

MEMORANDUM

To: Faculty Senate Executive Committee

From: Matthew Zacate, Faculty Senate President

Re: Proposed changes to the Research Misconduct Policy in the Faculty Handbook to bring it into compliance with federal regulations

Date: August 12, 2019

On April 27, 2017, a Policy Request Form was filed by Anita Southwick, Manager of Research Compliance, as part of a proposal to adopt a university-wide policy on Research Misconduct. In February of 2018, I was made aware of this proposed policy by Ken Katkin, Chair of the Professional Concerns Committee (PCC) when the PCC was asked to review it as part of the policy process map. For me, the proposed policy was problematic because it contained a number of inconsistencies with the Research Misconduct Policy in the Faculty Handbook.

On March 9, 2018, Ken and I met with the Provost, Janel, in her role as Policy Coordinator, Anita, and Sam Langley, Vice Provost for Graduate Education, Research, and Outreach to discuss the proposed policy. I had hoped that the proposed policy could be modified so that it would be compatible with the Faculty Handbook. By the end of the meeting, I thought that we had made good progress toward achieving that.

Then on June 19, 2018, I met with, among others, Anita and Joan Gates, NKU Vice President for Legal Affairs and General Counsel. Anita and Joan communicated their belief that it would not be possible to only change the proposed new policy to make it compatible with the Faculty Handbook because some elements of the Research Misconduct Policy in the Faculty Handbook are not compliant with federal regulations.

Over the next several months, I worked in consultation with Anita to draft changes to the Faculty Handbook that would bring it into compliance with federal regulations, as judged by Anita and by Joan. Once I had approval that the draft was compliant with federal regulations, I brought it to the Faculty Senate Executive Committee to review. It, in turn, asked the PCC to vote on the proposed changes after wordsmithing it and adding definitions to the draft.

The PCC reported back to the Executive Committee on May 6, 2019 with its approval of a new draft of proposed changes to the Research Misconduct Policy in the Faculty Handbook. Briefly, there were five types of changes made to the draft that the Executive Committee sent to the PCC.

- (1) Much improved wording throughout
- (2) Adding a section with definitions
- (3) Simplifying procedures/reporting requirements at the preliminary inquiry stage for non-federally funded research

- (4) Changing the definition of research misconduct to include explicitly self-plagiarism and duplicate publication with definitions of both
- (5) Explicitly indicating that there is no statute of limitations for investigating allegations of research misconduct

With the thought that the Provost would not approve a change in policy until it is approved by NKU General Counsel, I sent the PCC’s version to Anita, who, in turn, sent it to Joan, to review.

On August 1, 2019, I met with the Provost, Janel, and Joan to discuss the Research Misconduct Policy. I learned that Joan would recommend that the Provost *not* approve the PCC’s version of the policy unless two parts were changed: (1) the definition of research misconduct and (2) the explicit rejection of a statute of limitations. In short, these items were deemed to be “not consistent with current law or best practices.”

Because the primary aim of this revision is to bring the policy into compliance with federal regulations and not to make other substantive changes to the policy such as expanding the definition of research misconduct, I have modified the sections deemed to be a problem by General Counsel as follows.

1. Definition of research misconduct. I essentially changed this back to the version that was presented to the PCC for its consideration. It consists of the definition of research misconduct in the current Faculty Handbook with additional definitions for fabrication, falsification, and plagiarism added, with an explicit that difference of opinion doesn’t constitute research misconduct, and with a statement that indicates a federal definition trumps a Faculty Handbook definition in the event of a discrepancy, all per federal guidelines. A substantive change from the current version of the Faculty Handbook was removal of additional statements that other federal or legal guidelines may apply, which General Counsel recommended removing since they are addressed in other sections of the Faculty Handbook or in other policies.
2. Statute of limitations. I thought that I had made some progress toward a compromise between the PCC position and the General Counsel’s position in the version I sent to the PCC for review, but after the PCC’s change to this section, General Counsel insists that the text in the new draft must be a part of the Research Misconduct Policy as is.

On the pages that follow are (1) the latest draft reflecting the two above changes for the Executive Committees’ consideration as a replacement to Section 16.7 of the Faculty Handbook, (2) the PCC’s draft, (3) the draft that the Executive Committee sent to the PCC, and on un-numbered pages (4) the Policy Request Form dated April 27, 2017. (The version in the current Faculty Handbook is readily available at <https://www.nku.edu/academicaffairs/resources/faculty/handbook.html> .)

