

Policies and Procedures

<i>SECTION:</i> Academic Concerns	<i>NO.</i> 4.2.6.			
<i>CHAPTER:</i> Faculty	<i>ISSUED:</i> 5/15/13	<i>REV. A</i>	<i>REV. B</i>	<i>REV. C</i>
<i>POLICY:</i> Misconduct in Scholarly and Scientific Research That is Not Federally Funded	<i>PAGE 1 OF 9</i>			

PURPOSE

The purpose of this policy is to establish procedures to thoroughly, timely, objectively, and fairly evaluate, investigate, and respond to allegations of misconduct in scholarly and scientific research.

POLICY

Creighton University fosters an environment that promotes the responsible conduct of scholarly and scientific research. Creighton University shall promptly respond to all allegations or evidence of possible misconduct according to this policy.

SCOPE

This policy applies to faculty and staff of Creighton University engaged in scholarly and scientific research that is not funded in any part by a federal agency.

This policy applies to allegations of misconduct in scholarly and scientific research regardless of the existence or source of funding for the research; provided, however, that this policy does not apply to research misconduct in federally-funded research, research training, or activities related to that research or research training as set forth in University Policy 4.2.2, "Research Misconduct In Federally Funded Research." Allegations of misconduct that fall within the definition of research misconduct within the scope of Policy 4.2.2 shall be addressed under Policy 4.2.2.

DEFINITIONS

Complainant means any a person who in good faith makes an allegation of misconduct in scholarly or scientific research.

Preponderance of the Evidence means proof by information that, compared with opposing information, leads to the conclusion that the fact at issue is more probably true than not.

Research Record means the record of data or results that embody the facts resulting from scientific or scholarly inquiry, research proposals, laboratory records (both physical and electronic), progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and any documents and materials provided by the Respondent during the course of a misconduct proceeding.

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Misconduct means any act that violates the standards of integrity in the conduct of scholarly and scientific research. This includes, but is not limited to, plagiarism (as defined below); fabrication (as defined below); falsification (as defined below); forging academic documents; improprieties of authorship; misrepresentation of qualifications; abusing the confidentiality of information obtained from colleagues or other persons; intentionally or knowingly helping another to commit an act of misconduct, or otherwise facilitating such acts; or other practices that seriously deviate from ethical standards that are commonly accepted within the scientific and scholarly communities for proposing, conducting, or reporting research. It does not include honest error or differences of opinion in the interpretation of data.

Fabrication is making up data or results and recording or reporting them.

Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Respondent means the person against whom an allegation of research misconduct is made, and is the subject of a research misconduct proceeding.

PROCEDURE

1. Allegation of Misconduct

a. Receipt of an Allegation of Misconduct

All faculty and staff of Creighton University are required to report known or suspected misconduct. A good faith report of possible misconduct may be made, either verbally or in writing, to any University official, including, but not limited to, the reporting individual's supervisor, administrator, or Dean, or the Provost. Reports may also be made to the Research Compliance Officer (402-280-2360) or the Research Compliance Hotline (402-280-3200). A report of possible misconduct is not in good faith if it is made with knowing or reckless disregard for information that would negate the allegation. The report of possible misconduct shall be documented (if not already documented by the Complainant) and immediately sent to the Dean(s) of the school/college under which the scholarly or scientific research is conducted and the Research Compliance Officer. If there is more than one school/college involved in the allegation of misconduct, then the Deans of those schools/colleges shall be jointly responsible for determining whether an investigation is warranted, setting the date for the commencement of the investigation, and appointing members to the Ad Hoc Investigative Committee.

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In the event the allegation of misconduct involves a Dean or the Dean has a real or apparent conflict of interest in the matter, the determination of whether an investigation is warranted and the completion of other responsibilities set forth for the Dean herein will be completed by the Provost or his/her designee. The Dean(s) shall notify each Respondent of the receipt of an allegation of misconduct.

b. Review of Allegation by Dean(s)

The Dean(s) shall review the allegation of misconduct to determine whether or not an investigation is warranted. The Dean(s) and/or such designees as the Dean(s) determine necessary may review documents and research records and interview individuals as necessary to make this determination. The Dean(s) shall make the determination within 30 days of receiving an allegation of misconduct. An investigation is warranted if there is:

