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made for soliciting the permission of each child's parent(s) or guardian(s). If parental permission is to be obtained, the IRB may find that the permission of one parent is sufficient for research to be conducted under §97.404 or §97.405. If research is covered by §§97.406 and 97.407 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 if only one parent has legal responsibility for the care and custody of the child.

(c) In addition to the provisions for waiver contained in §97.116, 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 depends 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 must be documented in accordance with and to the extent required by §97.117.

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

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e-3, 3474; and 42 U.S.C. 300v-1(b))

§97.409 Wards.

(a) Children who are wards of the State or any other agency, institution, or entity may be included in research approved under §97.406 or §97.407 only if that research is—

- (1) Related to their status as wards; or
- (2) Conducted in schools, camps, hospitals, institutions, or similar settings

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in which the majority of children involved as subjects are not wards.

(b) If 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 must be an individual who has the background and experience to act in, and agrees to act in, the best interest 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 or investigators, or the guardian organization.

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e-3, 3474; and 42 U.S.C. 300v-1(b))

PART 98—STUDENT RIGHTS IN RESEARCH, EXPERIMENTAL PROGRAMS, AND TESTING

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AUTHORITY: Sec. 514(a) of Pub. L. 93-380, 88 Stat. 574 (20 U.S.C. 1232h(a)); sec. 1250 of Pub. L. 95-561, 92 Stat. 2355-2356 (20 U.S.C. 1232h(b)); and sec. 408(a)(1) of Pub. L. 90-247, 88 Stat. 559-560, as amended (20 U.S.C. 1221e-3(a)(1)); sec. 414(a) of Pub. L. 96-88, 93 Stat. 665 (20 U.S.C. 3474(a)), unless otherwise noted.

SOURCE: 49 FR 35321, Sept. 6, 1984, unless otherwise noted.

§98.1 Applicability of part.

This part applies to any program administered by the Secretary of Education that:

- (a)(1) Was transferred to the Department by the Department of Education Organization Act (DEOA); and

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(2) Was administered by the Education Division of the Department of Health, Education, and Welfare on the day before the effective date of the DEOA; or

(b) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making section 439 of the General Education Provisions Act inapplicable.

(c) The following chart lists the funded programs to which part 98 does not apply as of February 16, 1984.

Name of program	Authorizing statute	Implementing regulations
1. High School Equivalency Program and College Assistance Migrant Program.	Section 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96-374) 20 U.S.C. 1070d-2).	part 206.
2. Programs administered by the Commissioner of the Rehabilitative Services Administration.	The Rehabilitation Act of 1973 as amended by Pub. L. 95-602 (29 U.S.C. 700, et seq.).	parts 351-356, 361, 362, 365, 366, 369-375, 378, 379, 385-390, and 395.
3. College housing	Title IV of the Housing Act of 1950 as amended (12 U.S.C. 1749, et seq.).	part 614.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1230, 1232h, 3487, 3507)

§ 98.2 Definitions.

(a) The following terms used in this part are defined in 34 CFR part 77; "Department," "Recipient," "Secretary."

(b) The following definitions apply to this part:

Act means the General Education Provisions Act.

Office means the information and investigation office specified in § 98.5.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 98.3 Access to instructional material used in a research or experimentation program.

(a) All instructional material—including teachers' manuals, films, tapes, or other supplementary instructional material—which will be used in con-

nection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project.

(b) For the purpose of this part *research or experimentation program or project* means any program or project in any program under § 98.1 (a) or (b) that is designed to explore or develop new or unproven teaching methods or techniques.

(c) For the purpose of the section *children* means persons not above age 21 who are enrolled in a program under § 98.1 (a) or (b) not above the elementary or secondary education level, as determined under State law.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1232h(a))

§ 98.4 Protection of students' privacy in examination, testing, or treatment.

(a) No student shall be required, as part of any program specified in § 98.1 (a) or (b), to submit without prior consent to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning one or more of the following:

- (1) Political affiliations;
- (2) Mental and psychological problems potentially embarrassing to the student or his or her family;
- (3) Sex behavior and attitudes;
- (4) Illegal, anti-social, self-incriminating and demeaning behavior;
- (5) Critical appraisals of other individuals with whom the student has close family relationships;
- (6) Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or
- (7) Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

(b) As used in paragraph (a) of this section, *prior consent* means:

- (1) Prior consent of the student, if the student is an adult or emancipated minor; or
- (2) Prior written consent of the parent or guardian, if the student is an unemancipated minor.