16.7. SCIENTIFIC/RESEARCH MISCONDUCT

16.7.1. PREAMBLE AND POLICY STATEMENT

The preeminent principle in all research is the quest for truth. The credibility of such research must be above reproach if the public trust is to be maintained. Any compromise of the ethical standards required for conducting academic research cannot be condoned. While breaches in such standards are rare, these must be dealt with promptly and fairly by all parties in order to preserve the integrity of the research community.

A critical element of any policy on research misconduct is that it be a fair and effective process for distinguishing instances of genuine and serious misconduct from insignificant deviations from acceptable practices, technical violations of rules, or simple carelessness. The policy defined in this Handbook will allow such distinctions to be made in a manner that minimizes disruption and protects the honest researcher from false or mistaken accusations.

Research misconduct, as defined in Section 16.7.2., below, is not condoned at Northern Kentucky University and allegations of such misconduct will be investigated in accordance with the procedures described below. The policy and procedure discussed herein do not restrict or limit any legal options available to any of the parties through appropriate courts and/or administrative agencies. NKU must comply with federal regulations, and additional policies may apply to faculty engaged in federally sponsored research or submitting work to a federal agency.

16.7.2. DEFINITIONS

16.7.2.1. COMPLAINANT

Complainant means a person who in good faith makes an allegation of research misconduct.

16.7.2.2. GOOD FAITH

Good faith as applied to a complainant or witness, means having a belief in the truth of one's allegation or testimony that a reasonable person in the complainant's or witness's position could have based on the information known to the complainant or witness at the time. An allegation or cooperation with a research misconduct proceeding is not in good faith if made with knowing or reckless disregard for information that would negate the allegation or testimony. Good faith as applied to a committee member means cooperating with the research misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping an institution meet its responsibilities under this part. 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 research misconduct proceeding.

16.7.2.3. INQUIRY

Inquiry means preliminary information-gathering and preliminary fact-finding.

16.7.2.4. INVESTIGATION

Investigation means the formal collection, examination, and evaluation of all relevant facts to determine whether research misconduct has occurred.

16.7.2.5. RESEARCH MISCONDUCT

Research misconduct is defined as fabrication, falsification, plagiarism, or other serious deviations from those accepted practices in proposing, performing, or reviewing research, or in reporting results from research.

- 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.

Research misconduct does not include honest error or difference of opinion.

In cases of allegations involving activities submitted to or supported by a federal agency and definitions or procedures for research misconduct specified in the agency's regulations differ from those in this policy, the definitions and procedures in the agency's regulations will be used.

16.7.2.6. RESEARCH RECORD

Research record means the record of data or results that embody the facts resulting from scientific inquiry, including but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and any documents and materials provided to federal agencies or institutional officials by a respondent in the course of the research misconduct proceeding.

16.7.2.7. RESPONDENT

Respondent means the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

16.7.2.8. RETALIATION

Retaliation for the purpose of this part means an adverse action taken against a complainant, witness, or committee member by an institution or one of its members in response to (a) a good faith allegation of research misconduct or (b) good faith cooperation with a research misconduct proceeding.

16.7.3. POLICIES

16.7.3.1. CONFIDENTIALITY

All parties involved in the inquiry and investigation shall strive to maintain confidentiality of information, respondents, complainants, and research subjects that may be identified from research records or evidence.

16.7.3.2. INTERIM ADMINISTRATIVE ACTION

As provided by federal regulations, at any stage in the process of inquiry, investigation, formal finding and disposition, NKU may take interim administrative action to protect the welfare of human or animal subjects of research, to prevent the inappropriate use of funds, or to protect the interest of students, colleagues, or the University. A suspension or restriction of activities does not in any way imply that research misconduct has taken place. This action will be temporary and used as an interim measure prior to the conclusion of the formal investigation.

