1 PURPOSE

1.1. This guidance describes the processes for conducting research with children.

2 BACKGROUND

2.1. “Children” means:

2.1.1. 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.

2.2. “Assent” means:

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

2.3. “Permission” means:

2.3.1. The agreement of parent(s) or guardian to the participation of their child or ward in research.

2.4. “Parent” means:

2.4.1. A child’s biological or adoptive parent.

2.5. “Guardian” means:

2.5.1. An individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care. When research is conducted in any jurisdiction and permission for a child to participate in research is to be obtained from an individual other than biological or adoptive parents, the individual providing such permission must provide written documentation of the legal ability to consent to the child’s general medical care. A copy of this documentation is to be kept with the consent document in the investigator’s files.

2.5.1.1. In Florida, “Medical care and treatment” includes ordinary and necessary medical and dental examination and treatment, including blood testing, preventive care including ordinary immunizations, tuberculin testing, and well-child care, but does not include surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures. [F.S. 743.0645]

2.6. For purposes of this guidance any person who is under the age of 18 generally is unable to consent for themselves. Several important exceptions exist under Florida Chapter 743 that effectively treat children as adults and gives them the capacity to consent to their own medical care and to participate in research. They include the following:

2.6.1. An unwed pregnant minor may consent to the performance of medical or surgical care or services relating to her pregnancy by a hospital or clinic or by a physician.
2.6.2. An unwed minor mother may consent to the performance of medical or surgical care or services for her child by a hospital or clinic or by a physician.
2.6.3. Any minor who is married, or who has been married, to perform all acts they could do if not a minor.
2.6.4. Certified unaccompanied homeless youths.
2.6.5. Any minor who has been adjudicated as an adult and is in custody or under the supervision of the Department of Corrections.
2.6.6. Any minor aged 16 or older, who has been allowed via circuit court judge to remove the disabilities of nonage.

3 GUIDANCE

3.1. Research on children must be reviewed and categorized by the IRB into one of the following groups:

3.1.1. *Not greater than minimal risk*: research on children not involving physical or emotional risk greater than that ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests (i.e., minimal risk). This includes adequate provisions for soliciting the assent of the children and the permission of their parents or legal guardians.

3.1.2. *Greater than minimal risk*: research on children involving greater than minimal risk but presenting the prospect of direct benefit to the Individual subject. In order to approve the research, the IRB must determine if:

3.1.2.1. The risk is justified by the anticipated benefit to the subjects;

3.1.2.2. 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**

3.1.2.3. Adequate provisions are made for soliciting the assent of children and the permission of their parents or legal guardians.

3.1.3. *Greater than minimal risk & no prospect of direct benefit*: research on children involving greater than minimal risk and no reasonable prospect of direct benefit to the Individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition. The IRB must determine:

3.1.3.1. The risk represents a minor increase over minimal risk;

3.1.3.2. 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;

3.1.3.3. The intervention or procedure is likely to yield generalizable knowledge about the subjects' disorder or condition which is of vital importance to the understanding or amelioration of the subjects' disorder or condition; **and**

3.1.3.4. Adequate provisions are made for soliciting the assent of children and the permission of their parents or legal guardians.

3.1.4. *Research not otherwise approvable*: research on children not otherwise approvable which presents an opportunity to understand, prevent, or alleviate serious problems affecting the health or welfare of children.

3.1.4.1. Federally funded research in this category must be approved by the DHHS secretary, in consultation with a panel of experts in pertinent disciplines (e.g., science, medicine, ethics, or law), and requires consent of either both parents or the legal guardian. Non-Federally funded research may be approved by the IRB in the same manner. To approve the research, the secretary or IRB must determine:

3.1.4.1.1. That the research in fact satisfies the conditions of the previous categories, as applicable; or the following:

3.1.4.1.1.1. The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children;

3.1.4.1.1.2. The research will be conducted in accordance with sound ethical principles; **and**

3.1.4.1.1.3. Adequate provisions are made for soliciting the assent of children and the permission of their parents or legal guardians.

3.1.4.1.2. FDA-regulated research in this category must be approved by the FDA commissioner.

3.2. Since *a child cannot consent for themselves*, the IRB must determine that adequate provisions have been made for soliciting the permission of each child's parent or legal guardian, as documented in the consent form.

3.2.1. Where parental consent is to be obtained, the IRB may find that the consent of one parent is sufficient for minimal risk research or research presenting the prospect of direct benefit to the child.

3.2.2. Both parents must give their consent for all other research involving their child, 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.

3.2.3. Parents or legal guardians must be provided with the basic elements of consent and any additional elements the IRB deems necessary, as described in the policy on consent.

3.3. For research *not covered by the FDA regulations*, the IRB may waive the requirement for obtaining consent from a parent or legal guardian if:

3.3.1. The research meets the provisions for waiver of consent in adult research, *or*

3.3.2. If the IRB determines that the research protocol is designed for conditions or a subject population for which parental or legal guardian consent is not a reasonable requirement to protect the subjects (e.g., neglected or abused children) provided an appropriate mechanism for protecting the children who will participate as subjects in the research is substituted, and that the waiver is not inconsistent with Federal, state, or local laws. 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.

3.4. Parental consent may not be waived for research covered by the FDA regulations.

3.5. Consent from parents or legal guardians must be documented in accordance with and to the extent required by FAU policies on consent.

3.6. *A child must actively show their willingness to participate in the research*, rather than just complying with directions to participate and not resisting in any way. When judging whether children are capable of assent, the IRB is charged with considering the ages, maturity, and psychological state of the children involved.

3.7. At times there may be inconsistency between parent consent and child assent. Usually a "no" from the child overrides a "yes" from a parent, but a child typically cannot decide to be in research over the objections of a parent. Individual exceptions to these guidelines (such as when the use of an experimental treatment for a life threatening disease is being considered).

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

3.8.1. Researchers should try to draft a form that is age appropriate and study specific, taking into account the typical child's experience and level of understanding, and composing a document that treats the child respectfully and conveys the essential information about the study.

3.8.2. The assent form should include as many of the requirements for adult consent as possible, worded appropriately for the above considerations.

3.8.3. For younger children, the document should be limited to one page if possible. Illustrations might be helpful, and larger type makes a form easier for young

children to read. Studies involving older children or adolescents should include more information and may use more complex language.

3.9. Children who are *wards of the state or any other agency*, institution, or entity can be included in research involving greater than minimal risk where there is no prospect of direct benefits to Individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition, only if such research is:

3.9.1. Related to their status as wards; *or*

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

3.9.3. If the research meets the condition(s) above, an advocate must be appointed by the IRB for each child who is a ward (one individual may serve as advocate for more than one child), in addition to any other individual acting on behalf of the child as legal guardian.

3.9.3.1. The advocate must be an individual who has the background and experience to act in, and agrees to act in, the best interests of the child for the duration of the child's participation in the research and who is not associated in any way (except in the role as advocate or member of the IRB) with the research, the investigator(s), or the guardian organization.

3.10. If over the course of a research project a minor reaches the age of majority, the PI must obtain full consent from the newly adult subject. The assent, parental permission, and consent should be maintained in the subject’s file.

4 REFERENCES

4.1. 45 CFR Subpart D
4.2. 21 CFR 50 Subpart D
4.3. Florida Title XLIII, Chapter 743