



KENTUCKY COMMUNITY & TECHNICAL COLLEGE SYSTEM

Human Subjects Review Board

HANDBOOK
FOR
INVESTIGATORS:

For the Protection
of Human Subjects in Research

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Human Subjects Review Board

PART I

KCTCS HUMAN SUBJECTS RESEARCH POLICY

1.8.2.3.2.1 Human Subjects Review Board

The KCTCS Human Subjects Review Board (HSRB) has institutional responsibility for:

1. Assurance of protection of human subjects involved in research or related activities;
2. Assurance that KCTCS fulfills its contractual and federally mandated obligations relative to protection of human subjects, if applicable; and
3. Maintenance of policies and procedures for protection of human subjects which are, at a minimum, in accord with applicable regulations of funding and regulatory agencies.

The KCTCS HSRB is appointed annually by the KCTCS President after consultation with the KCTCS Cabinet. The membership composition of the Board is kept consistent with federal regulations. Chairpersons, ex officio members, and community members of the Board are designated by the President. HSRB members with other than ex-officio status normally shall have staggered three-year appointments. The HSRB reports to the President through the Office of Internal Affairs. The Vice President responsible for Internal Affairs serves as the designated institutional officer on the HSRB. Internal Affairs is responsible for managing individual protocol reviews; assisting in policy development, agency liaison, federal record keeping and reporting; handling allegation of noncompliance; and assisting the institution in responding to new federal initiatives affecting ethical conduct of research.

Any undertaking in which a KCTCS faculty member, staff member, or student investigates and/or collects data on human subjects for research or related activities may be construed as "involving human subjects". It is the responsibility of each investigator to seek review by the KCTCS HSRB of any proposed study involving human subjects prior to initiation of the project. Also, it is the responsibility of each investigator to ensure that research is implemented and records maintained in accord with KCTCS HSRB policies and procedures.

1.8.2.3.2.2 Responsibilities

The specific responsibilities of the designated KCTCS Human Subjects Review Board are to:

1. Review all research (or related activity) projects involving human subjects originating from their respective units.
2. Recommend appropriate action on these projects within the guidelines set forth by the applicable federal granting and regulatory agencies, if applicable, and the KCTCS HSRB Policy.
3. Review all proposed changes in previously approved research studies and recommend appropriate action on these changes within the guidelines set forth by the applicable federal granting and regulatory agencies and the KCTCS HSRB.
4. Conduct continuing review of previously approved research projects at intervals appropriate to the degree of risk, but not less than once per year.
5. Handle reports of unanticipated problems and allegations of noncompliance concerning protection of human subject regulations and, in cases where corrective action is needed, issue appropriate sanctions including but not limited to requesting minor changes, determining data collected cannot be used for publication, disqualifying investigators from conducting research involving human subjects at KCTCS, and recommending to KCTCS administration that further administrative action be taken.
6. Advise appropriate KCTCS officials of current federal regulations or proposed changes in federal regulations pertaining to the protection of human subjects, and advise on KCTCS policy development and regulation changes which best insure the rights and welfare of human research subjects.
7. Recommend to the President on membership composition of the Board through the KCTCS Vice President.
8. When participating in a cooperative project with another entity, enter into a joint arrangement, rely upon the review of another qualified HSRB, or make similar arrangements in accord with guidelines set forth by the applicable federal granting and regulatory agencies and KCTCS HSRB policy.

1.8.2.3.2.3 Meetings

Meetings of the HSRB may be regularly scheduled or held upon call of the chairperson.

1.8.2.3.2.3 Materials

Copies of the Department of Health regulations for human research subjects and other educational materials are available in the Internal Affairs Office.

Kentucky Community & Technical College System

Human Subjects Review Board

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PART II

SUMMARY GUIDE FOR INVESTIGATORS

Who must follow the KCTCS policy and procedures for the protection of human subjects?

Any administrator, faculty or staff of the Kentucky Community and Technical College System who is responsible for research activity involving human subjects must follow the KCTCS policy and procedures for any research activity that involves human subjects.

To what activities do the KCTCS policy and procedures apply?

To any research activity that involves human subjects, whether such research is undertaken on a large or small scale, whether it is preliminary or fully designed, whether it is student or faculty research, whether it is externally funded or not, and whether it involves minimal risk or more than minimal risk. [See *Part III, B, p. 9*]

Who reviews human subjects research?

All research involving human subjects must be submitted for review to the KCTCS Human Subjects Review Board, unless *the research complies fully with the criteria for one or more specific exemption categories*. Determination of whether a research project is exempt from formal review must be made in consultation with the KCTCS Human Subjects Review Board (859-256-3395). [See *Figure I, p. 17*]

When must a research activity involving human subjects be reviewed?

Prior to the initiation of activity, prior to the implementation of changes in previously approved procedure involving human subjects, and *at least annually* during the lifetime of the project. If the project is being proposed for external funding, review should take place *prior to* or *shortly after* submission of a proposal to the sponsor. [See Part I, p. 4; Part III, p. 16; Part III, C, 5 p. 29]

What is the process?

Here is the simple Seven Step process:

1. Employee/researcher selects and completes either the **Exempt** or **Non-Exempt** form.
2. District CEO signs (and, therefore, approves) the form.
3. The appropriate form is submitted to the System Vice President
4. If exempt – approval/non-approval is made at the Vice President level.
5. If non-exempt – the Human Subjects Review Board (HSRB) is convened for approval/non-approval.
6. Employee/researcher will be notified of approval/non-approval in writing.
7. Appropriate documentation will be maintained by the employee/researcher and by the System Vice President.

How can an investigator obtain further information or advice regarding the use of human subjects?

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PART III

Membership on the Human Subjects Review Board

The Code of Federal Regulations [Title 45, Part 46.107] outlines provisions for membership on the Human Subjects Review Board (HSRB). A summary of these provisions follows:

- a. Each HSRB shall have at least five (5) members.
- b. Members shall represent various backgrounds to promote complete and adequate review of research activities.
- c. The HSRB collective membership shall be diverse with consideration given to race, gender, and cultural backgrounds.
- d. No HSRB shall consist entirely of men or entirely of women.
- e. No HSRB shall consist entirely of members of one profession.
- f. The HSRB membership shall be sensitive to community attitudes “to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects.
- g. The HSRB may invite individuals with competence in special areas to assist in the review; however, these individuals may not vote.
- h. At least one member of the HSRB shall have primary concern in scientific areas.
- i. At least one member of the HSRB shall have primary concern in non-scientific areas.
- j. No member of the HSRB may participate in the review of any project in which there is a conflicting interest – except to provide information requested by the HSRB.

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PART IV

Fundamental Principles for the Use of Human Subjects in Research

The use of human subjects in research is extremely important to the development of new knowledge in many areas. However, careful attention must be given to questions of ethics and human dignity whenever human subjects participate in research.

In 1978, the National Commission for the Protection of Human Subjects in Biomedical and Behavioral Research developed broad ethical principles to provide a basis on which specific rules could be developed. These principles, which are discussed in *The Belmont Report*, are set forth below:

A. The Belmont Principles

Three basic principles are particularly relevant to the ethics of research involving human subjects: *respect for persons, beneficence, and justice*.

1. Respect for Persons

Respect for persons incorporates at least two basic ethical tenets: first, that individuals should be treated as autonomous agents, and second, that persons with diminished autonomy are entitled to protection. The principle of respect for persons thus divides into two separate moral requirements: the requirement *to acknowledge autonomy and the requirement to protect those with diminished autonomy*.

To respect autonomy is to give weight to autonomous persons' considered opinions and choices while refraining from obstructing their actions unless they are clearly detrimental to others. Respect for the immature and the incapacitated may require protecting them as they mature or while they are incapacitated. In most cases of research involving human subjects, respect for persons demands that subjects enter the research voluntarily and on the basis of adequate information about the research situation and possible consequences.

2. Beneficence

Persons are treated in an ethical manner not only by respecting their decisions and protecting them from harm, but also by making efforts to secure their well-being. Such treatment falls under the principle of beneficence. Two general rules

have been formulated as complementary expressions of beneficent actions in this sense: first, *do not harm* and second, *maximize possible benefits and minimize possible harms*. Learning what will, in fact, benefit may require exposing persons to risk. The problem posed by these imperatives is how to decide when it is justifiable to seek certain benefits, despite the risks involved, and when the possible benefits should be foregone because of the risks.

The obligations of beneficence affect both individual investigators and society at large, because they extend both to particular research projects and to the entire enterprise of research. In the case of particular projects, investigators and members of their institutions are obliged to give forethought to the maximization of benefits and the reduction of risks that might occur from the research investigation. In the case of scientific research in general, members of the larger society are obliged to recognize the longer term benefits and risks that may result from the improvement of knowledge and from the development of novel medical, psychotherapeutic, and social procedures.

3. Justice

Who ought to receive the benefits of research and bear its burdens? This is a question of justice--in the sense of "fairness in distribution" or "what is deserved." An injustice occurs when some benefit to which a person is entitled is denied without good reason or when some burden is imposed unduly. The selection of research subjects needs to be scrutinized in order to determine whether some groups (e.g., welfare patients, particular racial and ethnic minorities, or persons confined to institutions) are being systematically selected simply because of their easy availability, their compromised position, or their manipulability, rather than for reasons directly related to the problem being studied. Especially when research supported by public funds leads to the development of therapeutic devices and procedures, justice demands that these not provide advantages only to those who can afford them and that such research should not unduly involve persons from groups unlikely to be among the beneficiaries of subsequent applications of the research.

B. KCTCS Policy for Use of Human Subjects in Research

KCTCS Policy 1.8.2.3.2 applies to any research activity conducted at or sponsored by KCTCS that involves human subjects. It is relevant whenever an investigator conducts research in which he or she (1) obtains data through intervention or interaction with an individual or (2) obtains private information by which an individual could be identified. The policy is, therefore, applicable to research involving living human beings whose physical, emotional, or behavioral conditions, responses, tissues, or fluids are investigated for research purposes (that is, for any reason other than the sole purpose of benefiting the subject as an individual). It is applicable to the use of interviews, tests, observations, and inquiries designed to elicit or obtain nonpublic information about individuals or groups, as well as the study of existing public or privately held records where the identity of individuals is known. [See *Part 1*, pgs. 4, 5]

The policy is applicable whether the research is undertaken on a large or small scale and whether it is externally funded or not. Pilot projects, student dissertation and thesis projects, independent study projects, and course projects must follow this policy if they involve research with human subjects.

C. Basic Ethical Issues in Human Subjects Research

The KCTCS policies regarding research with human subjects use terms such as "subject" and "minimal risk," which may need further definition or explanation. This is especially so for borderline cases in which it may not be clear, for example, whether a project constitutes research or a person is a subject. The following sections attempt to explain these terms and to provide some guidance for the borderline cases.

1. Human Subject Research

As used in this document, the word *research* is defined as any systematic gathering and analysis of information, usually made under conditions determined by the investigator, that aims to test a hypothesis, to discover some unknown principle, or effect, or to re-examine some known or suggested principle. The term *research* includes:

- studies in which any substance or stimulus is administered to a subject by any means,
- studies that involve changes in physical or psychological state or environment or major changes in diet,
- interviews, surveys, tests, observations, and inquiries designed to elicit or obtain nonpublic information about individuals or groups,
- studies of existing public or privately held records where the identity of individuals is known.

Activities that meet this definition constitute *research* even if they are supported or funded under a program that serves other purposes. For example, some demonstration and service programs may include research activities.

The term ***research*** is not intended *to* apply to:

- routine course, workshop, or curriculum development using accepted educational practices sponsored by KCTCS, including evaluation to determine student/participant satisfaction, attitude change, and/or knowledge gain during the educational experience.
- aid or services provided by professionals to their clients that are consistent with accepted and established practice, and intended only to meet the clients' own personal needs.

2. Human Subject

The term ***human subject*** means a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or obtains identifiable private information.

- **Intervention** includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subjects' environment that are performed for research purposes.
- **Interaction** includes communication or interpersonal contact between investigator and subject.
- **Private information** includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place. It also refers to information that has been provided for specific purposes by an individual with the reasonable expectation that it will not be made public (for example, a medical record).
- Information is **individually identifiable** if the identity of the subject is associated with the information or can be readily ascertained by the investigator.
- The definition of **subject** excludes all accepted and established service relationships, such as normal relationship of patients to physicians, students to instructors, and other clients to professionals in which the patient, student, or client is receiving aid or services consistent with accepted and established practice, that is intended *only to meet her or his own personal needs*. The professional-client relationship has the welfare of the client as the primary objective, whereas the investigator-subject relationship has the discovery of new knowledge as its primary objective. This difference may not be fully understood by the subject who is also a client, and can result in the investigator's gaining consent without free decision.