- i. A reasonable basis for concluding that the allegation falls within the definition of misconduct under this policy and involves scholarly or scientific research; and
- ii. Preliminary information gathering and fact-finding indicates that the allegation may have substance.

c. Appointment of Ad Hoc Investigative Committee

If the Dean(s) determine(s) that an investigation is warranted pursuant to paragraph b above, the Dean(s) shall appoint an Ad Hoc Investigative Committee. The Dean(s) shall appoint the Ad Hoc Investigative Committee within 7 calendar days of the determination. The Dean(s) shall make every effort to appoint persons with appropriate knowledge and expertise to the Ad Hoc Investigative Committee and shall ensure that anyone appointed to the Ad Hoc Investigative Committee does not have unresolved personal, professional, or financial conflicts of interest with the Complainant(s), Respondent(s), or witnesses. The Ad Hoc Investigative Committee shall be composed of such persons whom the Dean(s) may choose to designate to serve; provided, however, that at least two (2) members shall be from outside the affected department/division. It is desirable that an appropriate Associate/Assistant Dean and two tenured faculty members of the school/college involved be appointed to the Ad Hoc Investigative Committee, but this is not a formal requirement. Individuals from the department of the Complainant(s) or Respondent(s) should not participate in the Ad Hoc Investigative Committee. The Dean(s) shall designate one of the Ad Hoc Investigative Committee members to act as Chair for the committee. The Ad Hoc Investigative Committee may rely upon consultants with expertise or knowledge in the area of research under investigation.

d. Notice to Respondent of Allegation

The Dean(s) shall notify each Respondent, in writing, prior to the start of any investigation. A copy of the notice(s) shall be sent to the Respondent's departmental chairperson, administrator, the Provost, the Office of General Counsel, and the Research Compliance Officer.

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e. Custody of Research Records

On or before the date on which the Respondent(s) is(are) notified, the Dean(s) shall take all reasonable and practical steps to obtain custody of all known research records and evidence needed to conduct the misconduct proceeding, inventory the records and evidence, and hold them in a secure manner to be available for the misconduct proceedings. In cases in which the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.

f. Ensuring Cooperation during the Misconduct Proceeding

Faculty, staff, students, and agents, including Complainant(s), Respondent(s), and witnesses, shall cooperate in the misconduct proceedings, including, but not limited to, being present as requested during the misconduct proceeding and providing relevant and truthful information and research records and evidence.

g. Finding that an Investigation is Not Warranted

The Dean(s) shall sufficiently document the decision not to investigate the allegation of misconduct and shall maintain all records of the allegation and determination in accordance with Section E below. The Dean(s) shall notify the Respondent(s) of the decision not to investigate and a copy of the notice will be sent to the Respondent's departmental chairperson, administrator, or supervisor, the Provost, the Office of General Counsel, and the Research Compliance Officer.

2. Investigation

a. Scheduling the Investigation and Required Notices

Should the Dean(s) determine that an investigation is warranted, the Ad Hoc Investigative Committee shall begin the investigation no later than 30 days after the determination. The Ad Hoc Investigative Committee shall complete all aspects of the investigation within 120 days from the date of initiating the investigation, which includes conducting the investigation, preparing the report of findings, and providing the draft report to and obtaining comments from the Respondent(s).

b. Investigation by the Ad Hoc Investigative Committee

- i.** The Ad Hoc Investigative Committee shall fairly and impartially conduct a thorough review of all research records and evidence and diligently pursue all relevant significant issues and leads (including evidence of additional instances of possible misconduct) in determining whether there was misconduct. The Committee will give the Respondent(s) prompt notice of any new allegations of misconduct that arise during the investigation that will be investigated and were not included within the initial notice of investigation provided by the Dean(s).