16.7.3.3. EXTRAMURAL ASSURANCE AND REPORTING REQUIREMENTS

If applicable, NKU will fully and continually cooperate with the appropriate federal agency during its oversight review or any subsequent administrative hearings or appeals. This may include providing research records and evidence under the institution's control, custody, or possession and access to all persons within its authority necessary to develop a complete record of relevant evidence. If required by a funding agency, the Institutional Official (IO) or designee shall submit written assurance that the institution is in compliance with the agency's requirements for handling allegations of misconduct. If the research is supported by an extramural funding agency, the IO or designee is responsible for ensuring compliance with the applicable funding agency's reporting requirements.

16.7.3.4. STATUTE OF LIMITATION

NKU will only investigate research misconduct that has occurred within six years of the date that the institution receives an allegation of research misconduct. This six-year limitation does not apply to the following circumstances:

- 1) Subsequent use by the respondent by continuation or renewal of any incident of alleged research misconduct that occurred before the six (6) year limitation through the citation, republication or other use for the potential benefit of the respondent of the research record that is alleged to have been fabricated, falsified or plagiarized.
- 2) If the appropriate funding agency or the University in consultation with the funding agency, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public.

16.7.3.5. CONFLICT OF INTEREST

Individuals responsible for carrying out any part of the research misconduct proceeding must not have any real or apparent unresolved, personal, professional, or financial conflicts of interest with the complainant, respondent, or witnesses. Any conflict of interest must be disclosed.

A conflict of interest may include, but is not limited to, co-authorship on a paper or book, a professional or personal relationship, professional or personal relationship or antagonism,

financial ties, or contact regarding possible employment with either the respondent or the complainant.

16.7.3.6 ABSENCE OF THE RESPONDENT OF THE ALLEGATION

Should the respondent leave NKU before the case is resolved, the dean, on behalf of NKU, when possible, shall continue the examination of the allegation and reach a conclusion. NKU shall cooperate with the process of another institution to resolve such questions to the extent possible under state and federal law.

16.7.3.7. RESTORING REPUTATION

The dean, or designee, or Provost shall undertake all practical and reasonable efforts to protect and restore the reputation of the individual(s) alleged to have engaged in research misconduct but against whom no finding of research misconduct has been made, if requested by the individual(s) as appropriate. The dean, or designee, or Provost shall undertake reasonable and practical efforts to protect or restore the position and reputation of the individual(s) who in good faith, made an allegation of research misconduct, if requested by the individual(s) and as appropriate. The dean, or designee, or Provost shall undertake reasonable and practical efforts to protect or restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against these individuals.

16.7.3.8. FALSE ACCUSATIONS

Regardless of the outcome of an inquiry or investigation, it is the policy of the University that no individual who, in good faith, has reported apparent research misconduct shall be subject to retaliation by the University or by any member of the University community. However, if it is determined that the charges were brought against the respondent with malicious or dishonest intent such that the complainant had a clear understanding that they were probably untrue and that they were designed to harm the respondent, the dean may recommend to the provost that appropriate administrative action be taken against the complainant consistent with the University's governing and administrative regulations.

16.7.4. PROCEDURES

16.7.4.1. ALLEGATIONS OF RESEARCH MISCONDUCT

It is the policy of Northern Kentucky University to treat fairly both the complainant and the respondent. All allegations of research misconduct will be treated seriously and, to the extent possible, the confidentiality of those who submit allegations will be maintained.

Though allegations of research misconduct may be by any means of communication to an institutional or federal official, the allegation of misconduct shall initially be documented in writing by either the complainant or the person receiving the allegation. If the allegation is made through the Ethics and Compliance Helpline, the person receiving the allegation should document the allegation in writing. Any other person receiving an allegation of research misconduct should relay the information to the appropriate dean for preliminary inquiry. The Provost may receive reports of research misconduct in situations where the appropriate dean may have a conflict of interest.

Either before or when the institution notifies the respondent of the allegation, inquiry or investigation, the institution must promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except that where 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. Respondents may be given supervised access to the research records throughout the inquiry and/or investigation.

16.7.4.2. PRELIMINARY INQUIRY

The purpose of the preliminary inquiry is to conduct an initial review of evidence to determine if there are sufficient grounds to warrant a formal investigation of the charge of research misconduct. The preliminary inquiry will be conducted by the dean of the college in which the respondent faculty member is appointed. If the allegation of misconduct is brought against a dean, the provost will appoint another dean to conduct the preliminary inquiry. The dean will notify university legal counsel and the provost regarding the nature of the allegations. University counsel shall determine whether the research at issue is governed by any federal legal regulations, and shall instruct the dean to ensure that the preliminary inquiry is conducted in compliance with any applicable regulations. When deemed necessary, the dean may select one or two other individuals to assist in the preliminary inquiry. Any such individuals should have no real or apparent conflict of interest related to the case in question. A conflict of interest may include, but is not limited to, co-authorship on a paper or book, professional or personal relationship or antagonism, financial ties, or contact regarding possible employment with either the respondent or the complainant.

