DEPARTMENT OF HEALTH & HUMAN SERVICES

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Office of Public Health and Science

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MSC 3RES
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RE: Human Research Subject Protections Under Federalwide Assurance 451

Research Project:	The Impact of Education in Navajo Nation Border Community Public Schools on the Hearts, Minds, and Spirits of Navajo Students (Code named The Navajo Racism Project by the Navajo Institute for Social Justice)
Principal Investigator:	Scott Wendell Bray, Ph.D.
Project Number:	NMSU Project Number 6012

Dear Dr. Chaitanya:

The Office of Human Research Protections (OHRP) has reviewed New Mexico State University's (NMSU's) September 7, 2006 letter in response to OHRP's July 20, 2006 letter regarding the above-reference research. Based on the information submitted, OHRP makes the following determination(s) regarding the above-referenced research and NMSU's system for protecting human subjects:

(1) Department of Health and Human Services (HHS) regulations at 45 CFR 46.103(a) and 45 CFR 46.103(b)(5) require that an institution holding a Federalwide Assurance (FWA) shall ensure prompt reporting to the Institutional Review Board (IRB), appropriate institutional officials, the head of the sponsoring Federal department or agency, if any, and OHRP of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy [45 CFR Part 46] or the requirements or determinations of the IRB; and (ii) any suspension or termination of IRB approval. OHRP finds that the

following unanticipated problem involving risk to a subject/researcher, suspension of IRB approval and termination of IRB approval were not reported to OHRP as required by HHS regulations at 45 CFR 46.103(a) and 45 CFR 46.103(b)(5):

(a) An unanticipated problem involving risk to a study subject/researcher that occurred on July 12, 2005;
(b) Suspension of IRB approval on July 15, 2005 (by IRB Chair) and July 22, 2005 (by full IRB); and
(c) Termination of IRB approval on September 15, 2005.

Required Action: Please provide OHRP with a corrective action plan outlining how NMSU will address this finding.

(2) OHRP finds that NMSU fails to have adequate written procedures for the reporting of certain events as required by HHS regulations at 45 CFR 46.103(a) and 45 CFR 46.103(b)(5) and the terms of its FWA. Pursuant to these federal authorities, an institution holding an FWA shall have written procedures ensuring prompt reporting to the IRB, appropriate institutional officials, the head of the sponsoring Federal department or agency, if any, and OHRP of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with 45 CFR Part 46 or the requirements or determinations of the IRB; and (ii) any suspension or termination of IRB approval. OHRP reviewed NMSU's Policy and Procedures for the Conduct of Research Involving Human Subjects (12/12/01) and found little evidence of written procedures as required by 45 CFR 46.103(a) and 45 CFR 46.103(b)(5).

Corrective Action: NMSU made the following statement in its September 7, 2006 response:

> "As a result of the noncompliance that occurred during the investigation of this incident, NMSU will revise its policies and procedures to identify the individual who will be responsible for providing written notification to OHRP of any unanticipated problems involving risks to subjects as required by HHS regulations. … To accomplish this, NMSU will review the policies and procedures of other educational institutions which conduct social and behavioral research. Once the procedures have been revised, they will be presented to the university legal counsel and to the IRB for their approval. NMSU aims to implement the new procedures by the end of the year."

OHRP finds that NMSU's proposed corrective action plan – revising its current policies and procedures to identify the individual who will be responsible for providing written notification to OHRP of any unanticipated problems involving risks to subjects - does not satisfy HHS regulations at 45 CFR 46.103(a) and

46.103(b)(5) because the proposed corrective action plan, coupled with NMSU's current policy, fails to include written procedures for ensuring prompt reporting to:

(a) the IRB, appropriate institutional officials, and the department or agency head, if any, of unanticipated problems involving risks to subjects or others (the proposed corrective action plan only addresses reporting such incidents to OHRP; NMSU's current policy is silent on this);
(b) the IRB, appropriate institutional officials, the department or agency head, if any, and OHRP of any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB (the proposed corrective action plan does not address reporting such incidents and NMSU's current policy is silent on this); and
(c) the IRB and the department or agency head, if any, and OHRP of any suspension or termination of IRB approval (the proposed corrective action plan is silent on this and NMSU's current policy only addresses reporting such incidents to the investigator and appropriate NMSU officials).

Required Action: Please provide OHRP with revised written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, the head of the sponsoring Federal department or agency, if any, and OHRP of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with 45 CFR Part 46 or the requirements or determinations of the IRB; and (ii) any suspension or termination of IRB approval. Please refer to OHRP's Guidance on Written IRB Procedures, available at http://www.hhs.gov/ohrp/humansubjects/guidance/irbgd107.htm, when drafting the procedures. OHRP suggests that the above-referenced procedures include details regarding the timeframe for reporting (e.g., within 24 hours, one week, or one month) and the individuals responsible for reporting to the IRB, institutional officials, sponsoring Federal department or agency head, if any, and OHRP.

