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Ethics and Education Research

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CHAPTER 3

REGULATORY CONTEXTS



Following an encounter with an ex-prisoner in his undergraduate Sociology of Education class, Gustav decides to embark on a new research direction to explore the educational opportunities provided within juvenile justice facilities. Gustav has previously conducted research on the educational experiences of young refugees and on students' sexualities. He wants his research to empower and give voice to marginalized groups. For this new project he needs approval not only from his university ethics committee but also from the prison service. The former is concerned about participants disclosing illegal activities and the possibility of Gustav and his data being subject to a court subpoena. The latter wishes to control exactly who he can include in his research before granting access. Is this project just too hard to do?

In Chapter 2 we outlined some of the guidelines for (educational) research and the work of Research Ethics Committees (RECs) in implementing such guidelines. In addition to such regulations specifically aimed at research, the ethical work of the education researcher may be

affected by international and national legislation and policies. In this chapter we begin by exploring the implications of the United Nations Convention on the Rights of the Child, as this is a framework that affects education research across most countries. In terms of national (or even state, province, regional or municipal) legislation and policies there are substantial differences, especially in terms of specific requirements that impact on researchers. Our approach for this chapter, therefore, is to discuss two broad types of relevant regulations (which may or may not be formalized in law) with examples from various countries as illustration. First, there are regulations that have a gatekeeping role: stipulating procedures for researchers gaining access to certain institutions and participants. Second, some regulations are related to the principle of confidentiality, such as legislation to do with privacy, mandated reporting of suspected child abuse, compelled disclosure through subpoenas and freedom of information requests, and data sharing.

The United Nations Convention on the Rights of the Child

A rights-based approach to ethics (see Chapter 2) is reflected in various international human rights conventions. For education researchers across the globe, the United Nations Convention on the Rights of the Child (UNCRC), which was initially adopted in 1989, is of particular relevance as it enjoys near-universal ratification. The UNCRC (UN, 1990) sets standards for nations in relation to education as well as health care and legal, civil and social services (UNICEF, 2013). The status of the UNCRC as a legally binding international human rights instrument combined with its widespread visibility and recognition make the UNCRC a fundamental document for education research involving children. Its rights-based nature directs our attention to the rights, well-being and human dignity of children, whether as participants in or intended beneficiaries of education research. The 54 Articles (UNICEF, 2013) address:

- *The guiding principles*: non-discrimination, the best interest of the child, basic rights to life, survival and development, and respect for children's own views (Articles 1, 2, 3, 6 and 12). These are then further explicated through the next three sets.
- *Survival and development rights*: life, survival and development of one's full potential (Articles 4–10, 14, 18, 20, 22–31, 42)
- *Protection rights*: keeping safe from harm (Articles 4, 11, 19–22, 32–41)

46 Ethics and Education Research

- *Participation rights*: having an active voice (Articles 4, 12–17)
- *Implementation by governments and international organizations* (Articles 43–54).

All of these may be of interest to education researchers depending on the specific project topic, aims and participants. Articles 28 and 29 outline the right to education and goals of education. These may be used merely as context, or more specifically (for example) to suggest specific topics worthy of research such as 28 1(e) ‘measures to encourage regular attendance at schools and the reduction of drop-out rates’ or 29 1(d) ‘the development of respect for the natural environment’ (UN, 1990, p.8 and 9). Of specific relevance for education researchers are Articles 3, 12, 36 and 42. The UN Committee on the Rights of the Child emphasizes that the Convention should be considered as a whole (UNICEF, 2007). Nevertheless, for ease of discussion we will consider these Articles separately below.