The preliminary inquiry should begin with an informal discussion with the complainant to verify that the allegation should be classified as possible research misconduct. Within ten (10) business days after this discussion with the complainant, the dean shall begin an informal discussion with the respondent regarding the allegations. If federal or state regulations so require, the dean shall also present the respondent with a letter that states: the nature of the allegations; the focus of the inquiry; an invitation to the respondent to provide comments and other relevant information to the dean; other relevant information; and a statement that the respondent has the right to be represented by an attorney.

The preliminary inquiry should be completed within sixty (60) days of receipt of the written allegation of misconduct. If the preliminary inquiry determines that there are not sufficient grounds within the context of the definition of misconduct for a formal investigation, the respondent and the complainant will be sent letters informing them of the results. All records will be sent to the office of the provost.

A formal investigation will be found to be warranted if:

- a. A reasonable basis for concluding that the allegation falls within the definition of research misconduct; and
- b. Preliminary information-gathering and preliminary fact-finding from the inquiry indicates the allegation may have substance

If the preliminary inquiry determines that there are sufficient grounds for a formal investigation within the context of the definition of misconduct, the respondent and the complainant will be

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to replace Section 16.7 of the Faculty Handbook

sent letters informing them of this decision. The letter to the respondent may include (or be deemed) the “draft preliminary inquiry report.” The letter to the respondent (i.e., “the draft preliminary inquiry report”) must include, but is not limited to, the following:

- The name and position of the respondent(s);
- That a formal investigation is to be conducted;
- Information pertaining to federal agencies involved including funding numbers, grant applications, contracts, etc., if applicable;
- The nature of the allegation, including a summary of all evidence that currently exists and the right to review it;
- The basis for recommending that the alleged actions warrant an investigation;
- That the respondent will have an opportunity to respond to the charges; and
- That the respondent has the right to be represented by an attorney.

The respondent shall have the opportunity to respond to this letter, in writing, within thirty (30) calendar days of the date on which the respondent receives it. The draft preliminary inquiry report, combined with any comments received from the respondent, shall constitute the preliminary inquiry report.

In the event a formal investigation is deemed to be warranted, the dean shall inform the following individuals and/or organizations: university legal counsel, chairs of any departments that may be involved, the provost, and appropriate regulatory bodies. As required by law or regulation, University counsel shall notify appropriate government agencies when a formal investigation is convened.

If a formal investigation is judged to be unwarranted and it is determined that the charges were brought against the respondent with malicious or dishonest intent such that the complainant had a clear understanding that they were probably untrue and that they were designed to harm the respondent, the dean may recommend to the provost that appropriate administrative action be taken against the complainant. Such appropriate administrative action shall be consistent with the University’s governing and administrative regulations.

Any records produced during the preliminary inquiry stage, including the preliminary inquiry report, must be maintained by University Counsel for at least seven (7) years and, upon request, be provided to the applicable government agencies.

16.7.4.3. FORMAL INVESTIGATION

Before any formal investigation commences, the respondent(s) and any involved collaborators must be notified by written statement of allegations that an investigation is to be conducted. The written statement shall:

- Include a copy of the preliminary inquiry report, which includes information on the nature of the allegations and the focus of the investigation, and inform those being investigated of the opportunity to provide comments and other relevant information to the dean
- Inform the respondent(s), prior to beginning the investigation, of his or her right to be represented by an attorney in preparing and/or giving his or her response in this and all subsequent phases of the investigation.

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- Give the respondent a copy of or refer to the institution's policies and procedures related to research misconduct.
- Indicate there can be no actions that are, or could be perceived as, retaliatory against the investigation committee members, witnesses, or the person who raised an allegation or is thought to have raised an allegation.

