- sponsor, if funded by an entity other than a Common Rule agency.

The HRC Director ensures that all steps of this policy are completed promptly after the initiating action. For more serious actions, the HRC Director will expedite reporting.

The above reporting is not required if the event occurred at a site that was not subject to the direct oversight of NYU IRB.

8. VULNERABLE POPULATIONS

When some or all of the participants in a protocol are likely to be vulnerable to coercion or undue influence or to specific risks, the IRB should include additional safeguards to protect the rights and welfare of these participants. Some of the vulnerable populations that might be involved in research studies include children, pregnant women, fetuses, prisoners, persons with impaired decision-making capacity, or economically or educationally disadvantaged persons.

If the IRB reviews research that involves categories of vulnerable participants, the review process will include one or more individuals who are knowledgeable about or experienced in working with these participants.

The subparts within 45 CFR Part 46 provide extra protections for specific vulnerable populations. These populations have additional review requirements for IRBs. For research funded by DHHS agencies, there are also other reporting requirements.

Subpart B: Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research

Subpart C: Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects

Subpart D: Additional Protections for Children Involved as Subjects in Research

Researchers conducting human subject research must check with the IRB to determine the applicability of and how to apply the subparts.

NYU recognizes individuals who have a unique relationship with investigators or cooperating sites, such as students and employees, as vulnerable due to the potential for undue influence and coercion in certain conditions.

8.1 PI RESPONSIBILITIES

The Principal Investigator is responsible for identifying the potential for enrolling vulnerable subjects in the research protocol and for adherence to the additional

requirements for the population, including any approvals from cooperating institutions, such as schools and penal institutions.

8.2 IRB RESPONSIBILITIES

The IRB shall include representation, either as members or ad hoc consultants, individual(s) interested in or who have experience with the vulnerable populations involved in a research proposal.

The IRB reviews the PI's justifications for including vulnerable populations in the research to assess the appropriateness of the research proposal and may require that additional safeguards be included to protect the rights and welfare of vulnerable participants as needed.

8.2.1 INITIAL REVIEW OF RESEARCH PROPOSALS

The Principal Investigator should identify the potential to enroll vulnerable participants in the proposed research at the initial review and provide the justification for their inclusion in the study.

The IRB evaluates the proposed plan for the consent of the specific vulnerable populations involved. If the research involves adults unable to consent, the IRB evaluates the proposed plan for permission of legally authorized representatives.

The IRB evaluates and approves the proposed plan for the assent of participants.

The Principal Investigator should provide appropriate safeguards to protect the participant's rights and welfare, which may include the addition of an independent monitor. The independent monitor is a qualified individual not involved in the research study who will determine the participant's capacity to provide voluntary informed consent.

The IRB assesses the adequacy of additional protections for vulnerable populations provided by the Principal Investigator.

8.2.2 CONTINUING REVIEW AND MONITORING

For research that requires an annual review, the Principal Investigator should identify the number of vulnerable participants enrolled and any that needed an independent monitor in the progress report.

8.3 RESEARCH INVOLVING PREGNANT WOMEN OR FETUSES

NYU applies the Federal Regulations 45 CFR Subpart B to all research regardless of funding source as applicable. Although this subpart is primarily directed at medical interventions, the IRB will take additional care to review any social and behavioral research projects that specifically target this group to ensure that the requirements for approval are met.

The NYU IRB does not review research involving neonates or involving, after delivery, the placenta, the dead fetus, or fetal material.

8.3.1 DEFINITIONS PERTINENT TO RESEARCH INVOLVING PREGNANT WOMEN OR FETUSES

Pregnant

Pregnancy encompasses the period of time from implantation until delivery. A woman shall be assumed to be pregnant if she exhibits any of the pertinent presumptive signs of pregnancy, such as missed menses, until the results of a pregnancy test are negative or until delivery.

Fetus

Fetus means the product of conception from implantation until delivery.

8.3.2 FINDINGS REQUIRED FOR THE APPROVAL OF RESEARCH WITH PREGNANT WOMEN OR FETUSES

Pregnant women or fetuses may be involved in research if all of the following conditions are met:

(a) Where scientifically appropriate, preclinical studies, including studies on pregnant animals, and clinical studies, including studies on nonpregnant women, have been conducted and provide data for assessing potential risks to pregnant women and fetuses;

(b) The risk to the fetus is caused solely by interventions or procedures that hold out the prospect of direct benefit for the woman or the fetus; or, if there is no such prospect of benefit, the risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge which cannot be obtained by any other means;

(c) Any risk is the least possible for achieving the objectives of the research;

(d) If the research holds out the prospect of direct benefit to the pregnant woman, the prospect of a direct benefit both to the pregnant woman and the fetus, or no prospect of

benefit for the woman nor the fetus when risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge that cannot be obtained by any other means, her consent is obtained in accord with the informed consent provisions;