The normal employer-employee relationship is also excluded from the definition of subject. Payment of research subjects for their time as participants does not alter their status as subjects and does NOT change the relationship to one of employer-employee.

If doubt exists as to whether the procedures to be employed are within accepted and established practice or whether the purpose is only for the personal needs of the client, the activity should be considered to involve subjects whose rights and welfare are to be protected in accord with this policy statement. Similarly, if doubt exists as to whether the procedures are within the normal limits of the employee's scope of work, employees should be considered to be participating as human subjects; and their rights and welfare must be protected.

The rights of some subjects require special attention, as detailed elsewhere in this handbook. These include:

- **Children**, because of their vulnerability, diminished autonomy, and incomplete understanding. In Kentucky, anyone under the age of 18 is not legally able to give consent for research participation.
- **Subjects with limited civil freedom**, such as prisoners and persons subject to military discipline.
- **People with limited capacities** or mental disabilities, such as the mentally retarded or the mentally ill.
- **Pregnant women and the viable fetus**, both *in utero* and *ex utero*.

3. Responsible Project Investigator

Responsible project investigator means a qualified faculty member at or above the level of instructor or a qualified staff member who will monitor the conduct of research involving human subjects.

4. Informed Consent

The ethical and professional codes governing the use of human subjects in research all require that the participation of the subject must be voluntary and that the subject gives her or his agreement to participate in the research based upon adequate knowledge and understanding of relevant information.

The principle of voluntary participation of subjects applies whether or not the research is governed by federal regulations and whether or not the research is exempt from full review.

The methods used to obtain consent may vary. They should be designed to fit the nature of the research, the nature and magnitude of the risks involved, the research setting, the nature of the subjects who will participate, and the requirements of applicable policies, laws, and regulations. The core elements of consent are given on p. 21)

Fieldwork, or ethnographic research, typically involves observation of and interaction with groups of subjects in their own environment, often over long periods of time. It may not be possible to specify detailed contents of the experimental protocol and the research itself may involve continuing interaction between the researcher and hosts that are difficult to describe in an informed consent statement prior to initiation of the research. The general principle of consent is still applicable to fieldwork, but the HSRB will consider waiving formal informed consent under certain circumstances (see p. 21). The American Sociological Association and the American Anthropological Association have developed guidelines that address ethical issues, and investigators conducting research in these disciplines should be aware of them in the design of their protocol.

5. Minimal Risk

A research protocol is defined as having minimal risk if the risks of anticipated harm are not greater, considering probability and magnitude, than those ordinarily encountered in the subject's daily life or during the performance of routine physical or psychological examinations or tests.

6. Children

Persons who have not attained the legal age for consent to treatment or procedures involved in research, as determined by the applicable law where the research will be conducted. (In Kentucky, this age is 18 years.)

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PART V

Distribution of Responsibility

The responsibility for the protection of subjects in research is distributed among several parties: the responsible project investigator, the KCTCS District Chief Executive Officer, the Human Subjects Review Board (HSRB), and those at cooperating institutions who provide access to subjects.

A. Responsible Project Investigator

The individual responsible for the conduct of the activity, i.e., the responsible project investigator, has primary responsibility for the protection of the rights and welfare of human subjects. Specifically, the investigator is responsible for:

- Carefully designing research methods,
- Adhering to ethical codes and applicable policies and procedures of the KCTCS, the sponsoring agency, and cooperating institutions, if any,
- Training and supervising personnel carrying out the research, both with respect to appropriate research methods and the rights of human subjects,
- Obtaining *prior* (i.e., *before any involvement of human subjects*) approval for non-exempt human subjects research,
- Obtaining *prior* approval for changes in a nonexempt research activity,
- Consulting with the HSRB Executive Secretary to determine if research can be exempt from full review,
- Reporting promptly to the HSRB any unanticipated problems involving risks to subjects or others,
- Retaining required records.

B. KCTCS District Chief Executive Officer

The KCTCS District Chief Executive Officer is responsible for:

- Ensuring that faculty, staff, and students are kept informed of the KCTCS policy and procedures and of their responsibilities for protecting the rights and welfare of human subjects involved in research,

- Ensuring that the District review process, if any, operates within HSRB-approved guidelines,
- Ensuring that, for any course offered by the department in which students are expected to serve as human subjects, notification to this effect is given in the course description in the official college and/or KCTCS bulletins and timetables,
- Reporting promptly to the KCTCS HSRB any unanticipated problems involving risks to subjects or others.

C. Human Subjects Review Board [see 1.8.2.3.2 KCTCS Human Subjects Research Policy]

The KCTCS HSRB is responsible for:

- Providing initial and continuing review of nonexempt research,
- Ascertaining acceptability of proposed research in terms of KCTCS policies and procedures,
- Documenting that reviews are conducted according to KCTCS policy,
- Providing advice and information to investigators engaged in research involving human subjects.

The KCTCS HSRB is additionally responsible for:

- Developing policy, procedures, information, and instructions regarding human subjects research,
- Adjudicating differences and reviewing problems arising in research involving human subjects,
- Ensuring compliance with externally mandated policies and regulations,
- Reporting to the appropriate institutional officials and, for research governed by HHS regulations, to the Secretary of HHS, any serious or continuing noncompliance by investigators with the requirements and determinations of the HSRB.

D. Individual or Institution Providing Access to Subjects

If access to research subjects is obtained through cooperating institutions, the authorized official of the cooperating institution must be informed of the research and should satisfy herself or himself that the subjects' rights and welfare will be protected and that institutional commitments to the subjects will not be abridged.

If professional practitioners or service agencies provide access to subjects, the individual providing access should ensure that his or her professional commitments to the clients are not abridged.

If the individual responsible for conduct of the activity is not a KCTCS employee or student, but the KCTCS is the cooperating institution providing access to research subjects, the *individual providing access* to the subjects is responsible for ensuring that KCTCS policies and procedures, including review requirements, are met.

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PART VI

Review Procedures

All research involving human subjects that is conducted at or sponsored by KCTCS, whether funded or unfunded and whether conducted by KCTCS faculty or others, must comply with the federal policy for the protection of human subjects. This includes pilot projects, student dissertation projects, independent study projects, and course projects if they involve human subjects. The Human Subjects Review Board is responsible for ensuring that all KCTCS research activities meet these requirements and campus policy (See p. 3). KCTCS is required to file an Assurance of Compliance with the Department of Health and Human Services Regulations for the Protection of Human Subjects to receive federal funds.

A. How to Obtain Approval for Human Subject Research

Example A:

- If the research involves more than minimal risk
- OR if it is externally funded,
- THEN it **must** be submitted to the Human Subjects Review Board for review.

Example B:

- If it is no more than minimal risk
- AND it is not externally funded
- THEN it **may** be submitted to that body for review.

Your research *may be exempted from full review* if the only involvement of human subjects will be in one or more of the six categories listed in Section B below. You must consult with the Administrative Assistant of the HSRB (859-256-3395) to determine if the project satisfies the exemption criteria. The HSRB maintains a database of all exempt human subjects' projects conducted by KCTCS researchers. All human subjects' research that is exempt **must** be conducted in accordance with the ethical principles as set forth in the "Belmont Report" and KCTCS policy.

If your project is *not exempt*, review must occur and approval must be granted by the HSRB prior to any involvement of human subjects in your research. For HSRB review, you must complete an HSRB-1 form and submit it to the HSRB office, 300 North Main Street. The form asks for information about the nature of the research, the funding source, how subjects will be recruited, how informed consent will be obtained, and the risks and benefits to the subjects of the proposed research. Answers should be brief and concise, but complete, and should avoid the use of jargon that might not be familiar to reviewers. In Section C below, there is further discussion of the criteria by which human subject's research is reviewed.

Upon completion of the review, a letter will be sent to you authorizing initiation of your project or containing stipulations that must be met before approval is granted. Once approval is granted, the use of human subjects may begin.

HSRB-1 forms and this handbook can be accessed via the KCTCSC website or from the HSRB office, 300 North Main Street, 859-256-3395.

B. Categories of Exempt Human Subject Research

If your project meets any of the following six exemption categories and is not excluded by the limitations for the specific categories, it may be exempt from full review. Consult with either the Executive Secretary of the HSRB (859-256-3395) to determine if the project satisfies the exemption criteria. The following categories are defined in the Federal Policy for the Protection of Human Subjects.

1. Federal Regulation 46.101(b)1	<i>Limitations</i>
<p>Research conducted in established or commonly accepted educational settings, involving normal educational practices such as</p> <ul style="list-style-type: none"> a. research on regular and special education instructional strategies, or b. research on the effectiveness of or the comparison among instructional techniques, curricula or classroom management methods. 	<p>Such work can be exempted only if the investigator believes that the research protocol will place the subjects at no more than minimal risk.</p> <p>The consent of authorized school official(s) can serve in lieu of consent of the individual subjects, but consent must be obtained in an appropriate way. If subjects are children with the capacity to give assent, normally their assent must also be solicited. (See p. 30)</p>

	<p>Confidentiality of identifiable information must be maintained without the express permission of the subjects to do otherwise. (See p. 25)</p> <p>If the work is governed by HHS regulations, this exemption does <i>not</i> apply to research involving prisoners or research <i>directed</i> toward pregnant women as subjects.</p>
<p>2. Federal Regulation 46.101(b)2</p>	<p><i>Limitations</i></p>
<p>Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:</p> <ol style="list-style-type: none"> a. Information obtained is recorded in such a manner than human subjects can be identified, directly or through identifiers linked to the subjects; and b. any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. c. Exemption Category 	<p>Such work can be exempted only if the investigator believes that the research protocol will place the subjects at no more than minimal risk.</p> <p>If the research is undertaken in a commonly accepted educational setting, the consent of authorized school official(s) can serve in lieu of consent of the individual subjects. Otherwise, consent of the subjects or their authorized representatives must be obtained. If subjects are children with the capacity to give assent, normally their assent must also be solicited. (See pp. 13, 28, 33)</p> <p>Confidentiality of identifiable information must be maintained without the express permission of the subjects to do otherwise.</p> <p>If governed by HHS regulations, this exemption does <i>not</i> apply to research involving prisoners or research <i>directed</i> toward pregnant women, and the following types of research involving children are not exempt:</p> <ol style="list-style-type: none"> a. Survey b. Interview c. Observation of public behavior when the investigator is a participant.

3. Federal Regulation 46.101(b)3	<i>Limitations</i>
<p>Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (b)(2) of this section, if:</p> <ul style="list-style-type: none"> a. Human subjects are elected or appointed public officials or candidates for public office; or b. Federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter. 	<p>Such work can be exempted only if the investigator believes that the research protocol will place the subjects at no more than minimal risk.</p> <p>If the work is governed by HHS regulations, this exemption does not apply to research involving prisoners or children, or research directed toward pregnant women as subjects.</p> <p>Confidentiality of identifiable information must be maintained without the express permission of the subjects to do otherwise.</p>
4. Federal Regulation 46.101(b)4	<i>Limitations</i>
<p>Research, involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.</p>	<p>Such work can be exempted only if the investigator believes that the research protocol will place the subjects at no more than minimal risk.</p> <p>The requirement for consent of the subjects is waived if the data, documents, records, or specimens, etc., are publicly available. The authorization of the custodian of the data, etc., can serve in lieu of specific subject consent for access to data, etc., which are not publicly available. In such cases, the investigator must be satisfied that the custodian is authorized to release the data, etc., for research purposes.</p> <p>If work is governed by HHS regulations, this exemption does not apply to research involving prisoners or research directed at pregnant women.</p>

<p>5. Federal Regulation 46.101(b)5</p>	<p><i>Limitations</i></p>
<p>Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine:</p> <ul style="list-style-type: none"> a. public benefit or service programs; b. procedures for obtaining benefits or services under those programs; c. possible changes in or alternatives to those programs or procedures; or d. possible changes in methods or levels of payment for benefits or services under those programs. 	<p>Such work cannot be exempted if prior review is specifically required by statute, or if the Secretary of HHS determines that a research or demonstration project presents a danger to the physical, mental, or emotional well-being of a participant or subject of the research or demonstration project.</p> <p>If the work is governed by HHS regulations, this exemption does not apply to research involving prisoners or to research directed toward pregnant women. The KCTCS requirements for informed consent can be waived if:</p> <ul style="list-style-type: none"> a. the research could not be carried out practicably without the waiver, and b. the Secretary of HHS has not determined that the project presents a danger to a participant or subject.
<p>6. Federal Regulation 46.101(b)6</p>	<p><i>Limitations</i></p>
<p>Taste and food quality evaluation and consumer acceptance studies,</p> <ul style="list-style-type: none"> a. if wholesome foods <i>without</i> additives are consumed or b. if a food is consumed that contains a food ingredient <i>at or below the level and for a use found to be safe</i>, or agricultural chemical or environmental contaminant <i>at or below the level found to be safe</i> by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture. 	<p>If the work is governed by HHS regulations, this exemption does not apply to research involving prisoners or to research directed toward pregnant women.</p>

C. Review of Non-exempt Research

The issues of informed consent, classification of risk, method of selection of research subjects and assurance of confidentiality of identifiable subject information are key to the review process of all human subject research. Each of these is discussed in greater detail below. This information should be consulted when filling out the HSRB-1 form and when preparing the consent form for your project.