Article 3 articulates the guiding principle of ‘the best interests of the child’, encouraging adult decision-makers in governments, public and private organizations actively to consider and prioritize those interests. This is attractive at a ‘common sense’ level but does not address what exactly we mean by children’s best interests and how they can be determined. It is not surprising, therefore, that the concept of ‘the best interests of children’ has received extensive attention in education research in relation to various contexts and in countries around the world (e.g. Thomson and Molloy, 2001; Vojak, 2003; Cumming et al., 2006; Bergström, 2010). Common across such literature is the concern that the best interests of the child may be at odds with the best interests of adults (parents, teachers – and we would add researchers) or other children. This is of relevance in research, which may not be directly in the best interests of the participating child although it may be in the interests of children as a group, or in the interest of adults. For example, it is important to study whether and how a new educational programme works before expanding it to more schools. If the programme turns out to be ineffective or even counter-productive, the children who participated in the research suffer harm, but children in general benefit because the programme will (presumably) be stopped (see also Chapter 4 on RCTs). In our case study at the beginning of the chapter, Gustav’s research might uncover deficiencies in educational provision within juvenile prisons. This could lead to improvements that benefit future young offenders, but may also expose his participants to reprisals by prison authorities unhappy with the findings.

The UNCRC implementation handbook clarifies that the Convention stipulates the best interests of the child are ‘a’, not ‘the’ primary consideration

and recognizes that 'there may be competing or conflicting human rights interests, for example, between individual children, between different groups of children and between children and adults' (UNICEF, 2007, p.38). This does not provide an excuse for researchers to override children's rights. Not only must researchers demonstrate that they have taken children's interests into account as a primary consideration (UNICEF, 2007, p.38), but this must be done within the spirit of the entire Convention and of the other guiding principles. At the very least, researchers should not allow their own interests (e.g. to pursue a particular topic or for career advancement) to override the interests of children. In relation to the Convention as a whole, it is not permissible to interpret 'best interests' in a relativist manner that goes against rights guaranteed elsewhere in the Convention (e.g. the right to privacy, and to access information). A legal (rather than research) example comes from the USA, where a group of parents brought a lawsuit against the local board of education because the parents objected to content in the compulsory set textbooks on the basis of their religion (Vojak, 2003). The parents' interpretation of what was in their children's interests was very different from the interpretation by the state. The children themselves were caught in the middle:

The interests of the child are not always easily separated from those of the parent. Although the parent may believe that he or she always acts in the child's best interests, the child may disagree. A parent's best intentions do not always serve the best interests or outcomes for the child [...]. Likewise, school officials may cite the child's best interests to explain why they teach about nineteenth-century feminists and women's rights, while the child finds that those ideas cause serious parent-child conflicts at home. (Vojak, 2003, p.406)

In relation to the guiding principles of the UNCRC, a key implication is that children should be able to contribute their own views (see Article 12) in order to establish what is in their best interests, for example by becoming co-researchers in projects.

Article 12 addresses the need for respecting the views expressed by children themselves in all matters that affect them. The Committee on the Rights of the Child emphasizes that children should be actively involved in this process and it has noted the impeding effect of traditional, paternalistic attitudes towards children in countries such as Chile, Burkina Faso, Morocco, India, Algeria, Hungary and Tanzania (UNICEF, 2007, pp.150–51) as well as the barrier of children not being adequately informed of their right under Article 12 in countries such as France, Iceland and Belgium (p.152). Education is explicitly mentioned as an arena in which children should be heard. In education research, this has been taken up most explicitly in youth-led and youth-participatory

research approaches. For example, Tuck's research on early school leavers used participatory action research as

a way for young men and women who are marginalized by race and ethnicity, class, gender, and sexuality to demand not only access to the conversations, policies, theories and spaces to which we/they have been systematically denied, but better yet, demand that our research informs and inspires these efforts. (2012, p.33)

The connection between research and advocacy is more explicit in this kind of research than is usually the case. For Gustav, in our case study, similar sentiments are reflected in his wish to empower his participants and enable their voices to be heard. Research with children, rather than on children, is less common in developing than in developed countries (Powell et al., 2012). We argue, however, that Article 12 applies to all research involving children and young people, regardless of methodology. When children are research participants the research clearly is a matter that affects them. This means researchers should be alert to the views of children about the topic of the research, even if their perceptions are not part of the research aims. In particular, all research should ensure that children themselves (not just their parent or guardian) are fully informed about the research and have the right to assent or dissent (see Chapter 5) in advance of, as well as during, the course of the research. Respect for children's views is central to ensuring that such efforts are genuine rather than tokenistic or even manipulative (UNICEF, 2005, p.3). In collectivist cultural and societal contexts such respect would include involvement of family and community (Suaalii and Mavoia, 2001). Researchers need to be aware of the risk, however, that young people may be 'unable to exercise their independent choice free from the influence of their adult guardians' as Ahsan encountered in her doctoral research about children's participation in decision-making processes in Bangladesh (2009, p.393). Various adults, such as teachers and NGO staff, acted as gatekeepers to the young people. Ahsan provides examples of young people being selected for participation by these adults, of gatekeepers completely blocking access to some sites, and of misinformation about the research being provided to young people. Her frustration is palpable, as she claims, in relation to the latter: 'the very first condition of my ethical methodology (empowering the participants with appropriate information for their voluntary participation) was therefore largely compromised and negated' (Ahsan, 2009, p.304).