The dean shall appoint an Investigative Body (IB) with three or more members to initiate an investigation thirty (30) calendar days after receipt of the preliminary inquiry report. IB members must be tenured faculty members with sufficient expertise in the area of investigation to insure a sound base from which to evaluate the nature of the charges. One member of the IB may be from outside the University if necessary to insure an accurate and knowledgeable evaluation of the evidence. All IB members must be free of real or apparent conflicts of interest regarding the investigation. The dean shall document the rationale for selecting IB members based on their expertise and impartiality. All IB members shall be required to sign a statement that they will maintain the confidentiality of the investigation, and that they have no interest that would conflict with those of the respondent, the complainant, the University, or the sponsoring agency for the research. Prior to the beginning of the formal investigation, the respondent shall be given the opportunity to object in writing to the appointment of any member of the IB, based on conflict of interest. If the member is appointed to the IB despite the respondent's objection, this fact shall be noted in the IB's final report.

The IB shall conduct a formal examination and evaluation of all relevant facts to determine if the allegations of misconduct are valid. In order to maintain the integrity of the review process and avoid any appearance of institutional influence over the panel's deliberations or decision-making, the IB shall be insulated from any administrative influence and any *ex parte* communications with the parties. The IB shall seek the advice of university counsel and may engage in, but is not limited to, the following investigative procedures:

- Interviewing witnesses;
- Sequestering and examining research data (both published and unpublished) and other evidence;
- Seeking expert counsel both inside and outside the University; and
- Conducting a hearing in which the respondent may respond to the charges, call witnesses, and question the complainant.

The IB shall pursue diligently all significant issues and leads discovered that are determined relevant to the investigation. A written summary or transcript of each interview conducted must be completed. A copy of the interview summary or transcript shall be provided to the interviewed party for comment.

The investigation must be completed within 120 days of beginning it, including conducting the investigation, preparing the report findings, providing the draft report for comment, and, if applicable, sending the final report to the appropriate federal agency. If a federal agency is to be involved, the IB must notify the Provost, who will facilitate arrangements for the report to be sent. If the IB is unable to complete the investigation in time, a written request for extension that includes an explanation for the delay shall be submitted to and approved by the Provost and be included in the investigation record. Except: if no federal or state regulation requires the investigation to be completed within 120 days, then the timeline for a particular

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investigation shall automatically be extended until the IB completes the investigation, without any need for written request of extension.

A finding of research misconduct requires that acts constitute research misconduct as defined above and that:

- 1) There is a significant departure from accepted practices of the relevant research community;
- 2) The misconduct is committed intentionally, or knowingly, or recklessly; and
- 3) The allegation is proven by a preponderance of evidence.

The IB shall prepare a draft Investigation Report. The draft report will be sent to all respondents, and all respondents shall be afforded the opportunity to comment upon the draft report and have the comments included in the formal record of the investigation. Any comments shall be submitted in writing within thirty (30) calendar days of the date on which the respondents received the draft report. The IB shall review all respondents' comments prior to issuing the final Investigation Report.

At the completion of the investigation, the IB shall submit its findings, comments from the respondents, and recommend institutional actions (also known as the Investigation Report) in writing to the dean who shall provide a copy to the respondents of the investigation, the Provost, Legal Counsel, and chair(s) of the affected department(s). The dean shall ensure that publishers and editors of journals are informed if manuscripts emanating from fraudulent research have been submitted or published.

The Investigation Report will include the following:

- 1) Description of the nature of the allegations of research misconduct
- 2) Description and documentation of federal financial support, if applicable (e.g., grant numbers, grant applications, contracts, etc.)
- 3) Institutional charge (e.g., description of specific allegations of research misconduct for consideration in the investigation)
- 4) Copy of the institutional policies and procedures under which the investigation was conducted
- 5) Research records and evidence. Identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody but not reviewed.
- 6) Statement of findings. For each separate allegation of research misconduct identified during the investigation, provide
 - a. A finding as to whether research misconduct did or did not occur as follows:
 - i. Identify whether research misconduct was falsification, fabrication, plagiarism, or other serious deviation from accepted practices and if it was intentional, knowing, or in reckless disregard;
 - ii. A finding that serious research irregularities have occurred, but that the irregularities are insufficient to constitute misconduct; or
 - iii. A finding that no research misconduct or research irregularities were committed.
 - b. A summary of the facts and the analysis that support the conclusion and consideration of the merits of any reasonable explanation by the respondent;
 - c. Information about the specific federal support affected, if applicable
 - d. Identification of any publications in need of correction or retraction;

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- e. Identification of the person(s) responsible for the misconduct; and
 - f. Listing of any current support or known grant proposal applications that the respondent has pending with federal agencies.
- 7) Comments. Include and consider any comments made by the respondent and complainant on the draft investigation report.