(3) HHS regulations at 45 CFR 46.103(b)(4)(iii) require that an IRB review and approve all proposed changes in a research activity, during the period for which IRB approval has already been given, prior to initiation of such changes, except when necessary to eliminate apparent immediate hazards to the subjects. OHRP finds no documentation that the NMSU IRB reviewed and approved the following protocol changes prior to initiation:

(a) Enrollment of an ineligible subject in the research; and
(b) Use of a recruitment advertisement.

Required Action: Please provide OHRP with a corrective action plan addressing how NMSU will ensure that the IRB will review and approve all proposed changes in a research activity, during the period for which IRB approval has already been given, prior to initiation of such changes, except when necessary to eliminate apparent immediate hazards to the subjects.

(4) OHRP finds that NMSU does not have written IRB procedures that adequately describe the following activities, as required by HHS regulations at 45 CFR 46.103(b)(4):

(a) Procedures the IRB will follow for conducting its initial review of research;
(b) Procedures the IRB will follow for conducting its continuing review of research;
(c) Procedures the IRB will follow for reporting its findings and actions to investigators and the institution;
(d) Procedures the IRB will follow for determining which projects require review more often than annually;
(e) Procedures the IRB will follow for determining which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and
(f) Procedures for ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject.

OHRP reviewed NMSU's Policy and Procedures for the Conduct of Research Involving Human Subjects (12/12/01) and found no evidence of the above referenced written procedures as required by 45 CFR 46.103(b) (4).

Required Action: Please provide OHRP with the written procedures outlined above. Please refer to OHRP's Guidance on Written IRB Procedures, available at http://www.hhs.gov/ohrp/humansubjects/guidance/irbgd107.htm, when drafting the procedures.

(5) It was alleged that the NMSU IRB Chair lacked a detailed understanding of the specific requirements of the HHS regulations for the protection of human subjects. OHRP cannot substantiate this allegation.

(6) HHS regulations at 45 CFR 46.116(a) delineate specific elements required for informed consent. OHRP finds that the NMSU IRB approved an informed consent document for the above-referenced study that failed to include or adequately address the following elements:

(a) 45 CFR 46.116(a)(1) – (i) A statement that the study involves research and (ii) an explanation of the purposes of the research;
(b) 45 CFR 46.116(a)(5) - A statement describing the extent to which confidentiality of records identifying the subject will be maintained; and
(c) 45 CFR 46.116(a)(8) - A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

Required Action: Please provide OHRP with a corrective action plan addressing how NMSU will ensure that the IRB approves informed consent documents that contain the elements required under 45 CFR 46.116, unless such requirements are appropriately waived by the IRB.

(7) HHS regulations at 45 CFR 46.111 delineate the criteria that must be satisfied in order for an IRB to approve research. OHRP finds that when reviewing the above-referenced study the NMSU IRB lacked sufficient information to make the determinations required for approval of research under HHS regulations at 45 CFR 46.111. Specifically, OHRP finds that the documentation upon which NMSU IRB approval was granted contained no information regarding:

(a) Equitable selection of subjects (namely, subject recruitment and enrollment procedures);
(b) Research methods/objectives/hypothesis(ses);
(c) Provisions to protect the privacy of subjects and maintain the confidentiality of data; and
(d) Safeguards to protect the rights and welfare of the subjects who are likely to be vulnerable due to economic disadvantage.

In addition, OHRP finds that the minutes of the NMSU IRB meetings on July 22, 2005 and September 15, 2005 and numerous emails to/from the NMSU IRB Chair provide further evidence that the NMSU IRB had little knowledge about the specifics of the above-referenced study at the time of IRB approval. For instance, the minutes of the July 22, 2005 IRB meeting reflect that the IRB was unaware of the following: use of a recruitment advertisement, a vulnerable subject population, location of interviews, and study risks and benefits.

Moreover, OHRP is concerned that given the inconsistencies noted below the NMSU IRB did not have sufficient information to make the determinations required for approval of research under 45 CFR 46.111:

(a) In the NMSU Application for Permission to Use Human Subjects in Research (hereinafter referred to as the NMSU IRB Application) the investigator noted that the research will end January 31, 2005. A reportable incident involving a study subject occurred July 12, 2005; 6 months after the study completion date. OHRP finds no evidence that the NMSU IRB queried the investigator as to why research activities were continuing past the research completion date of January 31, 2005.
(b) In the NMSU IRB Application the investigator responded that subjects are NOT minors (see response to question 7); however, the IRB approved an informed consent document including language allowing minors to enroll (see age of consent section) and signature section (providing signature of parent or guardian if under age 18).

