* Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

**Office of Institutional Research & Analysis**

At the University of Denver, the Office of Institutional Research & Analysis (IR) has been designated by the Registrar to review and approve requests for the use of student records for research purposes. If you intend to use student records for research purposes, including grades, course assignments, and other FERPA protected education records, you must complete the Student Records Request Form and submit it to IR for review and approval. That signed document must be submitted with your IRB application and other materials via IRBNet before IRB approval can be obtained.

**Using Class Rosters for Research Purposes**

*Investigators must understand that class rosters are covered under FERPA and cannot be used for research purposes. The following three scenarios are ways to address recruitment from active courses:*

1. Outside groups or unaffiliated researchers ask for a research opportunity to be shared. A DU professor or administrator can serve as the gatekeeper and forward the opportunity to students within a unit, department, and or class. The gatekeeper can utilize listservs or emails for this distribution, with the explicit understanding that emails and other identifying information will not be provided to the researcher by the gatekeeper.
2. A faculty member within the DU community asks for a research opportunity to be shared. A professor or administrator can serve as the gatekeeper and forward the opportunity to students within a unit, department, and/or class. The gatekeeper can utilize listservs or emails for this distribution, with the explicit understanding that emails and other identifying information will not be provided to the researcher by the gatekeeper.
3. A faculty member wants to use their class as potential research subjects. They cannot use the class roster or build the consent within a class assignment to ask the students to participate. The professor would have to use either a paper consent prior to the data collection or send an announcement through a system, like Canvas, to allow the students to opt into the research opportunity. The system (e.g., Canvas) serves as the gatekeeper in this instance and does not identify individuals specifically.