The UNCRC, in Article 12 and elsewhere, acknowledges that the child's age and maturity play a role in the extent to which they are able to

express themselves. However, no lower age limit is set and the Committee on the Rights of the Child vigorously asserts the rights of ‘even the youngest children’ to express their views (UNICEF, 2007, p.154), offering this advice:

To achieve the right of participation requires adults to adopt a child-centred attitude, listening to young children and respecting their dignity and their individual points of view. It also requires adults to show patience and creativity by adapting their expectations to a young child’s interests, levels of understanding and preferred ways of communicating. (2007, p.153)

For researchers, this may involve transforming research information into child-friendly language or pictorial representation, adapting their own body language and being aware of children’s body language, meeting children in places they are familiar with, respecting children’s preference not to be involved in the research and adapting data collection strategies (Graham et al., 2012). For example, in relation to enabling young people to communicate in their own preferred ways, Setyowati and Widiyanto (2009) used visual methods, role play and letters, as well as interviews, for their research on violence in schools in Indonesia.

Finally, it is useful to briefly consider Articles 36 and 42. Article 36 addresses children’s protection from any forms of exploitation that are not named elsewhere in the UNCRC. In its explanation of Article 36, UNICEF (2007, p.544) explicitly includes research, stating that: ‘Children can also be exploited by researchers or experimenters, for example by breaches of their privacy or by requiring them to undertake tasks that breach their rights or are disrespectful to their human dignity’. Article 42 can help prevent such exploitation as it focuses on ensuring that children are aware of their rights under the UNCRC. For education research, this places a responsibility on researchers to help children understand their rights as they are relevant for the study (Graham et al., 2012), including voluntary participation. Danby and Farrell (2005) offer detailed insights in the processes they used to gain and confirm informed consent from children aged 5–11 in Australian primary schools. They refer to the ‘pedagogic work of the researcher’ (p.57) to help children understand permission forms that locate them as active decision-makers. Such pedagogical and ethical work shifts the focus from children simply ‘having’ certain rights to supporting the realization of such rights (Roose and Bouverne-De Bie, 2007).

Not all education research involves children. The rights discussed above are also reflected in other conventions, such as the overall Universal Declaration of Human Rights, the Covenant on Civil and

Political Rights and the Convention on the Rights of Persons with Disabilities. A rights-based approach to ethical education research therefore can apply to all participants and intended beneficiaries, not just to children.

National legislation and regulation

In this section we now turn to legislation and regulation at the national (or state/province) level. These regulations may be directed specifically at research, such as in the case of protocols for accessing certain group of participants. These are addressed in the section on gatekeeping below. Other regulations apply more generally and research may not even have been a major consideration in the decisions made by legislators or policymakers. We discuss several such regulations here in terms of their effect on confidentiality.

Gatekeeping

Regulations that serve a gatekeeping role include protocols for gaining access to particular institutions and/or to particular participants. The role of individuals, such as parents and head teachers, as gatekeepers is addressed in Chapter 5. Here we focus on the ways that gatekeeping has been further formalized in certain jurisdictions, by way of illustrating issues that may also apply in other countries. We focus here on access to education, health and prison settings, and to children and Indigenous people.