1. Informed Consent

The participation of human subjects in research must be voluntary. The subjects must give their informed consent, or, if a subject lacks the capacity to consent, an authorized representative must consent. The principle of voluntary participation of subjects applies whether or not the research is governed by federal regulations and whether or not the research is exempt from full HSRB review. Federal regulations provide the following requirements for documentation of informed consent:

Federal Regulation 46.117 Documentation of Informed Consent

- A. Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the HSRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.
- B. Except as provided in paragraph (c) of this section, the consent form may be either of the following:
 - i. A written consent document that embodies the elements of informed consent required by [currency] 46.116. [See Table 1. Basic Elements of Informed Consent, p. 21] This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed;
 - ii. or a "short form" written consent document stating that the elements of informed consent required by [currency] 46.116 [See Table 1. Basic Elements of Informed Consent, p. 21] have been presented orally to the subject or the subject's legally authorized representative.

When this method is used, there shall be a witness to the oral presentation. Also, the HSRB shall approve a written summary of what is to be said to the subject or the representative.

Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary.

A copy of the summary shall be given to the subject or the representative, in addition to a copy of the "short form."

- C. An HSRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:
- iii. That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or
 - iv. That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside the research context.
 - v. In cases where the documentation requirement is waived, the HSRB may require the investigator to provide subjects with a written statement regarding the research.

When children (in Kentucky, those under the age of 18) are included as subjects, see pp. 32-33 for discussion of parental consent and requirements for assent of children.

The basic elements of informed consent are presented below. Not all items will be applicable to every project, but *the language used in every consent form should be understandable to the subject or representative*. An incomplete or poorly written consent form is the most common problem with material submitted to the HSRB for review.

Table 1: Basic Elements of Informed Consent

- Statement that the study involves research

- Explanation of the purposes of the research

- Expected duration of the subject's participation

- Description of the procedures to be followed
- Identification of any experimental medical treatments or procedures
- Statement that participation is voluntary
- Statement that refusal to participate will involve no penalty or loss of benefits to which subject is otherwise entitled
- Statement that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled
- Explanation of any compensation and, if appropriate, procedures to prorate compensation for subjects who withdraw prior to completion of the study
- Description of any reasonably foreseeable risks or discomforts
- Description of any benefits to the subject or to others which may reasonably be expected from the research
- Disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject

- Statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained
- Name and telephone number of person to contact for questions about the research, and name and telephone number of responsible project investigator, if different
- Name and telephone number of person to contact for questions about research subjects' rights. (NOTE: The HSRB Office is willing to serve as a contact for such questions)
- Name of person to contact in the event of research-related injury
- Statement that subjects may have a copy of the consent form
- Language used is understandable to the subject or representative
- No language is included through which the subject is made to waive any of her or his legal rights, including any release of the college, KCTCS or its agents from liability or negligence

For research involving more than minimal risk:

- An explanation of whether any compensation is available if injury occurs

- An explanation of whether any medical treatments are available if injury occurs, what they consist of (if any), and where further information may be obtained

Additional elements of informed consent may be appropriate for research involving children, pregnant women and fetuses, and prisoners. See Section IV for further discussion of research involving special subject groups.

Occasionally, fully informed consent may itself have an injurious effect on the subject, or it may invalidate the research. Incomplete disclosure (or deceit) can be justified if it is clear that incomplete disclosure is truly necessary to accomplish the goals of the research or to protect the subjects; and there are no undisclosed risks to subjects that are more than minimal; and, where appropriate, there is an adequate plan for debriefing subjects and for communicating research results to them.

Information shall not be withheld if withholding it would influence a reasonable person's decision to participate or would damage his or her subsequent self-esteem. Information about risks shall never be withheld for the purpose of eliciting the cooperation of subjects, and truthful answers should always be given to direct questions about the research.

2. Risk Classification

There are different risks inherent in different research procedures. For purposes of safeguarding human subjects, risks are classified as either *minimal risk* or *more than minimal risk*. Under minimal risk, the risks of harm in the proposed research are no greater, considering probability and magnitude, than those ordinarily encountered in the subject's daily life or during the performance of routine physical or psychological examinations or tests.

The potential for physical risk is most obvious in procedures requiring medical intervention or involving strenuous exertion. There is a wide range of medical, social and behavioral research that may pose no immediate physical risk to the subject, but may involve varying degrees of emotional stress, deceit, invasion of privacy, etc. It is the investigator's responsibility to minimize the risks associated with any research and to make clear to the research subjects any benefits that may result to them directly or more generally to society. Direct payments or other forms of remuneration to the research subject are not considered to be benefits of participation. Evaluation of the risk/benefit ratio is a primary consideration in the HSRB review of research protocols.

3. Recruitment of Research Subjects

The selection of subjects must be carefully considered. Subjects should not be selected for potentially beneficial research on the basis of favoritism, nor should risky research be directed to subjects who have limited power. Certain groups, such as the economically disadvantaged, the very sick, and the institutionalized, may have compromised capacity for free consent, and should be protected against the danger of being involved in research solely for administrative convenience or because they can be relatively easily manipulated.

No coercion, explicit or implicit, should be used to obtain or maintain cooperation. When the investigator has a specific relationship--faculty-student, professional-client, employer-employee--with a potential subject, special care must be taken to ensure that the subject feels completely free to decline to participate. Where access to subjects is gained through cooperating institutions or individuals, care should be taken not to abridge prior commitments made to the subjects about the confidentiality or other terms of the primary relationship.

When KCTCS students are enrolled in a course in which participation as human subjects forms an integral part of the course, the official KCTCS course catalogue and timetable shall state that fact in the description of the course. A statement such as the following shall be included in the course description: "Includes limited voluntary participation as a subject in research activities." This statement will serve to alert registrants, but it does not suffice as the only means of ensuring that the subjects' participation in a specific research activity is voluntary.

If access to research subjects is gained through cooperating institutions not under the control of KCTCS, the institution(s) must be identified on the HSRB-1 form and evidence provided that the authorized official of that institution is or will be informed of the study. (If such subjects are placed at more than minimal risk, documentation of the institutional approval will be required.)

4. Issues of Confidentiality

In all research involving human subjects, confidentiality of identifiable information is presumed and must be maintained unless the investigator obtains the express permission of the subject to do otherwise. The more sensitive the material, the greater the care that must be exercised. Ordinarily, the following requirements must be met:

- Questionnaires, inventories, interview schedules, and other data-gathering instruments and procedures should be carefully designed to limit the personal information to be acquired to only that information which is essential.

- Data that could reveal a subject's identity should be stored in files accessible only to the project investigator and authorized staff.
- As early as feasible, the data should be coded to remove identifying information,
- The identity of subjects must not be released except with their express permission.
- Use of existing data that were originally obtained for different purposes and that involve identifiable subject information, requires examination of the risk involved. There should be a determination of whether the new use is within the scope of the original consent or whether it is necessary or feasible to obtain additional consent. Anonymity of the subjects must be preserved.

Some research protocols use audio and video taping of research subjects. Subjects should always be told in the informed consent that taping will occur. Explicit consent must be obtained for any public use of the tapes such as use in the classroom or as part of a public presentation of the research results, since this constitutes a waiver of the normal confidentiality of research data.

Some studies involve collection of data on sensitive matters such as sexual behavior or criminal activities. There have been instances in which the identities of subjects or research data have been sought by law enforcement agencies. Under federal law, researchers can obtain an advance grant of confidentiality that will provide some protection even against a subpoena for research data (Public Health Service Act 301(d)). Protection is available whether or not the project has federal funding. Consult with the Executive Secretary of the HSRB (859-256-3395) for more information concerning the Certification of Confidentiality.

5. Continuation Reviews

The HSRB conducts continuing reviews of nonexempt research at intervals appropriate to the degree of risk, but at least once per year.

6. Record Retention

Federal regulations require that all records relating to the HSRB and to human subjects activities be retained for at least three years after completion of the research. Records, including signed consent forms and collected data, must be accessible for inspection at any time and for copying by authorized representatives of KCTCS and/or the agencies sponsoring the research.

D. Grant Submissions that Involve Human Subjects

No human subject's research can be conducted without prior approval. In addition, most funding agencies require certification of HSRB review and approval prior to the award or expenditure of funds. Some agencies permit a grace period of up to 60 days from receipt of the grant application for certification of HSRB approval of the project; however, requirements for the timing of HSRB approval vary across agencies. When submitting the HSRB-1 form, it is the responsibility of the responsible project investigator to provide the HSRB with the address to which certification of approval should be sent and with adequate time to meet agency deadlines.

E. Training Grants

When training grants are submitted and some projects are expected to involve human subjects, the training grant will be reviewed administratively by the Executive Secretary of the HSRB, and a certification of HSRB review and approval will be sent to the funding agency. The Principal Investigator is responsible for ensuring that all subprojects supported by the training grant also be submitted for full HSRB review prior to initiation. The annual continuing review of the training grant requires submission of a list of subprojects that involve human subjects and documentation that they have been reviewed by the HSRB.

F. Institutional Oversight

The central HSRB has the authority to suspend or terminate approval of any research conducted at or sponsored by KCTCS that is not being conducted in accordance with the HSRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval will include a statement of the reasons for the HSRB's action and shall be reported promptly to the investigator and to the appropriate institutional officials. For any HHS-supported work so terminated or suspended, HHS regulations require that the Secretary of HHS be notified as well.

Research that has been approved by the HSRB may be subject to further appropriate review and approval by officials of KCTCS. KCTCS officials may not approve the research if it has been *disapproved* by the HSRB.

G. Emergencies and Reporting of Adverse Events

The responsible project investigator must promptly notify the HSRB of any problems involving human subjects that arise during the course of the research project (333-2670). Problems include unanticipated side effects or adverse reactions from participation in the project and, of course, any injuries. If any emergency occurs during a research project, you should call 911 and be prepared to provide the following information to the dispatcher: 1) type of injury and what assistance is needed, 2) number of victims, 3) the location and instructions on how to get there, and 4) name and phone number.

For research projects at more than minimal risk, the consent form should include information on available medical treatment if injury should occur and whether any compensation is available for treatment of injuries.

H. Human Subjects Research Regulated by FDA

Investigators conducting human subject research involving products regulated by the Food and Drug Administration (FDA) are subject to FDA regulations CFR parts 50 and 56. There are some differences in FDA and PHS regulations and investigators should become familiar with those that may apply to their research. A summary of the differences in the two sets of regulations is available at the following FDA website: www.fda.gov/oc/oha/HSRB/toc10.html. The most significant difference involves the FDA exception from informed consent requirements for emergency research (CFR 50.24).

Kentucky Community & Technical College System

Human Subjects Review Board

PART VII

Research Involving Special Subject Groups

A. Children

In addition to the requirements specified elsewhere in this handbook, the following requirements are imposed on all research involving children. In the State of Kentucky, individuals under the age of eighteen are usually considered children.

1. Exempt Research

The categories of research that can be considered exempt from review are limited when children serve as subjects. Note particularly that the exemptions for research employing survey or interview procedures (Exemptions 2 and 3, pgs. 20-21) do not apply to research involving children. Such projects must be submitted to the central HSRB. The exemption from review of research involving observation of public behavior (Exemption (b)2, p. 20) applies only if the investigator does not participate in the activity being observed.