(c) In the NMSU IRB Application the investigator responded N/A when asked if subjects have been offered incentives to participate in the study (see response to question 9); however, the IRB-approved informed consent document included remuneration language. In addition, the IRB file contained a document explaining that subjects would be paid $100 over 3 visits.
(d) In the NMSU IRB Application the investigator responded N/A when asked if subjects will be fully informed (see response to question 11).
(e) In the NMSU IRB Application the investigator responded NO when asked if each subject will sign an informed consent document/assent prior to study participation (see response to question 14); however, the IRB approved an informed consent document for the study.

Lastly, OHRP is concerned that the NMSU IRB did not have sufficient information to make the determinations required for approval of research under 45 CFR 46.111 when it approved the above-referenced study based on an incomplete NMSU IRB Application. First, the NMSU IRB Application for the study failed to include information relative to the protocol/research project and protocol safety measures. Second, the NMSU IRB Application did not include explanations for certain responses. Third, the NMSU IRB Application for the study did not include the following documents (as required by NMSU's General Procedures for Submitting an IRB Application): (1) an Application for an Expedited IRB Review; (2) certification of education in the use of human subjects in research; and (3) copies of the interview questions.

Corrective Action: NMSU made the following statement in its September 7, 2006 response:

> "As a result of the noncompliance that occurred during the investigation of this incident … the [IRB] application will also be revised to require more detailed information on the recruitment of subjects. To accomplish this, NMSU will review the policies and procedures of other educational institutions which conduct social and behavioral research. Once the procedures have been revised, they will be presented to the university legal counsel and to the IRB for their approval. NMSU aims to implement the new procedures by the end of the year."

OHRP finds that the corrective action – revising the IRB application to require more detailed information on recruitment of subjects - does not adequately address the above finding/concerns and is not sufficient under NMSU's FWA. The current NMSU IRB Application, the main document upon which IRB approval is granted, does not take into account or capture all of the criteria necessary for IRB approval of research as required by 45 CFR 46.111. For instance, the current IRB application does not query investigators about risks to subjects, data monitoring, privacy and confidentiality.

Required Action: Please provide OHRP with a corrective action plan outlining how NMSU will ensure that human subject research approved by the NMSU IRB satisfies the criteria outlined in 45 CFR 46.111.

OHRP has the following additional questions and concerns regarding possible noncompliance with HHS regulations for the protection of human research subjects with respect to the research protocol referenced above:

(8) [Redacted]

(9) [Redacted]

Please respond. If your response, please indicate whether minors were enrolled in the research.

OHRP has the following additional questions and concerns regarding NMSU's system for protecting human subjects:

(10) [Redacted]

[Redacted]

(11) [Redacted]

At this time, OHRP provides the following guidance:

(12) OHRP notes that NMSU's Institutional Official was verbally notified of the reportable incident and IRB actions involving the above-referenced study in early October 2005; approximately 3 months after the date of the unanticipated problem/IRB suspension. OHRP recommends that reporting to appropriate institutional officials be made via written correspondence in a more timely manner.

(13) OHRP notes that NMSU's Application for Expedited IRB Review references the old expedited review categories. Please note that these categories were updated on November 9, 1998. The revised expedited review categories can be accessed at http://www.hhs.gov/ohrp/humansubjects/guidance/expedited98.htm.

(14) OHRP recommends that documentation for initial and continuing reviews conducted under an expedited review procedure include: (a) the specific permissible categories justifying the expedited review (see http://www.hhs.gov/ohrp/humansubjects/guidance/expedited98.htm); and (b) documentation of the review and action taken by the IRB chairperson or designated reviewer and any findings required under the HHS regulations.

Please submit your response to the findings, questions and concerns noted above so that OHRP receives them no later than April 16, 2007. If during your review you identify additional areas of noncompliance with HHS regulations for the protection of human subjects, please provide corrective action plans that have been or will be implemented to address the noncompliance.

OHRP appreciates your institution's continued commitment to the protection of human research subjects. Do not hesitate to contact OHRP if you should have any questions regarding this matter.

Sincerely,

Lisa A. Rooney, J.D.
Compliance Oversight Coordinator

Cc: Ms. Manuela L. Zuezada-Aragon, Director, Compliance and Research Administration, New Mexico State University (NMSU)
Dr. John Irvine, IRB Chair, NMSU
Dr. Scott Wendell Bray
Dr. Bernard Schwetz, OHRP
Dr. Melody H. Lin, OHRP
Dr. Michael Carome, OHRP
Ms. Shirley Hicks, OHRP
Dr. Irene Stith-Coleman, OHRP
Dr. Kristina Borror, OHRP