In relation to education settings, we draw on Australian protocols for research in schools as our examples. In Australia most state governments have regulations governing research access to government schools, such as the Research In Schools and Early Childhood (RISEC) application in Victoria and the State Education Research Approvals Process (SERAP) in New South Wales. Researchers need to submit a proposal for research in government schools to the State Department of Education and gain formal approval, following the guidelines provided. These procedures encompass familiar ethical issues, such as consent and confidentiality. However, they also require researchers to address the benefit of the research to the Department and to schools, the potential disruption the research may cause to the core educational role of schools, and the potential burden imposed on school staff for facilitating the research (NSW DEC, 2012; Victorian DEECD, 2013). The RISEC guidelines (Victorian DEECD, 2013, p.8) list the following criteria used to judge applications to conduct research in schools:

- benefit and value to the Department, sites and participants
- burden on sites and participants
- appropriateness of methodology for the setting
- ethical design and conduct, which includes issues such as informed consent, confidentiality, privacy and protection from harm.

The RISEC guidelines also list types of research that may not be approved, including proposals that ‘potentially lead participants to unreasonably incriminate themselves’ or that ‘have the potential to adversely affect the Department of Education and Early Childhood Development or the school’ (Victorian DEECD, 2013, p.13). Both the RISEC and SERAP guidelines indicate that a rejected proposal may be revised and re-submitted. Complexities occur when the changes required by the Department contradict what has been approved by the university Research Ethics Committee (REC). Moreover, research of a critical nature may never be approved. Even if the proposal passes smoothly through the Departmental approval process, it may add a month or more to the project timeline before data collection can commence.

Education research, however, does not only take place in schools but also in other settings. Formalized ethics guidelines are most widespread in relation to health and medical research. As a result, health institutions may apply their procedures to all researchers, even when the project is focused on education rather than health. In the UK, for example, this requires researchers, including student-researchers, to apply to a REC of the National Health Service (NHS), which usually includes attending the REC meeting in person (National Research Ethics Service, 2010). Education research in health settings may include research on education for sick children including in hospital schools (Bolton, 1997; Carstens, 2004; Akiko, 2005; Nisselle et al., 2011) and research on the workplace learning of health professionals (Jubas and Knutson, 2012; Manidis and Scheeres, 2012). For her Master of Education research on teachers’ experiences in a hospital school in South Africa, Carstens (2004) had to obtain ethics approval from the Faculty REC in her university, from the provincial Department of Education and from the REC of the hospital.

Education research may also take place in prisons and the ethical dilemmas this creates in relation to gatekeeping and monitoring have been recognized by researchers (e.g. Pascoe and Radel, 2008; Dalen and Jones, 2010; James, 2013). In Australia, State Departments of Corrective Services have protocols similar to the ones used by Departments of Education (see above). The New South Wales guidelines (NSW DCS, 2011, p.2) highlight concerns about privacy of inmates and also warn that ‘Exploratory research where no hypotheses have been formulated

and the researcher is seeking ideas rather than testing hypotheses will not be considered'. As a result more open-ended qualitative research, such as life history or ethnography, may not even pass the first hurdle. In the UK, the National Offender Management Service considers applications to conduct research and encourages research 'whenever it has the potential to increase the effectiveness of operational policy/delivery' (NOMS, 2013, n.p.). Prison authorities can be very powerful gatekeepers, which impacts on the education research that is enabled within prison settings. An example is provided by Pascoe and Radel (2008) in relation to their research on the education experiences of Indigenous men in custody in Australia. Although Indigenous people are considered a vulnerable group for research in Australia and elsewhere (see below and also Chapter 2), the main barrier for their research was gaining ethics approval from the Department of Corrective Services (DCS) research committee. DCS forms were complex, included various time-consuming requirements (such as obtaining a new criminal history check, even though the researchers had already passed this as part of their teaching work with the same men), and had a pro forma Deed of Agreement including a clause that would infringe the intellectual property rights of the researchers. Removing the latter was a condition of approval by the university. The resulting struggle between satisfying both the DCS and the university was finally resolved by the DCS deleting the clause and granting intellectual property rights to the researchers. The advice provided by Pascoe and Radel (2008) is of use to our case study researcher, Gustav. They point to the importance of lobbying, support networks and relationships with key people for enabling them to gain all the necessary approvals. This took nine months for Pascoe and Radel, suggesting that perseverance and patience are also required.