The investigation must be thorough and sufficiently documented including examination of all research records and evidence relevant to reaching a decision on the merits of the allegations. The IB must ensure that it maintains and provides all records from the investigation to the Provost. This is necessary so that they can be provided to any applicable federal agencies, which may request all relevant research records and records of the institution's research misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

16.7.4.4. DOCUMENTATION

At the conclusion of an allegation assessment, inquiry, or investigation, the dean shall forward all documentation pertaining to the allegation assessment, inquiry, or investigation to the Provost who shall arrange that the documentation be maintained for seven (7) years and ensure that documentation is provided to the appropriate federal agency upon request, if appropriate. Documentation to be maintained for federal agencies must include the following, as applicable:

- 1) Allegation assessment statement
- 2) Preliminary Inquiry final report
- 3) Formal Investigation Report, including a copy of the report, all attachments, and any appeals
- 4) Findings: statement whether or not the institution accepts the investigation's findings
- 5) Final institutional action: statement if the institution found research misconduct, and if so, who committed the misconduct
- 6) Institutional administrative actions: description of any pending or completed administrative actions against the respondents

The institution must notify the relevant federal agency (if applicable), if the institution plans to close out a case at the inquiry, investigation, or appeal stage on the basis that the respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason, except the closing of a case at the inquiry stage on the basis that an investigation is not warranted.

16.7.4.5. DISCIPLINARY ACTION

If the findings of the investigation substantiate allegations of research misconduct, the Provost, in consultation with Legal Counsel, shall determine appropriate administrative action, consistent with the University's governing and administrative regulations.

16.7.4.6. APPEAL

The respondent may appeal the decision of the investigative committee in writing to the provost. The respondent shall have thirty (30) days to file an appeal. A reinvestigation of the case will be warranted if one or more of the following conditions are judged by the

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provost to exist:

- Significant omission of new evidence that was not known or reasonably available at the time of the formal investigation;
- A member of the committee had a conflict of interest; or
- A member of the committee did not accurately interpret the evidence due to lack of expertise concerning the research topic.

The provost must rule within fifteen (15) days of receipt of the respondent's written appeal on whether or not an appeal is warranted. If the provost determines that an appeal is warranted, a new investigative committee will be appointed by the Provost to reexamine the case. The provost's ruling on the issue of appeal is final. The criteria for appointing members to the original investigative committee shall also apply to the qualifications of members of the new investigative committee. The procedures that applied to the original investigative committee will also apply to the new investigative committee. The new committee shall have one hundred twenty (120) days to complete the investigation. The decision of this review committee is final.

MEMORANDUM

To: Faculty Senate
From: PCC
Date: April 19, 2019
Re: Proposed Amendments to Draft "Research Misconduct" Policy

At our meetings of April 4, 2019 and April 18, 2019, at the request of the Provost, the PCC deliberated on a proposed draft policy on "Research Misconduct." This policy would replace the current NKU Faculty Handbook policy on Research Misconduct, which appears on Pages 103-108 of the 2018 NKU Faculty Handbook. The new policy is intended to incorporate certain language provided by the Provost's Office, which is said to be needed to ensure that our handbook policy remains consistent with certain federal regulations that govern federally funded behavioral and biomedical research. In addition, the PCC added additional new language derived from:

- (1) A publication of the Office of Research Integrity of the US Department of Health and Human Services entitled *Avoiding Plagiarism, Self-plagiarism, and Other Questionable Writing Practices: A Guide to Ethical Writing* (2003, revised 2015), available online at <https://ori.hhs.gov/plagiarism-13>; and
- (2) The Investigative Report setting forth the General Findings Of the Investigation Into Papers by Shailendra Verma, Balasubramani Ramjee, Anju Ramjee, Louis Noyd, and Richard Snyder 1995-2001 prepared by the NKU Ad Hoc Investigative Committee on Research Misconduct (Thomas Kearns, Robert Kempton, and Matthew Shank), December 23, 2002, available online at <https://www.sendspace.com/pro/ykfsfx>; and
- (3) Our current NKU Faculty Handbook policy on Research Misconduct, which appears on Pages 103-108 of the current (2016) NKU Faculty Handbook, available online at <https://www.nku.edu/content/dam/academicaffairs/docs/pdf/Faculty%20Handbook%202018-2019%20Final.pdf>.