2. Non-exempt Research

a. *Permission of Parents or Guardians*

When children are subjects in research, the permission of the child's parents or guardian must be obtained prior to the child's participation. The requirements for obtaining parental permission are essentially the same as those for obtaining consent. In particular, all the elements of informed consent must be satisfied. The responsible project investigator must describe in the HSRB-1 form how parental permission will be obtained and must include a copy of the parent permission form, if one is to be used.

The permission of one parent is sufficient (a) if the research does not involve greater than minimal risk or (b) the research involves greater than minimal risk, but presents the prospect of direct benefit to the individual subjects. For research that involves greater than minimal risk and no prospect of direct benefit to the individual subjects, the permission of both parents is required, unless only one parent has legal responsibility for the

custody of the child or the second parent is incompetent or not reasonably available. Special provisions must be met for children who are wards of the state to participate as subjects in research.

b. *Assent of Children*

In addition to parental permission, the investigator must obtain the assent of the children who are to be subjects in the research when those children are capable of providing assent. A child's desire not to participate in a given research project should be respected by the investigator. In determining whether children are capable of providing assent, the investigator and the HSRB should take into account the age, maturity, cognitive level, and psychological state of the children involved.

For research involving children who are capable of providing assent, the responsible project investigator must describe in the HSRB-1 form what will be taken as evidence of assent on the part of the children and how their assent will be obtained. The investigator must also describe what the children will be told about the research and how that information will be presented. The level of the information will vary as a function of the age and sophistication of the children involved. It can vary from a simple description of what the children will experience to the equivalent of the information that would be presented to an adult subject. All children capable of assent must be informed that they are free to withdraw from participation at any time.

For children who are not capable of providing assent, the investigator must take care that the subjects' rights are in no way abridged.

Assent of child subjects is not necessary when the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the individual children and is available only in the context of the research.

c. *Waiver of permission and assent*

Under certain circumstances, the HSRB may waive some or all of the parental permission and child assent requirements. In addition to the conditions for waiver described earlier in this handbook (p. 21), the HSRB may waive permission of the parents or guardian if the following three conditions hold:

- i. the research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), **and**
- ii. an appropriate mechanism is devised for protecting the children who participate in the research, **and**
- iii. the waiver is not inconsistent with federal, state or local laws.

B. Prisoners

In addition to the requirements specified elsewhere in this handbook, the following requirements are imposed on all research involving prisoners.

1. Exemptions

All research involving prisoners must be reviewed by the HSRB. No research that involves prisoners as subjects is exempt from prior review by the HSRB.

2. Permitted Research Involving Prisoners

The only types of research involving prisoners that may be approved by the HSRB are the following:

- a. Study of the possible causes, effects, and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;
- b. Study of prisons as institutional structures or of prisoners as incarcerated persons, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;
- c. Research on conditions particularly affecting prisoners as a class (for example, vaccine trials and other research on hepatitis which is much more prevalent in prisons than elsewhere; and research on social and psychological problems such as alcoholism, drug addiction, and sexual assaults) provided that the study may proceed only after the Secretary of Health and Human Services has consulted with appropriate experts, including experts in penology, medicine, and ethics and published notice in the *Federal Register* of her or his intent to approve such research; or
- d. Research on practices, both innovative and accepted, that have the intent and reasonable probability of improving the health or well-being of the subject. In cases in which those studies require the assignment of prisoners in a manner consistent with protocols approved by the HSRB to control groups that may not benefit from the research, the study may proceed only after the Secretary of Health and Human Services has consulted with appropriate experts, including experts in penology, medicine, and ethics and published notice in the *Federal Register* of her or his intent to approve such research.

3. Criteria for Approval

Research studies where prisoners are involved may only be approved if:

- a. Any possible advantages accruing to the prisoner through her or his participation in the research, when compared to the general living conditions, medical care, quality of food, amenities, and opportunity for earnings in the prison, are not of such a magnitude that her or his ability to weigh the risks of the research against the value of such advantages in the limited choice environment of the prison is impaired.
- b. The risks involved in the research are commensurate with risks that would be accepted by non-prisoner volunteers.

- c. Procedures for the selection of subjects within the prison are fair to all prisoners and immune from arbitrary intervention by prison authorities or prisoners. Unless the responsible principal investigator provides to the HSRB justification in writing for following some other procedures, control subjects must be selected randomly from the group of available prisoners who meet the characteristics needed for that particular research project.
- d. The information is presented in language that is understandable to the subject population.
- e. Adequate assurance exists that parole boards will not take into account a prisoner's participation in the research in making decisions regarding parole, and each prisoner is clearly informed in advance that participation in the research will have no effect on her or his parole; *and*
- f. Where the HSRB finds there may be a need for follow-up examination or care of participants after the end of their participation, adequate provision has been made for such examination or care, taking into account the varying lengths of individual prisoners' sentences and for informing participants of this fact.

C. Fetuses, Pregnant Women, Human Tissues

In addition to the requirements specified elsewhere in this handbook, the following requirements are imposed on all research involving fetuses, pregnant women, and human *in vitro* fertilization.

1. Exemptions

No research governed by HHS regulations directed toward pregnant women or fetuses is exempt from prior review by the HSRB.

2. General Limitations

The only conditions under which research involving fetuses, pregnant women, and human *in vitro* fertilization are permitted are the following:

- a. appropriate studies on animals and nonpregnant individuals have been completed;
- b. except where the purpose of the research is to meet the health needs of the mother of the particular fetus, the risk to the fetus is minimal and, in all cases, is the least possible risk for achieving the objectives of the research;
- c. individuals engaged in the research will have no part in: (i) any decisions as to the timing, method, and procedures used to terminate the pregnancy and (ii) determining the viability of the fetus at the termination of the pregnancy;
- d. no procedural changes that may cause greater than minimal risk to the fetus or the pregnant woman will be introduced into the procedure for terminating the pregnancy solely in the interest of the research; *and*
- e. no inducements, monetary or otherwise, may be offered to terminate the pregnancy for purposes of the research.

3. Additional Criteria for HSRB Approval

In addition to applying other criteria for approval, the HSRB will determine the following:

- a. For research *directed toward* pregnant women as subjects
 - i. No pregnant women may be involved as a subject in research unless
 - the purpose of the research is to meet the health needs of the mother, and the fetus will be placed at risk only to the minimum extent necessary to meet such needs, *or*
 - the risk to the fetus is minimal.
 - ii. Research permitted under paragraph a. of this section may be conducted only if the mother and father are legally competent and have given their informed consent after having been fully informed regarding the possible impact on the fetus, except that the father's informed consent need not be secured if:
 - the purpose of the research is to meet the health needs of the mother, *or*
 - his identity or whereabouts cannot reasonably be ascertained, *or*
 - he is not reasonably available, *or*
 - the pregnancy resulted from rape.
- b. For research directed toward fetuses *in utero* as subjects
 - i. No fetus *in utero* may be involved as a subject in any research unless:
 - the purpose of the research is to meet the health needs of the particular fetus and the fetus will be placed at risk only to the minimum extent necessary to meet such needs, *or*
 - the risk to the fetus imposed by the research is minimal and the purpose of the research is the development of important biomedical knowledge which cannot be obtained by other means.
 - ii. Such research may be conducted only if the mother and father are legally competent and have given their informed consent, except that the father's consent need not be secured if:
 - he is not reasonably available, *or*
 - his identity or whereabouts cannot reasonably be ascertained, *or*
 - the pregnancy resulted from rape.
- c. Research directed toward fetuses *ex utero*, including nonviable fetuses, as subjects
 - i. Until it has been ascertained whether or not a fetus *ex utero* is viable, a fetus *ex utero* may not be involved as a subject in research unless:
 - there will be no added risk to the fetus resulting from the research and the purpose of the activity is the development of important biomedical knowledge that cannot be obtained by other means, *or*

- the purpose of the research is to enhance the possibility of survival of the particular fetus to the point of viability.
- ii. No nonviable fetus may be involved as a subject in research unless:
 - vital functions of the fetus will not be artificially maintained,
 - experimental research, which of itself would terminate the heartbeat or respiration of the fetus, will not be employed, *and*
 - the purpose of the research is the development of important biomedical knowledge that cannot be obtained by other means.
- iii. In the event the fetus *ex utero* is found to be viable, it may be included as a subject in the research only to the extent permitted by the other requirements listed above.
- iv. Such research may be conducted only if the mother and father are legally competent and have given their informed consent, except that the father's informed consent need not be secured if:
 - his identity or whereabouts cannot reasonably be ascertained, *or*
 - he is not reasonably available, *or*
 - the pregnancy resulted from rape.
- d. For research involving the dead fetus, fetal material, or the placenta. Activities involving the dead fetus, macerated fetal material, or cells, tissue, or organs excised from a dead fetus shall be conducted only in accordance with any applicable state or local laws regarding such research.

4. Modifications or Waiver of Specific Requirements

Upon the request of an applicant (with the approval of the Human Subjects Review Board), the Secretary of Health and Human Services may modify or waive specific requirements listed above with the approval of the Ethical Advisory Board after such opportunity for public comment as the Ethical Advisory Board considers appropriate in the particular instance. In making such decisions, the Secretary will consider whether the risks to the subject are so outweighed by the sum of the benefit to the subject and the importance of the knowledge to be gained as to warrant such modification or waiver and that such benefits cannot be gained except through a modification or waiver. Any such modifications or waivers will be published as notices in the *Federal Register*.

D. Research in Foreign Countries

Research that takes place in foreign countries must provide the same human subjects protection as research conducted in the United States. In addition, such research may raise special issues related to cultural differences. It is generally subject to special review processes at the federal level that can delay funding and/or the initiation of the research. As the current time, the Office for the Protection of Research Risks (OPRR) at NIH reviews all NIH-funded research involving human subjects outside the United States prior to funding (except research that meets one or more of the exemption categories, p. 9). In some cases, a determination may be made that the procedures in the foreign country for protecting the rights of human subjects are at least equivalent to those in the United States (Federal Regulation 46.101 (h)) and the substitution of those procedures

may be approved. In other cases, the OPRR may require that the investigator establish a special HSRB in the foreign country to review the proposed research or take other steps to ensure that human subjects receive the same protection they would in the United States and that any special cultural factors are taken into consideration. For further information about conducting human subjects research in foreign countries, contact the Executive Secretary of the HSRB.

Kentucky Community & Technical College System

Human Subjects Review Board

Contact
Human Subject Review Board
Office of Research and Policy Analysis
Linda Morefield
859-256-3320
linda.morefield@kctcs.edu

PART VIII-IX

HANDBOOK FOR INVESTIGATORS

APPENDIX: Forms

- Exempt Form
- Non-Exempt Form
- Consent Form Example #2: MINIMAL RISK AND STUDENT IN A KCTCS COLLEGE COURSE
- Consent Form Example #1: PROJECT AT MORE THAN MINIMAL RISK
- Consent Form Example #3: MINIMAL RISK PROJECT -- PARENTAL CONSENT
- Consent Form Example #4: MINIMAL RISK PROJECT -- ASSENT OF CHILD

7. I certify that the project identified above, in which the only involvement of human subjects will be in one or more of the categories checked below, is exempt from federal regulations regarding the protection more of the categories checked below, is exempt from federal regulations regarding the protection of human research subjects and does not require full review by the Human Subjects Review Board.**

- (1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as
 - (i) research on regular or special education instructional strategies, or
 - (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.
- (2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior, **UNLESS**
 - (i) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; **AND**,
 - (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation

Note: When a study uses subjects who are MINORS, category (2) only applies as follows: Studies using educational tests involving minors as subjects are exempt. Studies using survey or interview procedures with minors as subjects are NOT exempt. Studies using observations of public behavior involving minors are NOT exempt unless the investigator does not participate in the activities being observed.
- (3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, or observation of public behavior that is not exempt under (2), if:
 - (i) the human subjects are elected or appointed public officials or candidates for public office; or
 - (ii) federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.
- (4) Research, involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified directly or through identifiers linked to the subjects. ***
- (5) Research and demonstration projects which are conducted by or subject to the approval of federal department or agency heads, and which are designed to study, evaluate, or otherwise examine:
 - (i) public benefit or service programs;
 - (ii) procedures for obtaining benefits or services under those programs;
 - (iii) possible changes in or alternatives to those programs or procedures; or
 - (iv) possible changes in methods or levels of payment for benefits or services under those programs.
- (6) Taste and food quality evaluation and consumer acceptance studies,
 - (i) if wholesome food without additives are consumed; or
 - (ii) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

I certify that the project will not be changed to increase the risk, exceed or change the exempt condition(s) without filing an additional certification or application for approval by the Human Subjects Review Board. I understand that responsibility for protecting human subjects is shared by the entire research team.