Gatekeeping may also apply to specific groups of participants. At a general level, regulations commonly require parental or guardian consent for children and young people under a particular age (usually 16 or 18) to take part in research (see also Chapter 5). Governing bodies of institutions such as schools, hospitals and juvenile prisons may implement consent procedures especially strictly when the children are considered to be vulnerable. For example, in the UK, research with 'looked after children' (elsewhere referred to as 'children in residential or foster care') may require permission from several gatekeepers, such as birth and foster parents, case managers and social services organizations. Heptinstall (2000, p.868) explains that 'Looked after children are often perceived by adults as particularly vulnerable – and therefore in need of protection – because of their previous adverse experiences'. As a result, gatekeeping institutions such as schools and social services have

tended to emphasize the protection of these children at the expense of children's right to participate and have their views heard (Heptinstall, 2000). The UNCRC also recognizes this tension between children's right to protection and their right to participation, while Ahsan (2009) refers to this as the tension between vulnerability and agency.

Indigenous people are also given special consideration in ethics regulations in countries such as Canada, Australia and New Zealand. The Canadian *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* (CIHR, NSERC and SSHRC, 2010) dedicates an entire chapter to research involving Aboriginal peoples. This highlights the gatekeeping role of Aboriginal organizations and leaders, such as tribal and hamlet councils, First Nation/Inuit/Métis* associations, Aboriginal service agencies as well as local elders and knowledge holders. The policy recognizes that there may be diverse interests within Aboriginal communities and that critical research may be valuable. Article 9.10 of the Canadian policy states that 'researchers may seek REB [Research Ethics Board] approval for an exception to the requirement for community engagement, on the basis of an acceptable rationale' (CIHR, NSERC and SSHRC, 2010, p.121). The default expectation, however, is for community engagement and input. This may extend beyond giving permission for research to take place, to participation 'in the design and execution of research' and 'in the interpretation of the data and the review of research findings' (CIHR, NSERC and SSHRC, 2010, p.126 and p.127). The First Nations Centre (2005) explains the principles of what is known as 'OCAP': ownership of, control of, access to, and possession of research processes and data in relation to Aboriginal communities. The First Nations Centre (2005, p.i) articulates this as 'an expression of self-determination in research' in the context of 'colonial research practices' (see also Chapter 2). Education researchers whose projects focus on Aboriginal students therefore need to incorporate into their research planning both time and opportunities for extensive dialogue with relevant communities.

We argue that gatekeeping regulations may serve (unintentionally) to produce ethical concerns, at the same time as intending to ensure that research is ethical. When protocols state that the research should benefit the department or institution, this may preclude important research of a more critical nature. Researchers may also self-censor by deciding to avoid including certain settings or participants. In Australia, for example, it is not

*Métis refers to people of mixed First Nations and European heritage; they are recognized as a specific Aboriginal group in Canada represented through national and provincial Métis councils.

uncommon for students preparing for a thesis in an undergraduate or Master's degree to be advised against research in government schools due to the lengthy process of gaining both University and Education Department permission. As Scott and Fonseca (2010, p.291) argue, 'supervisors "in the know" will steer their students towards simple replications and research designs'. In the UK, the National Offender Management Service explicitly states: 'Due to the potential volume of applications from undergraduates it is impractical for NOMS to assist with these' (NOMS, 2013, n.p.). As a result, education research in highly restricted settings (such as juvenile prisons and hospitals) continues to be relatively rare. Researchers whose participants are young people may exclude those under 16 or 18 (depending on the nation) from taking part in order to preclude having to gain consent from parents or guardians. All these omissions and exclusions threaten the vital democratic role of social research to understand, explain and scrutinize society, by keeping certain aspects of educational practice largely invisible. In terms of the ethical principle of justice, it also leads to an unfair over-reliance on those who are easier to access to carry the burden of research participation.

Confidentiality

The second set of regulations that affect education researchers relate to the principle of confidentiality. Of particular relevance are privacy legislation, child protection legislation, subpoenas and freedom of information legislation, and regulations around data sharing. We have purposively chosen to discuss examples here from countries where such regulations are most prominent, and where possible we include some key differences. Nevertheless, the specific legal context obviously varies between jurisdictions, and will also change over time in relation to the specific regulations we discuss below.

