

 JOHNS HOPKINS BLOOMBERG SCHOOL of PUBLIC HEALTH	Human Research Protection Program Policies & Procedures	
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Title: Research That Involves Children	Date Effective June 7, 2005	Supercedes P&P dated October 14, 2004

Background

The unique vulnerability of children requires that they receive additional protections when they are being considered as potential research subjects. Federal regulations require that, to the extent that they are able, children be given the opportunity to agree or disagree to take part in the research and that the permission of their parents or guardians be obtained. Furthermore, risks associated with the research must be compared with those encountered in the daily lives of children and must be justified in relation to the prospect of direct benefits.

While CHR and investigators must pay careful attention to these additional requirements, children should not be denied the benefits of participating in research. Children should be included in all JHSPH human research activities unless an appropriate justification for excluding them is given in the research plan or CHR decides that they should not be included.

JHSPH Policy and Procedures

Definition of a Child

For the purpose of conducting human subjects research, a child is a person who has not attained the legal age to consent to treatments or procedures involved in the research under the applicable law of the jurisdiction in which the research will be conducted. In most states, including Maryland, the legal age at which a person is able to consent to participate in research is 18 years. Investigators should check appropriate State and local laws and regulations before conducting research to determine the definition of a child for the purposes of enrollment in research. In international studies, the relevant national laws and regulations should be applied.

Justifications for Excluding Children from Research

CHR will consider the following scientific or ethical justifications for excluding children from the research:

1. The research topic is irrelevant to children.

2. There are laws or regulations that bar the inclusion of children in the type of research being proposed.
3. The knowledge being sought in the research is already available for children or will be obtained from another ongoing study, and an additional study would be redundant. Documentation of other studies must be provided.
4. A separate, age-specific study in children is warranted and preferable.
5. Insufficient data are available in adults to judge potential risks in children. (One of the research objectives could be to obtain sufficient adult data to make this judgment.)
6. The study is designed to collect additional data on pre-enrolled adult study participants.
7. Other special cases justified by the investigator.

Allowable Categories of Research Involving Children and Consent Requirements:

Investigators must submit a completed *Research Involving Children Checklist* (**LINK**) with all CHR applications. The checklist outlines the categories of research that are allowable under the Federal regulations and the conditions for obtaining permission of parents or guardians. These include:

1. Research involving *no more than minimal risk*. This requires that:
 - The assent of the child and permission of at least one parent or guardian will be obtained. (45 CFR 46.404)
2. Research involving *greater than minimal risk but presenting the prospect of direct benefit* to individual subjects. This requires that:
 - the risks are justified by the anticipated benefits, and
 - risks are minimized and the relationship of risks to benefits is at least as favorable as any available alternatives, and
 - the assent of the child and permission of at least one parent or guardian will be obtained. (45 CFR 46.405)
3. Research involving *greater than minimal risk and having no prospect of direct benefit* to individual subjects, but being likely to yield generalizable knowledge about the subject's disorder or condition. This requires that:
 - the risks represent only a minor increase over minimal risk, and
 - the intervention or procedure presents experiences to subjects that are reasonably commensurate with those inherent in their actual or expected medical, dental, psychological, social or educational settings, and

- the intervention or procedure is likely to yield generalizable knowledge about the subject's disorder or condition that is of vital importance for the understanding or amelioration of the disorder or condition, and
- the assent of the child and permission of both parents and guardian(s) will be obtained, unless one parent is deceased, unknown, incompetent, or not reasonably available; or only one parent has legal responsibility for the care and custody of the child. (45 CFR 46.406)

Note that in the above categories "direct benefit" refers to treatments or services that hold the prospect of benefit for the child and would not otherwise be reasonably available to the child.

If the research does not qualify for one of the above categories, CHR must either disapprove the research or refer the study to the Secretary, DHHS, for review and approval, provided that the CHR finds that the research presents a reasonable opportunity to understand, prevent or alleviate a serious problem affecting the health and welfare of children. In this situation, the assent of the child and permission of both parents or guardians must be obtained unless one parent is deceased, unknown, incompetent, or not reasonably available; or only one parent has legal responsibility for the care and custody of the child. (45 CFR 46.407)

Parental Permission and Child Assent

The Research Plan must describe how the permission of parents or guardians, and the assent of children, will be obtained. Any exceptions from obtaining parental permission, based on State and local laws, should also be described. CHR expects that parental permission and the assent of the child will be obtained unless the Research Plan states otherwise. A parental permission form and a child assent form should be included with the application to CHR.