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- ii. **Respondent's Right to Access Research Records.** Prior to and during the investigation, the Respondent(s) has (have) the right to receive copies of or be given reasonable supervised access to the research records.
 - iii. **Interviews.** The Ad Hoc Investigative Committee shall interview each Respondent, Complainant, and any other available persons who have been identified as having relevant information, including persons identified by the Respondent(s). Interviews shall be recorded or transcribed, with a copy provided to the interviewee for correction. The recording or transcript shall be included in the record of the investigation and be considered a part of the investigative record.
- c. **Criteria for Finding of Misconduct**
To support a finding of misconduct, the Ad Hoc Investigative Committee must find by a preponderance of the evidence that:
 - There was a significant departure from accepted practices of the relevant research and scholarly community; and
 - The misconduct was committed intentionally, knowingly, or recklessly.
- i. **Destruction, Absence of, or Respondent(s)' Failure to Provide Research Records**
The destruction of, absence of, or Respondent's failure to provide research records adequately documenting the questioned research is evidence of misconduct in cases in which it is established by a preponderance of the evidence that the Respondent(s) intentionally, knowingly, or recklessly had research records and destroyed them, had the opportunity to maintain the records but did not do so, or maintained the records and failed to produce them in a timely manner, and that the Respondent(s)' conduct constitutes a significant departure from accepted practices of the relevant research and scholarly community.
 - ii. **Respondent(s)' Burden of Proof**
Respondent(s) have the burden of proving, by a preponderance of the evidence, any and all affirmative defenses or mitigating factors. The Ad Hoc Investigative Committee shall give due consideration to admissible, credible evidence of honest error or difference of opinion presented by the Respondent(s).
- d. **Investigation Report.**
 - i. **Draft Report**
The Ad Hoc Investigative Committee shall prepare a written draft investigation report that shall include the following information:

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1. **Allegations.** A description of the nature of the allegations of misconduct.
 2. **Funding.** A description of the source of funding, if any, including, for example, any grant numbers, grant applications, contracts, and publications listing funding support.
 3. **Institutional Charge.** A description of the specific allegations of misconduct considered during the investigation.
 4. **Policies and Procedures.** Include a copy of this policy.
 5. **Research Records and Evidence.** Identity and summary of research records and evidence reviewed, as well as records and evidence taken into custody but not reviewed.
 6. **Statement of Findings.** A finding of whether misconduct did or did not occur for each separate allegation of misconduct considered during the investigation. For each finding of misconduct:
 - a. identify the form of misconduct;
 - b. identify whether it was intentional, knowing, or in reckless disregard;
 - c. summarize the facts and analysis that support the conclusion;
 - d. consider the merits of any reasonable explanation by the Respondent(s);
 - e. identify the specific funding support;
 - f. identify whether any publications need correction or retraction;
 - g. identify the person(s) responsible for the misconduct; and
 - h. identify any other corrective action recommended.
 7. **Other Support.** Listing of any other funding support or known applications or proposals for support that the Respondent(s) have pending with any funding entity.
- ii. Opportunity for Comment**
1. **Respondent(s)**
The Respondent(s) shall be given a copy of the draft investigation report, along with a copy of (or supervised access to) the records and evidence on which the report is based. The Respondent(s) shall have 30 days from date of receipt of the report to submit any comments to the Ad Hoc Investigative Committee.
 2. **Complainant(s)**
At the discretion of the Ad Hoc Investigative Committee, the Complainants may be given a copy of the draft investigation report or relevant portions of that report. The Complainant(s) shall have 30 days from the date of receipt of the report to submit any comments to the Ad Hoc Investigative Committee.

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iii. Final Report

The Ad Hoc Investigative Committee shall issue its final report, which shall contain all of the information outlined in paragraph 6.a above, any written comments received from the Respondent(s) and/or Complainant(s) within the time period set forth in paragraph ii.1 above, and the Ad Hoc Investigative Committee's consideration of and response to any comments received from the Respondent(s) or Complainant(s). A copy of the final report shall be given to the Respondent(s), redacting identities of any research subjects. A copy of the final report shall also be given to the Provost, Dean, administrator, or supervisor; the Office of General Counsel; and the Research Compliance Officer, redacting the identity of any research subjects. At the discretion of the Ad Hoc Investigative Committee, the Committee may provide a copy of the final report to the Complainant(s).