Legislation in relation to privacy in some countries focuses on people's personal health information and by extension on health and medical research (e.g. Australia: ALRC, 2008; the USA: HSS, 2007) while other countries take a broader view of sensitive or personal information for both privacy regulation and its application to research (e.g. Canada: Canadian Government, 1985; the UK: UK Government, 2000). In general, privacy legislation reinforces the requirement to respect people's right to confidentiality. This applies especially to a duty to protect personal information about people from disclosure and misuse. For researchers, this translates to safeguarding data both during and after data collection, for example through the use of password-protected computer files. Data protection and confidentiality may be fairly easily achieved with quantitative

data, but are more complex with qualitative data, especially if the research involved focus group discussions because 'participants will know who else was there and indeed what they said' (Ransome, 2013, p.40). Some countries also have more specific regulations, for example in Greece consent is required for photographing people in public spaces, while others (such as the USA) have a more lenient approach to privacy. Subject to certain conditions (such as the data not being used in a way likely to cause substantial distress), Canada, the UK, New Zealand and the Council of Europe allow personal information to be disclosed by organizations and companies for research purposes, without requiring the consent of each individual included (ALRC, 2008, Section 65). In other words, various forms of privacy legislation on the one hand increase the onus on researchers to ensure that they preserve the confidentiality of their own data, and on the other hand provide researchers with access to data collected by others.

While privacy and data protection legislation to some extent bolster research ethics protocols for confidentiality, other regulations complicate confidentiality. For education researchers the most obvious example is in relation to requirements to report child abuse. Although researchers are unlikely to be specifically named as a group mandated to report, they are included when all citizens are mandatory reporters (such as in the Northern Territory in Australia and most Canadian provinces) or they may hold a parallel role as, for example, a teacher or child care worker and be mandated or encouraged to report suspected abuse in that role (NHRPAC, 2002a; Mathews and Kenny, 2008; Child Welfare Information Gateway, 2012; Australian Institute of Family Studies, 2013). Mandated reporting is well established in the USA, Canada and Australia, while many other countries (such as Brazil, Hungary, Malaysia and South Africa) have established generic reporting duties (Mathews and Kenny, 2008). The UK does not have a specific mandatory reporting law; however, government guidelines specify that:

Everybody who works or has contact with children, parents and other adults in contact with children should be able to recognize, and know how to act upon, evidence that a child's health or development is or may be being impaired – especially when they are suffering, or likely to suffer, significant harm. (cited in NSPCC, 2010 p.1)

Some countries have more specific legislation. For example, in Norway professionals are obligated by law to seek to prevent female genital mutilation if they have reason to believe a girl is at imminent risk (Hauge, 2013). These kinds of regulations for mandatory reporting

override any promise or duty of confidentiality. This is of particular relevance for education researchers because their 'befriending role' may prompt disclosure of abuse by children in their research (Furey and Kay, 2010, p.121). Fisher (2009) offers her experience of conducting research on academic achievement after the transition from middle to high school in the USA, working with a group of 11 female students. After a final 'reunion' meeting, one of the girls disclosed that she had been sexually abused by a relative. Fisher recounts in detail the emotional turmoil of deciding to file a formal report, and her subsequent interactions with the girl and with other professionals such as the school counsellor. She concludes that:

When studying vulnerable populations, children especially, the purview of researcher must be expanded. [...] At times we bear witness to things we wish we hadn't. It is at this moment when although we are not legally mandated to report disclosures of abuse, we must realize that our moral mandate is still present. (Fisher, 2009, p.31)

Although many education researchers will never have such an experience, they would do well to heed the warning from colleagues such as Fisher and be prepared in advance. This includes clarifying to underage participants the potential limitations to confidentiality. Care is needed, however, to do so 'without appearing unduly alarming or off-putting' (Felzmann, 2009, p.106). For example, Danby and Farrell (2005, p.67) included the phrase 'It is okay by me that [...] Ann, Susan or Kathy might talk to someone responsible if they are worried about my safety' on their consent form for primary school children.