(e) If the research holds out the prospect of direct benefit solely to the fetus then the consent of the pregnant woman and the father is obtained in accord with the informed consent provisions, except that the father's consent need not be obtained if he is unable to consent because of unavailability, incompetence, or temporary incapacity or the pregnancy resulted from rape or incest;

(f) Each individual providing consent under paragraph (d) or (e) of this section is fully informed regarding the reasonably foreseeable impact of the research on the fetus or neonate;

(g) For children as defined in §46.402(a) who are pregnant, assent and permission are obtained in accord with the provisions for the involvement of children as research participants;

(h) No inducements, monetary or otherwise, will be offered to terminate a pregnancy;

(i) Individuals engaged in the research will have no part in any decisions as to the timing, method, or procedures used to terminate a pregnancy; and

(j) Individuals engaged in the research will have no part in determining the viability of a neonate.

8.4 RESEARCH INVOLVING PRISONERS

There are special federal regulations that govern research involving prisoners enrolled as participants. Subpart C of 45 Code of Federal Regulation (CFR) 46 applies when are target participant population are prisoners.

8.4.1 DEFINITIONS PERTINENT TO PRISONER RESEARCH

Secretary:

For DHHS-funded research, Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom authority has been delegated.

DHHS:

DHHS means the Department of Health and Human Services.

Prisoner:

A prisoner is defined as any individual involuntarily confined or detained in a penal institution. The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing.

Minimal Risk

Minimal Risk for prisoners is the probability and magnitude of physical or psychological harm that is normally encountered in the daily lives, or in the routine medical, dental, or psychological examination of healthy persons.

8.4.2 COMPOSITION OF THE BOARD WHEN REVIEWING PRISONER RESEARCH STUDIES

When the IRB reviews study protocols that will involve the use of prisoners as participants, a prisoner representative must participate in all types of these reviews (e.g., initial, continuation, modification, and adverse events)

A majority of the Board Members (exclusive of prisoner members) shall have no association with the prison(s) involved, apart from their membership on the Board.

8.4.3 FINDINGS REQUIRED FOR APPROVAL OF PRISONER RESEARCH

For the IRB to approve a study, there research must meet certain criteria:

(1) The research under review represents one of the categories of research permissible under §46.306(a);

(2)Any possible advantages accruing to the prisoner through his or her participation in the research, when compared to the general living conditions, medical care, quality of food, amenities, and opportunity for earnings in prison, are not of such a magnitude that his or her ability to weigh the risks of the research against the value of such advantages in the limited choice environment of the prison is impaired;

(3) The risks involved in the research are commensurate with risks that would be accepted by non-prisoner volunteers;

(4) Procedures for the selection of participants within the prison are fair to all prisoners and immune from arbitrary intervention by prison authorities or prisoners. Unless the principal investigator provides to the Board justification in writing for following some other procedures, control participants must be selected randomly from the group of available prisoners who meet the characteristics needed for that particular research project;

(5) The information is presented in language which is understandable to the participant population;

(6) Adequate assurance exists that parole boards will not take into account a prisoner's participation in the research in making decisions regarding parole, and each prisoner is clearly informed in advance that participation in the research will have no effect on his or her parole; and

(7) Where the Board finds there may be a need for follow-up examination or care of participants after the end of their participation, adequate provision has been made for such examination or care, taking into account the varying lengths of individual prisoners' sentences, and for informing participants of this fact.

(b) For DHHS supported research, the Board shall carry out such other duties as may be assigned by the Secretary.

(c) For DHHS supported research, the institution shall certify to the Secretary, in such form and manner as the Secretary may require, that the duties of the Board under this section have been fulfilled.

Permitted research involving prisoners at 45 CFR 46.306(a):

(i) Study of the possible causes, effects, and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than an inconvenience to the participants;

(ii) Study of prisons as institutional structures or of prisoners as incarcerated persons provided that the study presents no more than minimal risk and no more than an inconvenience to the participants;

(iii) Research on conditions particularly affecting prisoners as a class (for example, vaccine trials and other research on hepatitis which is much more prevalent in prisons than elsewhere; and research on social and psychological problems such as alcoholism, drug addiction, and sexual assaults), and, for DHHS supported research, provided that the study may proceed only after the Secretary has consulted with appropriate experts including experts in penology medicine and ethics, and published notice, in the FEDERAL REGISTER, of his intent to approve such research; or

(iv) Research on practices, both innovative and accepted, which have the intent and reasonable probability of improving the health or well-being of the participant. For DHHS supported research, in cases in which those studies require the assignment of prisoners in a manner consistent with protocols approved by the IRB to control groups which may not benefit from the research, the study may proceed only after the Secretary has consulted with appropriate experts, including experts in penology medicine and ethics, and published notice, in the FEDERAL REGISTER, of his intent to approve such research.

A certification report must be submitted to OHRP for all HHS funded projects involving prisoners. A certification letter from OHRP must be received before a research study can commence.