3. Institutional Actions

a. Finding of Misconduct

If the alleged misconduct is substantiated by thorough investigation of the Ad Hoc Investigative Committee, the recommendations of the Ad Hoc Investigative Committee contained in the final report may be implemented and the following actions, if not already recommended by the Ad Hoc Investigative Committee in its final report, may be taken:

- i. Restitution of funding as appropriate or if required by the funding entity or contract.
- ii. Withdrawal of abstracts and papers emanating from the questioned research, and notification of editors of journals and publications that published previous abstracts and papers concerning the research, if the Ad Hoc Investigative Committee concludes that substantiated misconduct makes such abstracts and papers of questionable validity. The Dean is authorized to request/direct such actions if the researcher(s) involved fail(s) to do so within a reasonable time after the Dean directs such actions.
- iii. Appropriate action (including interim administrative actions) to terminate or alter the status of Respondent(s) whose misconduct is substantiated, or to impose other sanctions deemed appropriate under the circumstances.
- iv. The Dean, the Provost, and the President of the University shall consider, in consultation with the Office of General Counsel, release of information about the misconduct to the public and/or press.

b. No Findings of Research Misconduct

If the Ad Hoc Investigative Committee finds that there was no misconduct, efforts shall be undertaken as and if necessary to restore the position and reputation of the Respondent(s).

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4. General Provisions

a. Confidentiality

i. Identity of Participants in Misconduct Proceedings

Disclosure of the identity of Respondents, Complainants, and witnesses involved in misconduct proceedings is limited to those who need to know, to the extent possible consistent with a thorough, competent, objective, and fair misconduct proceeding, and as allowed or required by law.

ii. Records and Evidence

Except as otherwise required by law, confidentiality of all records and evidence from which research subjects might be identified shall be maintained. Disclosure of such information is limited to those who have a need to know to carry out a misconduct proceeding.

b. Safeguards

The rights, privacy, positions, and reputations of all parties involved in the misconduct proceedings shall be protected. No one shall retaliate against any Complainant, witness, or committee member who, in good faith, participates in a misconduct proceeding.

- i. All reasonable and practical efforts shall be taken to restore the position and reputation of Respondents where there is no finding of misconduct.
- ii. All reasonable and practical efforts shall be taken to restore the position and reputation of any Complainant, witness, or committee member and to counter potential or actual retaliation against these individuals.
- iii. Disciplinary action will be taken, in accordance with University policy, against anyone who fails to act in good faith in either bringing an allegation of misconduct, cooperating during the misconduct proceedings (i.e., providing evidence) or serving as a member of the Ad Hoc Investigative Committee. An allegation or cooperation with a misconduct proceeding is not in good faith if made with knowing or reckless disregard for information that would negate the allegation or testimony. A committee member does not act in good faith if his/her acts or omissions on the committee are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the misconduct proceeding.

c. Notice to Funding Entities

At any time during the misconduct proceeding, the entity funding the activity shall be notified as required by the funding agreement. Prior to the commencement of any investigation, the Dean (s) of the school/college conducting the research shall notify the Research Compliance Officer, who shall notify the funding entities after consultation with the Office of General Counsel in cases in which such notification is determined required or necessary.

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d. Role of the Office of General Counsel

The Office of General Counsel is available to render advice to the Dean(s), the Research Compliance Officer, or the Ad Hoc Investigative Committee at any step in the misconduct proceedings. Individuals serving in any of these capacities are encouraged to seek legal guidance regarding any procedural question, particularly in connection with the preparation of written reports of actions taken, or before any action is taken with respect to any person believed to have made an accusation of misconduct in bad faith. Any contact or inquiry to the University from a lawyer outside the University, including contacts and inquiries emanating from legal representatives of any Respondent, funding entity, or federal, state, or local agency, must be referred to the Office of General Counsel.

5. Maintenance of Research Records and Evidence Related to Misconduct Proceedings

The following records of misconduct proceedings shall be maintained for 3 years after completion of the misconduct proceeding or per the funding agency or contract.

- The records secured for the investigation, except to the extent it is subsequently determined that those records are not relevant to the investigation or that the records duplicate other records that are being retained;
- The documentation of the determination of irrelevant or duplicate records; and
- The investigation report and all records (other than drafts of the report) in support of the investigation report, including the recordings or transcriptions of each interview conducted during the investigation stage.

ADMINISTRATION

The Dean(s) of the affected school/college and the Research Compliance Officer are responsible for administering this policy when there is an allegation of misconduct. The Dean(s) of the affected school/college shall report any final action taken under this policy to the Provost, the Office of General Counsel, and the Research Compliance Officer.

AMENDMENTS OR TERMINATION OF THIS POLICY

Creighton University reserves the right to modify, amend, or terminate this policy at any time.