Signature: _____

Project Director/ Principal Investigator

Date

Signature: _____

KCTCS College President/CEO

Date

Concurrence with claim of exemption

Signature: _____

Board Chair/ Authorized Reviewer

Date

* The original Certification of Exemption is to be forwarded to HSRB Chair, KCTCS System Office, 300 N. Main St., Versailles, KY 40383 with copies of the proposal routed for review and approval. This project may be subject to review and confirmation of its exempt nature by the KCTCS Human Subjects Review Board and/or the sponsoring agency.

** If the Project Director has any questions about the Exempt status of the project, the appropriate Human Subjects Review Board Chair should be contacted.

*** If the records involved are those of KCTCS students, the project is not exempt and must be reviewed by the HSRB. Such research must conform with the Family Education Rights and Privacy Act of 1974 also known as the Buckley Amendment.

Kentucky Community and Technical College System
**Request for Expedited or Full Review:
Investigation Involving Human Subjects**

Project Director/ Principal Investigator: _____

Faculty: _____ Staff: _____ Student: _____ College: _____

Address: _____

Office Phone: _____ Email: _____ Fax: _____

Faculty Sponsor (Student/Class Project): _____

Department: _____

Address: _____

Office Phone: _____ Email: _____ Fax: _____

FOR SUBMISSION DEADLINES AND COMMITTEE MEETING DATES CALL 859-256-3320 (Committee meetings scheduled once a semester as necessary: no meetings in the summer.)

1. **Source of Support:** Sponsored Research Sponsor: _____
 University Funded Research Unfunded Research

2. **Type of Project:** *(Check all that apply)* Original Submission Resubmission
 Student Project Class Project
 New Continuation Renewal

A class project requires HSRB review if it is a research project. Research is defined as "any systematic gathering and analysis of information, usually made under conditions determined by the investigator, that aims to test a hypothesis, to discover some unknown principle, or effect, or to re-examine some known or suggested principle." (Human Subjects Review Board: Handbook for Investigators, Part III, C.1)

3. Research to be conducted in the U.S.? Yes No

If *No*, specify country or territory: _____

4. Has this study been previously reviewed by another HSRB? Yes No

If *Yes*, please identify: _____

5. **Project Title** _____

6. **Repository:** Following the completion of the study, Human Research documentation will be stored for a period of no less than three years in:

Repository: Room, Building, Organization

EXPEDITED REVIEW is conducted by the HSRB for protocols involving a normal population of subjects who are exposed to no more than minimal risk. **MINIMAL RISK** means that the probability and magnitude of harm or discomfort anticipated in the research is not greater, in and of themselves, than those ordinarily encountered in daily life or during the performance of routine physical psychological examinations or tests.

7. Human subjects involved in the proposed research protocol are:

Minors	Fetuses	Abortuses	Pregnant Women
Prisoners	Mentally Retarded	Mentally Disabled	None of the Above

8. Expedited review is requested because human subject involvement is restricted to:

**Categories of Research That May Be Reviewed by the
Human Subjects Review Board (HSRB) through an
Expedited Review Procedure**

Applicability

- (A) Research activities that (1) present no more than minimal risk to human subjects, and (2) involve only procedures listed in one or more of the following categories, may be reviewed by the HSRB through the expedited review procedure authorized by 45 CFR 46.110 and 21 CFR 56.110. The activities listed should not be deemed to be of minimal risk simply because they are included on this list. Inclusion on this list merely means that the activity is eligible for review through the expedited review procedure when the specific circumstances of the proposed research involve no more than minimal risk to human subjects.
- (B) The categories in this list apply regardless of the age of subjects, except as noted.
- (C) The expedited review procedure may not be used where identification of the subjects and/or their responses would reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, insurability, reputation, or be stigmatizing, unless reasonable and appropriate protections will be implemented so that risks related to invasion of privacy and breach of confidentiality are no greater than minimal.
- (D) The expedited review procedure may not be used for classified research involving human subjects.
- (E) HSRBs are reminded that the standard requirements for informed consent (or its waiver, alteration, or exception) apply regardless of the type of review—expedited or convened—utilized by the HSRB.
- (F) Categories one (1) through seven (7) pertain to both initial and continuing HSRB review.

Research Categories

- (1) Clinical studies of drugs and medical devices only when condition (a) or (b) is met.
 - (a) Research on drugs for which an investigational new drug application (21 CFR Part 312) is not required. (Note: Research on marketed drugs that significantly increases the risks or decreases the acceptability of the risks associated with the use of the product is not eligible for expedited review.)
 - (b) Research on medical devices for which (i) an investigational device exemption application (21 CFR Part 812) is not required; or (ii) the medical device is cleared/approved for marketing and the medical device is being used in accordance with its cleared/approved labeling.
- (2) Collection of blood samples by finger stick, heel stick, or ear stick, or venipuncture as follows:
 - (a) from healthy, nonpregnant adults who weight at least 110 pounds. For these subjects, the amounts drawn may not exceed 550 ml in an 8 week period and collection may not occur more frequently than 2 times per week; or
 - (b) from other adults and children, considering the age, weight, and health of the subjects, the collection procedure, the amount of blood to be collected, and the frequency with which it will be collected. For these subjects, the amount drawn may not exceed the lesser of 50 ml or 3 ml per kg in an 8 week period and collection may not occur more frequently than 2 times per week.

- (3) Prospective collection of biological specimens for research purposes by noninvasive means.
 Examples: (a) hair and nail clippings in a nondisfiguring manner; (b) deciduous teeth at time of exfoliation or if routine patient care indicates a need for extraction; (c) permanent teeth if routine patient care indicates a need for extraction; (d) excreta and external secretions (including sweat); (e) uncannulated saliva collected either in an unstimulated fashion or stimulated by chewing gumbase or wax or by applying a dilute citric solution to the tongue; (f) placenta removed at delivery; (g) amniotic fluid obtained at the time of rupture of the membrane prior to or during labor; (h) supra- and subgingival dental plaque and calculus, provided the collection procedure is not more invasive than routine prophylactic techniques; (i) mucosal and skin cells collected by buccal scraping or swab, skin swab, or mouth washings; (j) sputum collected after saline mist nebulization.
- (4) Collection of data through noninvasive procedures (not involving general anesthesia or sedation) routinely employed in clinical practice, excluding procedures involving x-rays or microwaves. Where medical devices are employed, they must be cleared/approved for marketing. (Studies intended to evaluate the safety and effectiveness of the medical device are not generally eligible for expedited review, including studies of cleared medical devices for new indications.)
 Examples: (a) physical sensors that are applied either to the surface of the body or at a distance and do not involve input of significant amounts of energy into the subject or an invasion of the subject's privacy; (b) weighing or testing sensory acuity; (c) magnetic resonance imaging; (d) electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, electroretinography, ultrasound, diagnostic infrared imaging, Doppler blood flow, and echocardiography; (e) moderate exercise, muscular strength testing, body composition assessment, and flexibility testing where appropriate given the age, weight, and health of the individual.
- (5) Research involving materials (data, documents, records, or specimens) that have been collected, or will be collected solely for nonresearch purposes (such as medical treatment or diagnosis). (NOTE: Some research in this category may be exempt from the HHS regulations for the protection of human subjects. 45 CFR 46.101(b)(4). This listing refers only to research that is not exempt.)
- (6) Collection of data from voice, video, digital, or image recordings made for research purposes.
- (7) Research on individual or group characteristics or behavior (including, but not limited to, research on perception, condition, motivation, identity, language, communication, cultural beliefs or practices, and social behavior) or research employing survey, interview, oral history, focus group, program evaluation, human factors evaluation, or quality assurance methodologies. (NOTE: Some research in this category may be exempt from the HHS regulations for the protections of human subjects. 45 CFR 46.101 (b)(2) and (b)(3). This listing refers only to research that is not exempt.)
- (8) Continuing review of research previously approved by the convened HSRB as follows:
 (a) where (i) the research is permanently closed to the enrollment of new subjects; (ii) all subjects have completed all research-related interventions; and (iii) the research remains active only for long-term follow-up of subjects; or
 (b) where no subjects have been enrolled and no additional risks have been identified; or
 (c) where the remaining research activities are limited to data analysis.
- (9) Continuing review of research, not conducted under an investigational new drug application or investigational device exemption where categories two (2) through eight (8) do not apply by the HSRB has determined and documented at a convened meeting that the research involves no greater than minimal risk and no additional risks have been identified.

9. Description of Protocol: Attach, or provide below, a complete, detailed description of the research protocol. It should be understandable to the non-specialist and not longer than three pages.

A PROJECT MAY ONLY BEGIN AFTER YOU HAVE BEEN NOTIFIED THAT THE BOARD HAS REVIEWED AND APPROVED YOUR RESEARCH. APPROVAL IS EFFECTIVE FOR A MAXIMUM OF ONE YEAR FROM BOARD MEETING DATE.

“I affirm the accuracy of this application, and I accept the responsibility for the conduct of this research, the supervision of human participants, and maintenance of informed consent documentation as required by the HSRB. This is to certify that the project identified above will be carried out as approved by the HSRB, and will neither be modified nor carried out beyond the period approved below without express review and approval by the Board. I understand that responsibility for protecting human participants is shared by the entire research team.”

Signature: Principal Investigator _____ Date _____

Signature: Faculty Sponsor (if appropriate) _____ Date _____

Signature: KCTCS District CEO _____ Date _____

Protocol Approved

Protocol Disapproved

Signature: Board Chair/Authorized Reviewer _____ Date _____

Period of Approval: _____ Date of Next Review: _____

CONSENT FORMS

The following are four **EXAMPLES** of how consent forms can be prepared for your research. The four include:

- minimal risk subjects
- more than minimal risk subjects
- children and
- parent/guardians

These are not intended to be used exactly “as written” – only to serve as guides.

CONSENT FORM
EXAMPLE 1: PROJECT AT MORE THAN MINIMAL RISK

The Work of Breathing in Pulmonary Patients

The goal of this study is to find out how much extra energy it takes for patients with chronic pulmonary disease to breathe. Some doctors think that the weight loss that is common in such patients may be due to how hard they have to work to breathe.

Participation in this study will involve an overnight stay at the _____ Medical Center. After checking in, you will complete some questionnaires about your diet and general health. The next morning your breathing will be measured by a spirometer and another instrument where a physician will insert a small tube down your nose, and a balloon on the end of the tube will inflate for one second. This will measure your work of breathing because pressures are measured in that one second. You will then eat breakfast and at 30, 60, and 90 minutes after breakfast your breathing will be measured again by spirometry, but the balloon will not be used.

Next you will be asked to walk for 12 minutes as quickly as you can without becoming breathless or uncomfortable. Immediately afterward, you will breathe into the spirometer again. You will be able to leave the Medical Center by noon.

There are no risks associated with breathing into the spirometer. Your nose may become irritated as the breathing tube is inserted. There is a slight risk that you may gag or vomit when the tube is inserted, although not eating immediately prior to the test makes this less likely. There is a slim chance that sudden death or cardiac irregularities could occur while exercising. However, this study will be conducted on a medical ward attended by physicians, physician assistants, and nurses who have training and experience in handling medical emergencies. In the event of any injury resulting from participation in this study, the _____ Medical Center will provide emergency care. However, the University of Illinois will not provide compensation for any injury sustained as the result of participation in this research, except as required by law.

Refusal to participate in this study would involve no penalty or loss of rights to which you are entitled, and it would not affect any other treatment that you may be receiving. You may withdraw from the study at any time.

Although the results of this research may be included in scientific reports and publications, your identity will not be revealed.

You are encouraged to ask all questions that you might have about this study and your participation in it before agreeing to participate. In case other questions or problems arise later, you can call Dr. Doe at 333-1111 during the day or Mr. Smith at 333-2222 after hours.

RESEARCH SUBJECT'S CONSENT

The Work of Breathing in Pulmonary Patients

I have read or have had read to me all of the above description of this research project. Dr. Jane Doe has explained the study to me and answered all of my questions. I have been told of the risks or discomforts of the study/

I voluntarily consent to participate in this study. I will receive a copy of the full consent form.

SIGNATURE OF SUBJECT

DATE

SIGNATURE OF WITNESS

SIGNATURE OF INVESTIGATOR

The Administrative Assistant of the KCTCS Human Subject Review Board can answer any question about the general rights of research subjects (300 North Main Street, 859-256-3395).