8.5 RESEARCH INVOLVING CHILDREN

The following applies to all research involving children, regardless of funding source. The requirements in this section are consistent with [Subpart D of 45 CFR 46].

8.5.1 DEFINITIONS PERTINENT TO RESEARCH INVOLVING CHILDREN

Children:

Children are 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.

Guardian:

Guardian means an individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care.

Assent:

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

Permission:

Permission is an agreement from the parent(s) or legal guardian for their child or ward to participate in research.

Parent:

A parent is a child's biological or adoptive parent.

8.5.2 ALLOWABLE CATEGORIES OF RESEARCH WITH CHILDREN

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

Research 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). [45 CFR 46.404]

Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual participant. [45 CFR 46.405]

Research involving greater than minimal risk and no reasonable prospect of direct benefit to the individual participant, but likely to yield generalizable knowledge about the participant's disorder or condition. [45 CFR 46.406]

Research not otherwise approvable, which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children. [45 CFR 46.407] HHS will conduct or fund research that the IRB does not believe meets the requirements of 46.404, 46.405, or 46.406 only if: (a) the IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and (b) the Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, has determined either: (1) that the research in fact satisfies the conditions of §46.404, §46.405, or §46.406, as applicable, or (2) the following: (i) the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children;(ii) the research will be conducted in accordance with sound ethical principles;(iii) adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in §46.408.

8.5.3 PERMISSION AND ASSENT

Parental Permission

In accordance with [45 CFR 46.408(b)], the IRB must determine that adequate provisions have been made for soliciting the permission of each child's parents or guardians. The criteria for obtaining and documenting permission from each child's parents or guardians follow the provisions for obtaining informed consent, including the criteria for waiving consent and/or waiving documentation of consent.

In addition to the provisions for waiving consent, the IRB may waive the requirement for obtaining permission from a parent or legal guardian if the IRB determines that the research protocol is designed for conditions or a participant population for which

parental or guardian permission is not a reasonable requirement to protect the participants (for example, neglected or abused children), and an appropriate mechanism for protecting the children who will participate as participants in the research is substituted and 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 participants, and their age, maturity, status, and condition.

Assent from Children

For research activities involving children whose capacity to understand resembles that of adults, the assent procedure should likewise include information similar to what would be provided for informed consent by adults. For children whose age and maturity level limits their ability to fully comprehend the nature of the research activity but who are still capable of being consulted about participation in research, it may be appropriate to focus on conveying an accurate picture of what the actual experience of participation in research is likely to be (for example, what the experience will be, how long it will take, whether it might involve any pain or discomfort). The assent procedure should reflect a reasonable effort to enable the child to understand, to the degree they are capable, what their participation in research would involve.

The IRB presumes that children ages four and older should be given an opportunity to provide assent. Generally, oral assent using a script in language appropriate for the child's age should be obtained from children 4-11 years of age. Written assent using a written document for the children to read should be sought for children aged 12 and older. If the child's assent is not obtained, the Principal Investigator may either re-approach the child at a later time or not enroll the child.

At times, there may be an inconsistency between parent permission and child assent. Usually, a "no" from the child overrides a "yes" from a parent. There are individual exceptions to these guidelines (such as when the use of an experimental treatment for a life-threatening disease is being considered). The general idea, however, is that children should not be forced to be research participants, even when their parent gives permission for it.

If the IRB determines that the capability of some, or all, of the children, is so limited that they cannot reasonably be consulted, or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research, the assent of the children is not a necessary condition for proceeding with the research.

Even when the IRB determines that the participants are capable of assenting, the IRB may still waive the assent requirement under the provisions for waiving informed consent.

8.5.4 THE ASSENT FORM

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

8.5.5 CHILDREN WHO ARE WARDS

Children who are wards of the State or any other agency, institution, or entity can be included in research involving greater than minimal risk and no prospect of direct benefit to individual participants, but likely to yield generalizable knowledge about the participant's disorder or condition, only if such research is:

- related to their status as wards; or
- conducted in schools, camps, hospitals, institutions, or similar settings in which the majority of children involved as participants are not wards.

If the research meets the condition(s) above, an advocate must be appointed 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 or in *loco parentis.*

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.

8.6 VULNERABLE POPULATIONS RECOGNIZED BY THE NYU HRPP: STUDENTS AND EMPLOYEES AS RESEARCH PARTICIPANTS

When researchers recruit students and employees as potential participants, researchers must ensure that there are additional safeguards for these participants. The voluntary nature of their participation must be primary and without undue influence on their decision.

Researchers must emphasize to participants that neither their academic status nor grades nor employment will be affected by their participation decision. Records of participation cannot be linked to an academic record and, whenever possible, an employer should not be told whether an employee participates in the research.

To minimize coercion and undue influence, investigators should avoid, whenever possible, the use of their students and employees in procedures that do not hold the possibility of direct benefits to the participants. Investigators should solicit participants through means such as bulletin board notices, flyers, advertisements in newspapers, and announcements in classes other than their own.