As a rule, all of the requirements concerning informed consent apply to obtaining parental permission; i.e., the appropriate elements of informed consent must be included in a written parental permission form (**LINK**). Investigators should, however, consult State and local laws and regulations, or national laws for international studies, for exceptions to obtaining parental permission and child assent. Similarly, the waiver requirements for informed consent also apply to parental permission (**LINK**). CHR may, however, waive the requirement for parental permission if the research is designed for a population for which seeking parental permission would not be reasonable; i.e. abused or neglected children. In such cases an appropriate mechanism must be in place to protect the children who will participate. The choice of mechanism depends upon the research design, risks and benefits of the research, and the children's age, maturity, status and condition. If a waiver of parental permission is requested, a concise, but complete justification must be provided in the research plan.

Child assent

Child assent may range from a simple oral explanation for which a child's signature is not required to a consent document that contains all of the elements of informed consent. The form and content of the assent depends on the intellectual age of the child. CHR requires that assent be obtained from children with an intellectual age

of 7 years or more. Younger children cannot provide assent, but they should be appropriately informed of study procedures.. The following guidelines generally apply:

- Children younger than 7 years: A simple oral explanation should be offered to the child before study-related procedures are conducted. For example: *“We have to take a little bit of blood from your arm. That means that you will feel a little needle stick. It will only hurt for a minute. Your mom (or dad) will be with you the whole time and can hold your hand.”*
- Children aged 7 to 11 years: Informed voluntary verbal assent should be obtained without pressure from parents or investigators. The CHR application should include an example of the explanation to be offered to the child. A sample child assent form is available ([LINK](#)). The child’s assent should be solicited and recorded in the presence of a parent, and the signed parental permission form should include the following statement: *“This study has been explained to my child in my presence, in language he/she can understand. He/she has been encouraged to ask questions both now, and in the future, about the research study.”*
- Children aged 12 to 15 years: Investigators may choose to handle the consent/assent requirements for this group in one of two ways. They may either submit a combined child assent/parental permission form that is written at a level simple enough for both parent and child to read and understand, e.g. about a 6th grade reading level, or they may choose to submit a permission form for parents and a separate assent form for the child to read and sign. If a single form is designed for both parent(s) and child, it should be signed by each after the study has been explained. The form should be written as simply as possible and should cover the following points:
 - What the study is about
 - Why he/she was selected for the study
 - That taking part in the study is voluntary
 - The procedures that will be done
 - Potential benefits of the study
 - Potential risks of the study
 - Assurance that he/she will be treated the same whether or not he/she agrees to join the study
 - An invitation to ask questions about the study
 - Assurance that he/she may withdraw from the study after discussing it with his/her parents
- Children aged 16 to 18 years: A combined child assent/parental permission form that includes all of the elements of informed consent, as appropriate, and is written in language that is easily understood by both the parents and the child (about an 8th grade reading level) is sufficient for this group. A separate child assent form need not be used. The parent(s) and the child must each sign the form.

Child Consent Without Parental Permission in Maryland

Under certain conditions, a child in Maryland may be able to consent to the research *without the permission of parents*. The following is a list for Maryland of the most common situations in which a child is able to consent without a requirement for parental permission:

- Generally, a child who is not living with a parent or guardian and is financially independent from the parent or guardian may consent to take part in research that is related to the condition for which the child is seeking treatment.
- A female who is pregnant may consent to research and treatments concerning the pregnancy.
- A minor who wants specific treatment or advice about: drug abuse, alcoholism, sexually-transmitted diseases, pregnancy, or contraception (other than sterilization) may consent to research that is related to the treatment of these conditions.
- A child who is at least 16 years old may consent to consultation, diagnosis, and treatment of a mental or emotional disorder by a physician, psychologist, or a clinic and may consent to research that is related to the diagnosis or treatment of these conditions.
- A child who is validly married or is the parent of a child may consent to take part in research that is related to the condition for which the child is seeking treatment.

