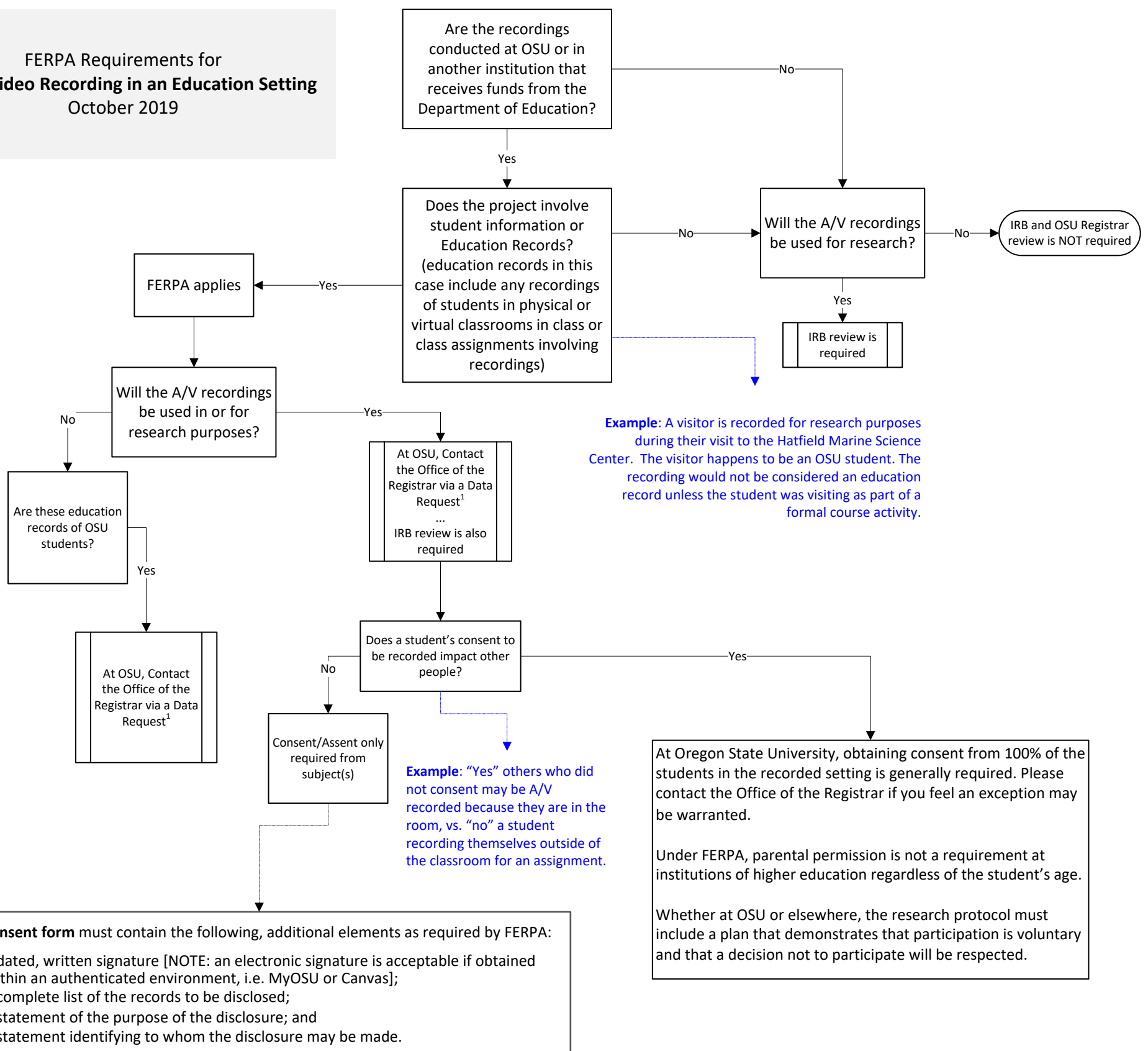


FERPA Requirements for
Audio/Video Recording in an Education Setting
October 2019



WHEN FERPA AND THE COMMON RULE BOTH APPLY

The **Family Educational Rights and Privacy Act (FERPA)** (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The **Common Rule** is the federal regulation that applies to research involving human subjects (45 CFR 46). In cases where both FERPA and the Common Rule apply, compliance with the more conservative regulation is required.

The school site(s) are responsible for determining whether the plan for assent, consent, and parental permission is in compliance with FERPA. Under the Common Rule, a waiver of consent or parental permission can only be waived under one of the following circumstances:

1. The research involves minimal risk to subjects; the waiver or alteration will not adversely affect the rights and welfare of subjects; AND the research could not practicably be carried out without the waiver or alteration, and whenever appropriate, the subjects will be provided with additional pertinent information after participation. [45 CFR 46.116]
2. 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, 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. [45 CFR 46.408(c)]
3. The study is otherwise eligible for the FLEX initiative and waiving parental permission if adequately justified by the Principal Investigator and consistent with any relevant requirements from the research site if minors are being recruited from or studied in a school, camp, or other similar setting. When appropriate, parental notification with a reasonable opt-out period is utilized.

LINKS & DEFINITIONS

- **Data Request Form:** http://bit.ly/OtR_data
- **Assent:** The agreement of someone not able to give legal consent to participate in the research activity.
- **Education Records:** Records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution, or by a party acting for the agency or institution.