At a more general level, researchers may be required to breach confidentiality and provide access to their data due to Freedom of Information legislation or to a subpoena from a court of law. The extent to which education researchers have been subject to court-ordered subpoenas is unclear. The potential certainly exists, especially for research on controversial topics. If Gustav, our case study researcher, uncovers information about thus far undetected illegal activity by his participants, he may be subject to a court subpoena (as feared by his university REC) or perhaps to a Freedom of Information (FoI) request by a journalist. As another example, Australian legislation introduced in 2013 gives the Australian Sports Anti-Doping Authority

the ability to issue a 'disclosure notice' compelling persons of interest to assist ASADA's investigations. This notice can require a person to do one, or more of the following:

- attend an interview to answer questions;
- give information; and/or
- produce documents or things (a legal term meaning pretty much any thing).

(ASADA, 2013)

The final bullet point includes research data. In relation to education research, this may impact on projects investigating junior athletes in schools as well as projects on workplace learning by sports people and their support persons (such as coaches and health professionals). A central ethical concern about this kind of compelled disclosure of data is that the researcher loses control over how data may be used and made public (O'Neil, 2010). For example, data may be misinterpreted (thus threatening the integrity of research) and may lead to the identification of participants (thus undermining confidentiality).

FoI laws usually enshrine processes by which the general public may gain access to information held by governments. In the UK, however, publicly funded universities and research institutions are subject to FoI legislation. Privacy laws apply, so that personal information is exempted from FoI rights. Nevertheless, researchers have expressed concerns about data management, intellectual property and confidentiality (Charlesworth and Rusbridge, 2010; Jubb, 2012; Wilson, 2011), since the request can include research data.

Connected to this, in countries such as Australia, the UK and the US, researchers are encouraged by major research funders to make their data available to fellow researchers through public use files and shared repositories (NHRPAC, 2002b; ESRC, 2010; ANDS, 2012; see also OECD, 2007). In the UK, the high-profile government research funding agency the Economic and Social Research Council (ESRC, which applies to education research) makes explicit that it 'recognizes publicly funded research data as valuable, long-term resources that, where practical, must be made available for secondary scientific research' (ESRC, 2010, p.2; see also Chapter 4 on data archiving). The ESRC requires data to be offered to its archive and will only approve waivers of this requirement in exceptional circumstances. The difference between such planned data sharing and compelled provision of data through subpoenas or FoI requests is not only that the sharing occurs at a time chosen by the researchers (usually after the project has been completed and findings have been published), but also that data are expected to be de-identified before they are made available (NHRPAC, 2002b; OECD, 2007; Van den Eynden, 2008; ESRC, 2010; ANDS, 2012). For example, in the USA the recommendation is that:

When IRBs [Institutional Review Boards] are satisfied that a protocol involves the collection of data in anonymous form or on unknown persons, these data should be classified as public use data files. When IRBs are asked to authorize public data files from data originally collected with identifiers, [several] factors should be considered by the IRB to be certain the data files has been effectively de-identified for analysis by secondary users. (NHRPAC, 2002b, p.2)

These recommendations assert that removing participant names is not sufficient – for example, researchers also need to remove references to other people made by participants and variables that would identify a person, and to combine categories if the number of people in a category is so small that this could identify them (NHRPAC, 2002b). The ESRC (2010, p.7) suggests that even ‘sensitive and confidential data can be shared ethically’ as long as researchers prepare for this in relation to consent procedures, anonymization of data and access restrictions as part of their data management plan.

Conclusion

This chapter has highlighted that a variety of international, national and regional regulations may impact on the ethical conduct of education research. We have chosen to highlight the United Nations Convention on the Rights of the Child as our international example, as well as regulations from specific countries that affect education research through gate-keeping or in relation to confidentiality. These regulations illustrate issues that are likely to be pertinent to most education researchers, but our discussion here could not possibly address all potentially relevant legislation and policies. Not only are there differences between jurisdictions, but within a specific jurisdiction, policies will change over time.

It is vital that education researchers are aware of the specific regulations that apply to their local context and to the nature of their project. In some countries there may be little national regulation, for example in relation to mandatory reporting or data protection, and researchers will need to draw on their own morality and their knowledge about local customs in order to decide on appropriate strategies. Such preparation in advance will enable researchers to plan ahead rather than be caught by surprise. For example, Gustav (from our case study) needs to be aware of the role of corrective services authorities as gatekeepers for research access, and also be prepared for the possibility that his data may be subject to a subpoena or FoI request. Such awareness and preparation will inform the first stage of the research: the design.