



The Executive Officer's Column

What's Happening in Your Own Backyard!

Once again, I am writing my "Open Window" column to alert ASA members and other interested Footnotes readers about an amendment regarding parental consent that was signed into law by President Bush on January 8 as part of reauthorizing the Elementary and Secondary Education Act (ESEA). Those of us engaged in tracking this issue since 1995 have tried to look on the bright side. From one vantage, the amendment that passed could have been worse; from another, perhaps what passed is equally problematic.



Background

As this bill (H.R. 1)-"Leave No Child Behind"-was wending its way through Congress, the American Sociological Association (ASA) and other social and behavioral science societies were deeply troubled about an amendment proposed by Rep. Todd Tiahrt (R-KS) requiring prior written consent as the *only* mechanism for obtaining informed consent in *all* federally funded research in schools. We were also uneasy about an alternative amendment introduced by Senator Tim Hutchinson (R-AR) that directed state and local agencies (e.g., school districts) to develop guidelines to protect student privacy in dealing with public and private entities that are not schools. The Senate version of the amendment was primarily concerned about commercial surveys in the classroom, not with social and behavioral science school-based research. Nonetheless, the language made no distinction between types of research.

The Hutchinson amendment prevailed in the final language that came out of the conference committee. Essentially this new law delegates to state or local agencies the development and adoption of policies for student privacy and parental access to information (see Title X, Part F). According to this Act, the guidelines are to include, in addition to arrangements to protect student privacy, parents having the right to inspect surveys (addressed to a wide-ranging number of issues) before they are administered, and parents needing to be advised of the adopted guidelines at least once annually.

The New Situation

On the face of it, such issues could be reasonably addressed. The problem relates more to what is not said than what is said, and what can happen by virtue of a proliferation of local policies. In this Act, for example, there is no mention at all that there are longstanding Federal Regulations for the



Protection of Human Subjects (45 CFR 46) and that issues of confidentiality, privacy, and consent (including parental consent involving children) are already being reviewed for school-based research by Institutional Review Boards (IRBs) at colleges, universities, and research institutions. As sociologists know, the Federal Regulations have been carefully crafted and yet give local IRBs the flexibility to apply those guidelines as are appropriate to specific circumstances.

While the Federal Regulations may need improvement and more meaningful implementation, there are processes in place for doing so that both protect research participants and advance important research on children and youth. To have long-term studies or studies undertaken at many sites be subject to various guidelines developed at different points in time or by different state and local agencies can affect the validity of essential knowledge about children, send to children and their families confusing messages about ethical protections in place, and produce sampling bias and reduced sample sizes.

Our largest concern is that the neutral language in ESEA might lead those who sought to provide for parental consent through *only* written consent (as in the Tiahrt amendment) to take a one-size-fits-all understanding of consent to guidelines being developed by state and local agencies. Given the number of states and the thousands of school districts, it will be even harder to address such singular thinking at this level. Yet, we know that, for certain types of research and for certain populations, written consent by parents or even close scrutiny of surveys in advance of a study may not be the best ethical practice for ensuring protection of children and youth. The Federal Regulations provide IRBs with the latitude and flexibility to waive written parental consent when appropriate. In contrast, ESEA states only the minimal guidelines that need to be developed and adopted; there are no safeguards in place for overreach or for promoting flexible standards.

New Jersey as a Case in Point

One state-New Jersey-has already signed into law guidelines for the conduct of research that would require prior written consent by parents at least two weeks prior to the administration of a survey, assessment, or evaluation. The law further states that, without written consent from a parent or guardian, students cannot participate in the research. The absolute nature of these state-wide guidelines and how they might affect what we learn about certain populations with parents less likely or willing to return forms speak for itself.

The trickle-down effect of what can happen goes beyond New Jersey to all of us and all institutions where there are social and behavioral scientists doing school-based research. Understandably, the Institutional Review Panel for Human Subjects at Princeton University has just circulated the full text of the New Jersey law and has indicated that this law will apply to all school-based research being undertaken irrespective of funding source.

In Your Backyard



The value of the Federal Regulations for the Protection of Human Subjects is that it balances specification of ethical guidelines with local flexibility and discretion. For at least school-based research, ESEA can contribute-however inadvertently-to turning this inside out. Therefore, we urge you to be attentive to what is happening in your own "backyard" and let us know what occurs in your local area and institution. Meanwhile, we need to monitor the situation and determine what to do as the action shifts to the states.

-Felice J. Levine