CONSENT FORM
EXAMPLE 2: MINIMAL RISK AND
STUDENT IN A KCTCS COLLEGE COURSE

INFORMED CONSENT

Visual Decision Making

You are invited to participate in a study of visual attention and perceptual judgments. You will view simple figures on a computer screen and then press a key on the computer to indicate whether the figures are the same or different. There are no risks or discomforts expected as a result of your participation, nor are there any direct benefits to you. You are free to withdraw from the study at any time for any reason.

Your decision either to participate in this research or not to participate in it will in no way affect your grade in this course.

You are asked to participate in a total of ten sessions, each of which will last approximately 30 minutes. You will receive \$5.00 for each session, as well as a bonus of an additional \$10.00 for completing all ten sessions. If you withdraw from the study, you will be paid for all sessions you have completed.

Your performance in this study will be completely confidential. Your responses will be coded to be anonymous, and any publications or presentation of the results of the research will include only information about group performance.

You are encouraged to ask any questions that you might have about this study whether before, during, or after your participation. However, answers that could influence the outcome of the study will be deferred to the end of the experiment. Questions can be addressed either to Dr. Jane Doe (333-1111) or research assistant John Smith (333-2222).

I understand the above information and voluntarily consent to participate in the experiment described above. I have been offered a copy of this consent form.

SIGNATURE

DATE

CONSENT FORM
EXAMPLE 2: MINIMAL RISK PROJECT
PARENTAL CONSENT PARENT/GUARDIAN
PERMISSION

Our goal at the Sunshine Community Program (SCP) is for every child to have a successful and enjoyable experience that helps to prepare him or her for the future. To help us understand how well we are meeting this goal, we want to interview the children who participate in our programs.

We want to ask all children enrolled in SCP about their experience in our programs, in school, and in related areas of their life. With your permission, we will ask your child to complete a questionnaire at three different times – when your child first enters the program, halfway through the school year, and at the end of the school year. It will take your child about 30 minutes to do the questionnaire each time. The questionnaire is available for you to look at. (Please contact Jane Doe at 333-1111 if you would like to review it.)

In addition, we ask your permission to get copies of your child’s school record, including report cards and scores on achievement tests, as well as your permission to ask your child’s teacher to complete a questionnaire about your child’s participation in the SCP programs. In addition to your permission, we will also ask your child to consent to participate in the study.

You are free to withdraw your permission for your child’s participation at anytime for any reason. Your child’s responses to the questionnaire will be kept completely confidential. The staff of the SCP will never see the individual responses of any children participating in this study. Whether or not you give permission for your child to take part in the study will in no way affect your child’s participation in the SCP.

If you have any questions, please call Jane Doe (614-9999), the research assistant in charge of this project, or you may call collect to Dr. John Smith (217-333-2222).

I have read and understand the above, and I voluntarily give permission for my child, _____ to participate in this study, I understand that I may keep a copy of this form.

PARENT OR GUARDIAN SIGNATURE

DATE

The Administrative Assistant of the KCTCS Human Subjects Review Board can answer any questions about the general rights of research subjects. (300 North Main Street, 859-256-3395).

CONSENT FORM
EXAMPLE 4: MINIMAL RISK PROJECT – ASSENT OF
CHILD

INFORMED CONSENT – YOUTH

Our goal at the Sunshine Community Program (SCP) is for every child to have a successful and enjoyable experience that helps to prepare him or her for the future. To help us understand how well we are meeting this goal, we want to ask you some questions.

We want to know what you think about our programs, your school, and other areas of your life. We would like you to fill out a survey that would take about 30 minutes to do. You would be given the survey three different times throughout the school year.

You may be asked some personal questions in the survey. You do not need to answer any questions that you don't want to. If you agree to participate in our surveys, you can change your mind at any time. If you decide not to do our surveys, you can still participate in the SCP programs.

All your answers to the survey questions will be completely confidential. Your answers will be coded so your name will not be on the survey. No one here at the SCP will see your answers.

If you have any questions, please call Jane Doe (614-9999), the research assistant in charge of this project, or you may call collect to Dr. John Smith (217-333-2222).

I have read and understand the above information, and I voluntarily consent to participate in this project.

STUDENT SIGNATURE

DATE

Code of Federal Regulations

**TITLE 45
PUBLIC WELFARE**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

**PART 46
PROTECTION OF HUMAN SUBJECTS**

**Revised June 23, 3005
Effective June 23, 3005**

Basic HHS Policy for Protection of Human Research Subjects

**Subpart A –
Sec.**

	To what does this policy apply?
<u>46.101</u>	
<u>46.102</u>	Definitions.
<u>46.103</u>	Assuring compliance with this policy – research conducted or supported by any Federal Department or Agency.
<u>46.104-</u>	[Reserved]
<u>46.106</u>	[Reserved]
<u>46.107</u>	IRB membership. IRB functions and operations.
<u>46.108</u>	
<u>46.109</u>	IRB review of research.
<u>46.110</u>	Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
<u>46.111</u>	Criteria for IRB approval of research. Review by institution.
<u>46.112</u>	Suspension or termination of IRB approval of research.
<u>46.113</u>	
<u>46.114</u>	Cooperative research.
<u>46.115</u>	IRB records.
<u>46.116</u>	General requirements for informed consent.
<u>46.117</u>	Documentation of informed consent.
<u>46.118</u>	Applications and proposals lacking definite plans for involvement of human subjects.

- 46.119 Research undertaken without the intention of involving human subjects.
- 46.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
- 46.121 [Reserved]
- 46.122 Use of Federal funds.
- 46.123 Early termination of research support: Evaluation of applications and proposals.
- 46.124 Conditions.

Subpart B – Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research

Sec.

To what do these regulations apply?

- 46.201
- 46.202 Definitions.
- 46.203 Duties of IRBs in connection with research involving pregnant women, fetuses, and neonates.
- 46.204 Research involving pregnant women or fetuses.
- 46.205 Research involving neonates.
- 46.206 Research involving, after delivery, the placenta, the dead fetus or fetal material.
- 46.207 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of pregnant women, fetuses, or neonates.

Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects

Subpart C—

Sec.

- 46.301 Applicability.
- 46.302 Purpose.
- 46.303 Definitions.
- 46.304 Composition of Institutional Review Boards where prisoners are involved.
- 46.305 Additional duties of the Institutional Review Boards where prisoners are involved.
- 46.306 Permitted research involving prisoners.

Subpart D -- Additional Protections for Children Involved as Subjects in Research

Sec.	
<u>46.401</u>	To what do these regulations apply?
<u>46.402</u>	Definitions.
<u>46.403</u>	IRB duties.
<u>46.404</u>	Research not involving greater than minimal risk.
<u>46.405</u>	Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.
<u>46.406</u>	Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition.
<u>46.407</u>	Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.
<u>46.408</u>	Requirements for permission by parents or guardians and for assent by children.
<u>46.409</u>	Wards.

Authority: 5 U.S.C. 301; 42 U.S.C. 289(a).

Editorial Note: The Department of Health and Human Services issued a notice of waiver regarding the requirements set forth in part 46, relating to protection of human subjects, as they pertain to demonstration projects, approved under section 1115 of the Social Security Act, which test the use of cost—sharing, such as deductibles, co-payment and coinsurance, in the Medicaid program. For further information see 47 FR 9208, Mar. 4, 1982.

Note: As revised, Subpart A of the HHS regulations incorporates the Federal Policy for the Protection of Human Subjects (56 FR 28003). Subpart D of the HHS regulations has been amended at Section 46.401(b) to reference the revised Subpart A.

The Federal Policy for the Protection of Human Subjects is also codified at

7 CFR Part 1c	Department of Agriculture
10 CFR Part 745	Department of Energy
14 CFR Part 1230	National Aeronautics and Space Administration
15 CFR Part 27	Department of Commerce
16 CFR Part 1028	Consumer Product Safety Commission
22 CFR Part 225	International Development Cooperation Agency, Agency for International Development
24 CFR Part 60	Department of Housing and Urban Development
28 CFR Part 46	Department of Justice
32 CFR Part 219	Department of Defense
34 CFR Part 97	Department of Education
38 CFR Part 16	Department of Veterans Affairs

40 CFR Part 26
45 CFR Part 690
49 CFR Part 11

Environmental Protection Agency
National Science Foundation
Department of Transportation

* * *

Subpart A	Basic HHS Policy for Protection of Human Research Subjects
	Authority: 5 U.S.C. 301; 42 U.S.C. 289(a); 42 U.S.C. 300v-1(b).
	Source: 56 FR 28003, June 18, 1991; 70 FR 36325, June 23, 2005.

§46.101 To what does this policy apply?

(a) Except as provided in paragraph (b) of this section, this policy applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by federal civilian employees or military personnel, except that each department or agency head may adopt such procedural modifications as may be appropriate from an administrative standpoint. It also includes research conducted, supported, or otherwise subject to regulation by the federal government outside the United States.

(1) Research that is conducted or supported by a federal department or agency, whether or not it is regulated as defined in §46.101(e), must comply with all sections of this policy.

(2) Research that is neither conducted nor supported by a federal department or agency but is subject to regulation as defined in §46.102(e) must be reviewed and approved, in compliance with §46.101, §46.102, and §46.117 of this policy, by an institutional review board (IRB) that operates in accordance with the pertinent requirements of this policy.

(b) Unless otherwise required by department or agency heads, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from this policy:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (i) research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

(i) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (b) (2) of this section, if: (i) the human subjects are elected or appointed public officials or candidates for public office; or (ii) federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate or otherwise examine:

(I) Public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (i) if wholesome foods without additives are consumed or (ii) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

(c) Department of agency heads retain final judgment as to whether a particular activity is covered by this policy.

(d) Department of agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the department or agency but not otherwise covered by this policy, comply with some or all of the requirements of this policy.

(e) Compliance with this policy requires compliance with pertinent federal laws or regulations which provide additional protections for human subjects.

(f) This policy does not affect any state or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations which may otherwise be applicable and which provide additional protections to human subjects of research.

(h) When research covered by this policy takes place in foreign countries, procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the World Medical Assembly Declaration (Declaration of Helsinki amended 1989) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the FEDERAL REGISTER or will be otherwise published as provided in department or agency procedures.

(i) Unless otherwise required by law, department or agency heads may waive the applicability of some or all of the provisions of this policy to specific research activities or classes or research activities otherwise covered by this policy. Except when otherwise required by statute or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Human Research Protections, Department of Health and Human Services (HHS), or any successor office, and shall also publish them in the FEDERAL REGISTER or in such other manner as provided in Department or Agency procedures.¹

[56 FR 38012, 28022, June 18, 1991; 56 FR 29756, June 28, 1991; 70 FR 36325, June 23, 2005]

§46.102 Definitions.

¹ Institutions with HHS-approved assurances on file will abide by provisions of Title 45 CFR part 46 subparts A-D. Some of the other departments and agencies have incorporated all provisions of Title 45 CFR Part 46 into their policies and procedures as well. However, the exemptions at 45 CFR 46.101(b) do not apply to research involving prisoners, subpart C. The exemption at 45 CFR 46.101(b)(2), for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, subpart D, except for research involving observations of public behavior when the investigator(s) do not participate in the activities being observed.

(a) *Department or agency head* means the head of any federal department or agency and any other officer or employee of any department or agency to whom authority has been delegated.

(b) *Institution* means any public or private entity or agency (including federal, state, and other agencies).

(c) *Legally authorized representative* means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

(d) *Research* means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For examples, some demonstration and service programs may include research activities.

(e) *Research subject to regulation*, and similar terms are intended to encompass those research activities for which a federal department or agency has specific responsibility for regulating as a research activity, (for example, Investigational New Drug requirements administered by the Food and Drug Administration). It does not include research activities which are not incidentally regulated by a federal department or agency solely as part of the department's or agency's broader responsibility to regulate certain types of activities whether research or non-research in nature (for examples, Wage and Hour requirements administered by the Department of Labor).

(f) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains

- (1) Data through intervention or interaction with the individual, or
- (2) Identifiable private information.

Intervention includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject.

Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be

ascertained by the investigator or associate with the information) in order for obtaining the information to constitute research involving human subjects.

(g) *IRB* means an institutional review board established in accord with and for the purposes expressed in this policy.

(h) *IRB approval* means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

(i) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(j) *Certification* means the official notification by the institution to the supporting department or agency, in accordance with the requirements of this policy, that a research project or activity involving human subjects has been reviewed and approved by an IRB in accordance with an approved assurance.

§46.103 Assuring compliance with this policy – research conducted or supported by any Federal Department or Agency.