Note, however, that a child who meets any of the above conditions is only able to consent to research if it is either not greater than minimal risk (45 CFR 46.404) or, if it is greater than minimal risk and holds the prospect of providing direct benefit to the child that is at least equal to the risk (45 CFR 46.405).

Retention of Research Records

Legal requirements for retaining records of research that involves minors must be determined and followed for the State or other jurisdiction in which the research will be done. In Maryland, such records must be retained until the subjects reach age 21 years or until 5 years after completion of the research, whichever is the longest, unless the minor's parent or guardian is notified, or, if the minor is able to consent on his or her own (see above), the minor is notified.

Research Conducted in Public Elementary and Secondary Schools

Investigators must determine, and describe in the Research Plan, the locally applicable requirements for review and approval of research that will be conducted in public elementary or secondary schools. For example, research that will be conducted in a Baltimore City public school must be reviewed and approved by the Baltimore City Health Department before it is initiated. Similarly, if research will be conducted in a Baltimore

County public school, it must have prior review and approval by the County Board of Education.

When conducting research in public elementary and secondary schools, investigators are responsible for ensuring that the school has confirmed in writing that it is in compliance with the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). FERPA controls access to and disclosure of personal identifiable student information and records; PPRA controls the development and administration of surveys that involve protected information in local educational agencies and schools.

Under FERPA, with certain exceptions, the permission of parents or guardians must be obtained before disclosing a student's record or personally identifiable information. Likewise under PPRA, the permission of parents or guardians must be obtained (or in some cases the parents must be allowed to exclude their children from the survey) if an investigator develops or administers a survey to students that covers one of the following areas of protected information:

1. Political affiliations or beliefs of the student or the student's parents;
2. Mental or psychological problems of the student or the student's family;
3. Sexual behavior or attitudes;
4. Illegal, anti-social, self-incriminating or demeaning behavior;
5. Critical appraisals of other individuals with whom respondents have close family relationships;
6. Legally recognized privileged or analogous relationships, such as those with lawyers, physicians or ministers;
7. Religious practices, affiliations or beliefs of the student or the student's parents; or,
8. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program.)

Investigators must provide a letter of support from the school to CHR with their application when conducting research within the school system. The letter should include a statement that the school will comply with the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA), and a statement that the school supports the research. Research applications that do not provide such a statement will not be reviewed or approved by CHR.

Wards of the State

Children who are wards of the state or any other agency may be included in the allowable categories of research if the research is: (i) related to their status as wards, or (ii) conducted in settings in which a majority of children who are subjects are not wards.

If (i) the research involves *greater than minimal risk and has no prospect of direct benefit* to individual subjects, but is likely to yield generalizable knowledge about the subject's disorder or condition (45 CFR 46.406), or (ii) the research is not otherwise approvable but presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children (45 CFR

46.407), investigators must make provisions for a child advocate for each child who is a ward of the state 45 CFR 46.409. The advocate must be an individual who has the background and experience to act in, and agrees to act in, the best interests of the child for the duration of the child's participation in the research and who is not associated with the research in any way, except as a member of CHR. One person may serve as advocate for more than one child. The advocate may not be a child's guardian or a person acting *in loco parentis*. The Research Plan must either provide for this requirement or state that wards of the state will be excluded from participation.

Definitions

Assent: A child's affirmative agreement to participate in research. Mere failure to object, absent affirmative agreement, should not be construed as assent.

Permission: The consent of a parent(s) or guardian to the participation of their child or ward in research.

Child: A person who has not attained the legal age for consent to treatments or procedures involved in the research under the applicable law of the jurisdiction in which the research will be conducted.

Guardian: An individual who is authorized under applicable state or local law to give consent on behalf of a child for general medical care and to give permission for the child to take part in research.

Parent: A child's biological or adoptive mother or father. A pregnant woman is not a parent until she gives birth to a living child.

Privilege: a special benefit, exemption from a duty, or immunity from penalty, given to a particular person, a group or a class of people.

Ward of the State: A person who is housed by and receives protection and necessities from the government (e.g. when a governmental agency has custody of a minor or a mentally incompetent person for his or her protection and care.)

RESOURCES & REFERENCES

45 CFR 46.402

45 CFR 46.404

45 CFR 46.405

45 CFR 46.406

45 CFR 46.407

45 CFR 46.409

OHRP Requirement _____

FDA Requirement _____

AAHRPP Element _____