

#### § 46.409

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 approved under § 46.406 or § 46.407 only if such research is:

(1) Related to their status as wards; or

#### 45 CFR Subtitle A (10-1-07 Edition)

(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.

#### PART 50—U.S. EXCHANGE VISITOR PROGRAM—REQUEST FOR WAIVER OF THE TWO-YEAR FOREIGN RESIDENCE REQUIREMENT

##### Sec.

- 50.1 Authority.
- 50.2 Exchange Visitor Waiver Review Board.
- 50.3 Policy.
- 50.4 Waivers for research.
- 50.5 Waivers for the delivery of health care service.
- 50.6 Procedures for submission of application to HHS.
- 50.7 Personal hardship, persecution and visa extension considerations.
- 50.8 Compliance.

AUTHORITY: 75 Stat. 527 (22 U.S.C. 2451 et seq.); 84 Stat. 116 (8 U.S.C. 1182(e)).

SOURCE: 49 FR 9900, Mar. 16, 1984, unless otherwise noted.

#### § 50.1 Authority.

Under the authority of Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 527) and the Immigration and Nationality Act as amended (84 Stat. 116), the Department of Health and Human Services is an "interested United States Government agency" with the authority to request the Department of State to recommend to the Attorney General waiver of the two-year foreign residence requirement for Exchange Visitors under the Mutual Educational and Cultural Exchange