(a) Each institution engaged in research which is covered by this policy and which is conducted or supported by a federal department or agency shall provide written assurance satisfactory to the department or agency head that it will comply with the requirements set forth in this policy. In lieu of requiring submission of an assurance, individual department or agency heads shall accept the existence of a current assurance, appropriate for the research in question, on file with the Office for Human Research Protections, HHS, or any successor office, and approved for federal wide use by that office. When the existence of an HHS-approved assurance is accepted in lieu of requiring submission of an assurance, reports (except certification) required by this policy to be made to department and agency heads shall also be made to the Office for Human Research Protections, HHS, or any successor office.

(b) Departments and agencies will conduct or support research covered by this policy only if the institution has an assurance approved as provided in this section, and only if the institution has certified to the department or agency head that the research has been reviewed and approved by an IRB provided for in the assurance, and will be subject to continuing review by the IRB. Assurances applicable to federally supported or conducted research shall at a minimum include:

(1) A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of

research conducted at or sponsored by the institution, regardless of whether the research is subject to Federal regulation. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This requirement does not preempt provisions of this policy applicable to department- or agency-supported or regulated research and need not be applicable to any research exempted or waived under §46.101 (b) or (i).

(2) Designation of one or more IRBs established in accordance with the requirements of this policy, and for which provisions are made for meeting space and sufficient staff to support the IRB's review and recordkeeping duties.

(3) A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution for example: full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant. Changes in IRB membership shall be reported to the department or agency head, unless in accord with §46.103(a) of this policy, the existence of an HHS-approved assurance is accepted. In this case, change in IRB membership shall be reported to the Office for Human Research Protections, HHS, or any successor office.

(4) Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (ii) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review and (iii) for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject.

(5) Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB; and (ii) any suspension or termination of IRB approval.

(c) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by this policy and shall be filed in such form and manner as the department or agency head prescribes.

(d) The Department or Agency head will evaluate all assurances submitted in accordance with this policy through such officers and employees of the department or agency and such experts or consultants engage for this purpose as the department or agency head determines to be appropriate. The department or agency head's evaluation will take into consideration the adequacy of the proposed IRB in light of the anticipated scope of the institution's research activities and the types of subject populations likely to be involved, the appropriateness of the proposed initial and continuing review procedures in light of the probable risks, and the size and complexity of the institution.

(e) On the basis of this evaluation, the department or agency head may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The department or agency head may limit the period during which any particular approved assurance or class of approved assurances shall remain effective or otherwise condition or restrict approval.

(f) Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under §46.101 (b) or (i). An institution with an approved assurance shall certify that each application or proposal for research covered by the assurance and by §46.103 of this Policy has been reviewed and approved by the IRB. Such certification must be submitted with the application or proposal or by such later date as may be prescribed by the department or agency to which the application or proposal is submitted. Under no condition shall research covered by §46.103 of the Policy be supported prior to receipt of the certification that the research has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

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[56 FR 38012, 28022, June 18, 1991; 56 FR 29756, June 28, 1991; 70 FR 36325, June 23, 2005]

§§46.104—46.106[Reserved]

§46.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the

experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, as long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting

§46.109 IRB review of research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by this policy.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with §46.116. The IRB may require that information, in addition to that specifically mentioned in §46.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with §46.117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator and opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

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§46.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Secretary, HHS, has established, and published as a Notice in the FEDERAL REGISTER, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The list will be amended, as appropriate, after consultation with other departments and agencies, through periodic republication by the Secretary, HHS, in the FEDERAL REGISTER. A copy of the list is available from the Office for Human Research Protections, HHS, or any successor office.

(b) An IRB may use the expedited review procedure to review either or both of the following:

(1) some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk,

(2) minor changes in previously approved research during the period (of one year or less) for which approval is authorized.

Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in §46.108(b).

(c) Each IRB which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

(d) The department or agency head may restrict, suspend, terminate, or choose not to authorize an institution's or IRB's use of the expedited review procedure.

§46.111 Criteria for IRB approval of research.

(a) In order to approve research covered by this policy the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized: (i) By using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits or therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by §46.116.

(5) Informed consent will be appropriately documented, in accordance with, and to the extent required by §46.117.

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

§46.112 Review by institution.

Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

§46.113 Suspension or termination of IRB approval of research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the department or agency head.

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§46.114 Cooperative research.

Cooperative research projects are those projects covered by this policy which involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy. With the approval of the department or agency head, an institution participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified IRB, or make similar arrangements for avoiding duplication of effort.

§46.115 IRB records.

(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the IRB and the investigators.

- (5) A list of IRB members in the same detail as described in §46.103(b)(3).**
- (6) Written procedures for the IRB in the same detail as described in §46.103(b)(4) and §46.103(b)(5).**
- (7) Statements of significant new findings provided to subjects, as required by §46.116(b)(5).**

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the department or agency at reasonable times and in a reasonable manner.

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§46.116 General requirements for informed consent.

Except as provided elsewhere in this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

(a) Basic elements of informed consent. Except as provided in paragraph (c) or (d) of this section, in seeking informed consent the following information shall be provided to each subject:

- (1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;**
- (2) A description of any reasonably foreseeable risks or discomforts to the subject;**

- (3) A description of any benefits to the subject or to others which may reasonably be expected from the research;**
 - (4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;**
 - (5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;**
 - (6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;**
 - (7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and**
 - (8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.**
- (b) Additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject:**
- (1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;**
 - (2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;**
 - (3) Any additional costs to the subject that may result from participation in the research;**
 - (4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;**
 - (5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and**
 - (6) The approximate number of subjects involved in the study.**

(c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent provided the IRB finds and documents that:

(1) The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine: (i) public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and

(2) The research could not practicably be carried out without the waiver or alteration.

(d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

(1) The research involves no more than minimal risk to the subjects;

(2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;

(3) The research could not practicably be carried out without the waiver or alteration; and

(4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

(e) The informed consent requirements in this policy are not intended to preempt any applicable federal, state, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

(f) Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal, state, or local law.

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§46.117 Documentation of informed consent.

(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

(b) Except as provided in paragraph (c) of this section, the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by §46.116. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

(2) A short form written consent document stating that the elements of informed consent required by §46.116 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative, in addition to a copy of the short form.

(c) An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

(1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

(2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

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§46.118 Applications and proposals lacking definite plans for involvement of human subjects.

Certain types of applications for grants, cooperative agreements, or contracts are submitted to departments or agencies with the knowledge that subjects may be involved within the period of support, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants when selection of specific projects is the institution's responsibility research training; research training grants in which the activities involving subjects remain to be selected; and projects in which human subjects' involvement will depend upon completion of instruments, prior animal studies, or purification of compounds. These applications need not be reviewed by an IRB before an award may be made. However, except for research exempted or waived under §46.101 (b) or (i), no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in this policy, and certification submitted, by the institution, to the department or agency.

§46.119 Research undertaken without the intention of involving human subjects.

In the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in this policy, a certification submitted, by the institution, to the department or agency, and final approval given to the proposed change by the department or agency.

§46.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.

(a) The department or agency head will evaluate all applications and proposals involving human subjects submitted to the department or agency through such officers and employees of the department or agency and such experts and consultants as the department or agency head determines to be appropriate. This evaluation will take into consideration the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained.

(b) On the basis of this evaluation, the department or agency head may approve or disapprove the application or proposal, or enter into negotiations to develop an approvable one.

§46.121 [Reserved]

§46.122 Use of Federal funds.

Federal funds administered by a department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied.

§46.123 Early termination of research support: Evaluation of applications and proposals.

(a) The department or agency head may require that department or agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the department or agency head finds an institution has materially failed to comply with the terms of this policy.

(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragraph (a) of this section and whether the applicant or the person or persons who would direct or has/have directed the scientific and technical aspects of an activity has/have, in the judgment of the department or agency head, materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

§46.124 Conditions.

With respect to any research project or any class of research projects the department or agency head may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

Subpart B	Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research
	Source: 66 FR 56778, Nov. 13, 2001, unless otherwise noted.

§46.201 To what do these regulations apply?

(a) Except as provided in paragraph (b) of this section, this subpart applies to all research involving pregnant women, human fetuses, neonates of uncertain viability, or nonviable neonates conducted or supported by the Department of Health and Human Services (DHHS). This includes all research conducted in DHHS facilities by any person and all research conducted in any facility by DHHS employees.

(b) The exemptions at §46.101(b)(1) through (6) are applicable to this subpart.

(c) The provisions of §46.101(c) through (1) are applicable to this subpart. Reference to State or local laws in this subpart and in §46.101(f) is intended to include the laws of federally recognized American Indian and Alaska Native Tribal Governments.

(d) The requirements of this subpart are in addition to those imposed under the other subparts of this part.

§46.202 Definitions.

The definition in §46.102 shall be applicable to this subpart as well. In addition, as used in this subpart:

(a) Dead fetus means a fetus that exhibits neither heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles, nor pulsation of the umbilical cord.

(b) Delivery means complete separation of the fetus from the woman by expulsion or extraction or any other means.

(c) Fetus means the product of conception from implantation until delivery.

(d) Neonate means a newborn.

(e) Nonviable neonate means a neonate after delivery that, although living, is not viable.

(f) Pregnancy encompasses the period of time from implantation until delivery. A woman shall be assumed to be pregnant if she exhibits any of the pertinent presumptive signs of pregnancy, such as missed menses, until the results of a pregnancy test are negative or until delivery.

(g) Secretary means the Secretary of Health and Human Services and any other office or employee of the Department of Health and Human Services to whom authority has been delegated.

(h) Viable, as it pertains to the neonate, means being able, after delivery, to survive (given the benefit of available medical therapy) to the point of independently maintaining heartbeat and respiration. The Secretary may from time to time, taking into account medical advances, publish in the FEDERAL REGISTER guidelines to assist in determining whether a neonate is viable for purposes of this subpart. If a neonate is viable then it may be included in research only to the extent permitted and in accordance with the requirements of subparts A and D of this part.

§46.203 Duties of IRBs in connection with research involving pregnant women, fetuses, and neonates.

In addition to other responsibilities assigned to IRBs under this part, each IRB shall review research covered by this subpart and approve only research which satisfies the conditions of all applicable sections of this subpart and the other subparts of this part.

§46.204 Research involving pregnant women or fetuses.

Pregnant women or fetuses may be involved in research if all of the following conditions are met:

- (a) Scientifically appropriate, preclinical studies, including studies on pregnant animals, and clinical studies, including studies on nonpregnant women, have been conducted and provide data for assessing potential risks to pregnant women and fetuses;**
- (b) The risk to the fetus is caused solely by interventions or procedures that hold out the prospect of direct benefit for the woman or the fetus; or, if there is no such prospect of benefit, the risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge which cannot be obtained by any other means;**
- (c) Any risk is the least possible for achieving the objectives of the research;**
- (d) If the research holds out the prospect of direct benefit to the pregnant woman, the prospect of a direct benefit both to the pregnant woman and the fetus, or no prospect of benefit for the woman nor the fetus when risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge that cannot be obtained by any other means, her consent is obtained in accord with the informed consent provisions of subpart A of this part;**
- (e) If the research holds out the prospect of direct benefit solely to the fetus then the consent of the pregnant woman and the father is obtained in accord with the informed consent provisions of subpart A of this part, except that the father's consent need not be obtained if he is unable to consent because of unavailability, incompetence, or temporary incapacity or the pregnancy resulted from rape or incest.**
- (f) Each individual providing consent under paragraph (d) or (e) of this section is fully informed regarding the reasonably foreseeable impact of the research on the fetus or neonate;**

(g) For children as defined in §46.402(a) who are pregnant, assent and permission are obtained in accord with the provisions of subpart D of this part;

(h) No inducements, monetary or otherwise, will be offered to terminate a pregnancy;

(i) Individuals engaged in the research will have no part in any decision as to the timing, method, or procedures used to terminate a pregnancy; and

(j) Individuals engaged in the research will have no part in determining the viability of a neonate.

§46.205 Research involving neonates.

(a) Neonates of uncertain viability and nonviable neonates may be involved in research if all of the following conditions are met:

(1) Where scientifically appropriate, preclinical and clinical studies have been conducted and provide data for assessing potential risks to neonates.

(2) Each individual providing consent under paragraph (b)(2) or (c)(5) of this section is fully informed regarding the reasonably foreseeable impact of the research on the neonate.

(3) Individuals engaged in the research will have no part in determining the viability of a neonate.

(4) The purpose of the research is the development of important biomedical knowledge that cannot be obtained by other means; and

(5) The legally effective informed consent of both parents of the neonate is obtained in accord with subpart A of this part, except that the waiver and alteration provisions of §46.116(c) and (d) do not apply. However, if either parent is unable to consent because of unavailability, incompetence, or temporary incapacity, the informed consent of one parent of a nonviable neonate will suffice to meet the requirements of this paragraph (c)(5), except that the consent of the father need not be obtained if the pregnancy resulted from rape or incest. The consent of a legally authorized representative of either or both of the parents of a nonviable neonate will not suffice to meet the requirements of this paragraph (c)(5).

(d) Viable neonates. A neonate, after delivery, that has been determined to be viable may be included in research only to the extent permitted by and in accord with the requirements of subparts A and D of this part.

§46.206 Research involving, after delivery, the placenta, the dead fetus or fetal material.

(a) Research involving, after delivery, the placental; the dead fetus; macerated fetal material; or cells, tissue, or organs excised from a dead fetus, shall be conducted only in accord with any applicable federal, state, or local laws and regulations regarding such activities.

(b) If information associated with material described in paragraph (a) of this section is recorded for research purposes in a manner that living individuals can be identified, directly or through identifiers linked to those individuals, those individuals are research subjects and all pertinent subparts of this part are applicable.

§46.207 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of pregnant women, fetuses, or neonates.

The Secretary will conduct or fund research that the IRB does not believe meets the requirements of §46.204 or §46.205 only if:

(a) The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women, fetuses or neonates; and

(b) The Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, ethics, law) and following opportunity for public review and comment, including a public meeting announced in the FEDERAL REGISTER, has determined either:

(1) That the research in fact satisfies the conditions of §46.204, as applicable; or

(2) The following:

(i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women, fetuses or neonates;

(ii) The research will be conducted in accord with sound ethical principles; and

(iii) Informed consent will be obtained in accord with the informed consent provisions of subpart A and other applicable subparts of this part.

Subpart C	Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects
	Source: 43 FR 53655, Nov. 16, 1978, unless otherwise noted.

§46.301 Applicability.

- (a) The regulations in this subpart are applicable to all biomedical and behavioral research conducted or supported by the Department of Health and Human Services involving prisoners as subjects.**
- (b) Nothing in this subpart shall be construed as indicating that compliance with the procedures set forth herein will authorize research involving prisoners as subjects, to the extent such research is limited or barred by applicable State or local law.**
- (c) The requirements of this subpart are in addition to those imposed under the other subparts of this part.**

§46.303 Definitions.

As used in this subpart:

- (a) *Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom authority has been delegated.**
- (b) *DHHS* means the Department of Health and Human Services.**
- (c) *Prisoner* means any individual involuntarily confined or detained in a penal institution. The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing.**
- (d) *Minimal risk* is the possibility and magnitude of physical or psychological harm that is normally encountered in the daily lives, or in the routine medical, dental, or psychological examination of healthy persons.**

§46.304 Composition of Institutional Review Boards where prisoners are involved.

In addition to satisfying the requirements in §46.107 of this part, an Institutional Review Board, carrying out responsibilities under this part with respect to research covered by this subpart, shall also meet the following specific requirements:

(a) A majority of the Board (exclusive of prisoner members) shall have no association with the prison(s) involved, apart from their membership on the Board.

(b) At least one member of the Board shall be a prisoner, or a prisoner representative with appropriate background and experience to serve in that capacity, except that where a particular research project is reviewed by more than one Board only one Board need satisfy this requirement.

[43 FR 53655, Nov. 16, 1978, as amended at 46 FR 8366, Jan. 26, 1981]

§46.305 Additional duties of the Institutional Review Boards where prisoners are involved.

(a) In addition to all other responsibilities prescribed for Institutional Review Boards under this part, the Board shall review research covered by this subpart and approve such research only if it finds that:

(1) The research under review represents one of the categories of research permissible under §46.306(a)(2);

(2) Any possible advantages accruing to the prisoner through his or her participation in the research, when compared to the general living conditions, medical care, quality of food, amenities and opportunity for earnings in the prison, are not of such a magnitude that his or her ability to weigh the risks of the research against the value of such advantages in the limited choice environment of the prison is impaired;

(3) The risks involved in the research are commensurate with risks that would be accepted by nonprisoner volunteers;

(4) Procedures for the selection of subjects within the prison are fair to all prisoners and immune from arbitrary intervention by prison authorities or prisoners. Unless the principal investigator provides to the Board justification in writing for following some other procedures, control subjects must be selected randomly from the group of available prisoners who meet the characteristics needed for that particular research project;

(5) The information is presented in language which is understandable to the subject population;

(6) Adequate assurance exists that parole boards will not take into account a prisoner's participation in the research in making decisions regarding parole, and each prisoner is clearly informed in advance that participation in the research will have no effect on his or her parole; and

(7) Where the Board finds there may be a need for follow-up examination or care of participants after the end of their participation, adequate provision has been made for such examination or care, taking into account the varying lengths of individual prisoners' sentences, and for informing participants of this fact.

(b) The Board shall carry out such other duties as may be assigned by the Secretary.

(c) The institution shall certify to the Secretary, in such form and manner as the Secretary may require, that the duties of the Board under this section have been fulfilled.

§46.306 Permitted research involving prisoners.

(a) Biomedical or behavioral research conducted or supported by DHHS may involve prisoners as subjects only if:

(1) The institution responsible for the conduct of the research has certified to the Secretary that the Institutional Review Board has approved the research under §46.305 of this subpart; and

(2) In the judgment of the Secretary of the proposed research involves solely the following:

(i) Study of the possible causes, effects, and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(ii) Study of prisons as institutional structure or of prisoners as incarcerated persons, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(iii) Research on conditions particularly affecting prisoners as a class (for example, vaccine trials and other research on hepatitis which is much more prevalent in prisons than elsewhere; and research on social and psychological problems such as alcoholism, drug addiction, and sexual assaults) provided that the study may proceed only after the Secretary has consulted with appropriate experts including experts in penology, medicine, and ethics, and published notice, in the FEDERAL REGISTER, of his intent to approve such research; or

(iv) Research on practices, both innovative and accepted, which have the intent and reasonable probability of improving the health or well-being of the subject. In cases in which those studies require the assignment of prisoners in a manner consistent with protocols approved by the IRB to control groups which may not benefit from the research, the study may proceed only after the Secretary has consulted with appropriate experts, including experts in penology, medicine, and

ethics, and published notice, in the FEDERAL REGISTER, of the intent to approve such research.

(b) Except as provided in paragraph (a) of this section, biomedical or behavioral research conducted or supported by DHHS shall not involve prisoners as subjects.

Subpart D	Additional Protections for Children Involved as Subjects in Research
	Source: 48 FR 9818, March 8, 1983, unless otherwise noted.

§46.401 To what do these regulations apply?

(a) This subpart applies to all research involving children as subjects, conducted or supported by the Department of Health and Human Services.

(1) This includes research conducted by Department employees, except that each head of an Operating Division of the Department may adopt such nonsubstantive, procedural modifications as may be appropriate from an administrative standpoint.

(2) It also includes research conducted or supported by the Department of Health and Human Services outside the United States, but in appropriate circumstances, the Secretary may, under paragraph (i) of §46.101 of subpart A, waive the applicability of some or all of the requirements of these regulations for research of this type.

(b) Exemptions at §46.101(b)(1) and (b)(3) through (b)(6) are applicable to this subpart. The exemption at §46.101(b)(2) regarding educational tests is also applicable to this subpart. However, the exemption at §46.101(b)(2) for research involving survey or interview procedures or observations of public behavior does not apply to research covered by this subpart, except for research involving observation of public behavior when the investigator(s) do not participate in the activities being observed.

(c) The exceptions, additions, and provisions for waiver as they appear in paragraphs (c) through (i) of §46.101 of subpart A are applicable to this subpart.

[48 FR 9818, Mar. 8, 1983; 56 FR 28032, June 18, 1991; 56 FR 29757, June 28, 1991.]

§46.402 Definitions.

The definitions in §46.102 of subpart A shall be applicable to this subpart as well. In addition, as used in this subpart:

(a) *Children* are persons who have 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.

(b) *Assent* means a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

(c) *Permission* means the agreement of parent(s) or guardian to the participation of their child or ward in research.

(d) *Parent* means a child's biological or adoptive parent.

(e) *Guardian* means an individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care.

§46.403 IRB duties.

In addition to other responsibilities assigned to IRBs under this part, each IRB shall review research covered by this subpart and approve only research which satisfies the conditions of all applicable sections of this subpart.

§46.404 Research not involving greater than minimal risk.

HHS will conduct or fund research in which the IRB finds that no greater than minimal risk to children is presented, only if the IRB finds that adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians, as set forth in §46.408.

§46.405 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.

HHS will conduct or fund research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that holds out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is likely to contribute to the subject's well-being, only if the IRB finds that:

(a) **The risk is justified by the anticipated benefit to the subjects;**

(b) **The relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative approaches; and**

(c) **Adequate provisions are made for soliciting the assent of the children and permission of their parents or guardians, as set forth in §46.408.**

§46.406 Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition.

HHS will conduct or fund research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that does not hold out the prospect of direct benefit for the individual subject, or by a monitoring procedure which is not likely to contribute to the well-being of the subject, only if the IRB finds that:

- (a) The risk represents a minor increase over minimal risk;**
- (b) 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 situations;**
- (c) The intervention or procedure is likely to yield generalizable knowledge about the subjects' disorder or condition which is of vital importance for the understanding or amelioration of the subjects' disorder or condition; and**
- (d) Adequate provisions are made for soliciting assent of the children and permission of their parents or guardians, as set forth in §46.408.**

§46.407 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.

HHS will conduct or fund research that the IRB does not believe meets the requirements of §46.404, §46.405, or §46.406 only if:

- (a) The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and**
- (b) The Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, has determined either:**
 - (1) That the research in fact satisfies the conditions of §46.404, §46.405, or §46.406, as applicable, or (2) the following:**
 - (i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children;**
 - (ii) The research will be conducted in accordance with sound ethical principles;**

(iii) Adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in §46.408.

§46.408 Requirements for permission by parents or guardians and for assent by children.

(a) In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine that adequate provisions are made for soliciting the assent of the children, when in the judgment of the IRB the children are capable of providing assent. In determining whether children are capable of assenting, the IRB shall take into account the ages, maturity, and psychological state of the children involved. This judgment may be made for all children to be involved in research under a particular protocol, or for each child, as the IRB deems appropriate. If the IRB determines that the capability of some or all of the children is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research, the assent of the children is not a necessary condition for proceeding with the research. Even where the IRB determines that the subjects are capable of assenting, the IRB may still waive the assent requirement under circumstances in which consent may be waived in accord with §46.116 of Subpart A.

(b) In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine, in accordance with and to the extent that consent is required by §46.116 of Subpart A, that adequate provisions are made for soliciting the permission of each child's parents or guardian. Where parental permission is to be obtained, the IRB may find that the permission of one parent is sufficient for research to be conducted under §46.404 or §46.405. Where research is covered by §46.406 and §46.407 and permission is to be obtained from parents, both parents must give their permission unless one parent is deceased, unknown, incompetent, or not reasonably available, or when only one parent has legal responsibility for the care and custody of the child.

(c) In addition to the provisions for waiver contained in §46.116 of subpart A, if the IRB determines that a research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), it may waive the consent requirements in Subpart A of this part and paragraph (b) of this section, provided an appropriate mechanism for protecting the children who will participate as subjects in the research is substituted, and provided further that the waiver is not inconsistent with federal, state, or local law. The choice of an appropriate mechanism would depend upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status, and condition.

(d) Permission by parents or guardians shall be documented in accordance with and to the extent required by §46.117 of subpart A.

(e) When the IRB determines that assent is required, it shall also determine whether and how assent must be documented.

§46.409 Wards.

(a) Children who are wards of the state or any other agency, institution, or entity can be included in research under §46.406 or §46.407 only if such research is:

(1) Related to their status as wards; or

(2) Conducted in schools, camps, hospitals, institutions, or similar settings in which the majority of children involved as subjects are not wards.

(b) If the research is approved under paragraph (a) of this section, the IRB shall require appointment of an advocate for each child who is a ward, in addition to any other individual acting on behalf of the child as guardian or in loco parentis. One individual may serve as advocate for more than one child. The advocate shall 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 in any way (except in the role as advocate or member of the IRB) with the research, the investigator(s), or the guardian organization.