At its Meeting of April 18, 2019, PCC voted to recommend that the Faculty Senate recommend the replacement of the current NKU Faculty Handbook policy on Research Misconduct with the following new policy. The proposed new policy is compliant in all respects with federal regulations that apply to federally-funded biomedical and behavioral research.

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The preeminent principle in all research is the quest for truth. The credibility of such research must be above reproach if the public trust is to be maintained. Any compromise of the ethical standards required for conducting academic research cannot be condoned. While breaches in such standards are rare, these must be dealt with promptly and fairly by all parties in order to preserve the integrity of the research community.

A critical element of any policy on research misconduct is that it be a fair and effective process for distinguishing instances of genuine and serious misconduct from insignificant deviations from acceptable practices, technical violations of rules, or simple carelessness. The policy defined in this Handbook will allow such distinctions to be made in a manner that minimizes disruption and protects the honest researcher from false or mistaken accusations.

Research misconduct, as defined in Section 16.7.2., below, is not condoned at Northern Kentucky University and allegations of such misconduct will be investigated in accordance with the procedures described below. The policy and procedure discussed herein do not restrict or limit any legal options available to any of the parties through appropriate courts and/or administrative agencies. NKU must comply with federal regulations, and additional policies may apply to faculty engaged in federally sponsored research or submitting work to a federal agency.

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Investigation means the formal collection, examination, and evaluation of all relevant facts to determine whether research misconduct has occurred.

16.7.2.5. RESEARCH MISCONDUCT

The question of what constitutes a serious deviation from accepted scholarly practices must be resolved by applying the standards and norms of the particular academic discipline at issue.

Research “misconduct,” as used herein, is defined as:

- Fabrication, falsification, plagiarism including self-plagiarism, redundant or duplicate publications, or other serious deviations from those accepted practices in proposing, performing, or reviewing research, or in reporting results from research.
 - 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.
 - Self-plagiarism occurs when some or all significant elements of a previous publication (e.g. text, data, and images) are reused in a new publication with ambiguous acknowledgement or no acknowledgement at all as to their prior dissemination. Self-plagiarism is most blatant when a previously published paper is later published again with very little or no modification.
 - Redundant or duplicate publications refers to publications in which a substantial portion of the work has already been published. It also includes the situation in which the work is either so similar to previously published material or so modest an extension of previously published work that it would not be viewed as significant were the previous publication acknowledged. In most academic disciplines, recycling of material in redundant or duplicate publications, without properly citing the prior work, is a serious deviation from accepted scholarly practices.
- Material failure to comply with federal requirements that are uniquely related to the conducting of research.
- Failure to comply with federal requirements for protection of researchers, human subjects, or the public, or for insuring the welfare of laboratory animals or
- Failure to meet other material legal requirements governing research.

Research misconduct does not include honest error or difference of opinion.

In cases of allegations involving activities submitted to or supported by a federal agency and definitions or procedures for research misconduct specified in the agency's regulations differ from those in this policy, the definitions and procedures in the agency's regulations will be used.

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In cases of allegations involving activities not submitted to or supported by a federal agency, the definitions of research misconduct specified in this policy should be supplemented by (or interpreted in light of) applicable substantive standards of the relevant research community or the academic discipline at issue.

16.7.2.6. RESEARCH RECORD

Research record means the record of data or results that embody the facts resulting from scientific inquiry, including but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and any documents and materials provided to federal agencies or institutional officials by a respondent in the course of the research misconduct proceeding.

16.7.2.7. RESPONDENT

Respondent means the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

16.7.2.8. RETALIATION

Retaliation for the purpose of this part means an adverse action taken against a complainant, witness, or committee member by an institution or one of its members in response to (a) a good faith allegation of research misconduct or (b) good faith cooperation with a research misconduct proceeding.

16.8.3. POLICIES

16.7.3.1. CONFIDENTIALITY

All parties involved in the inquiry and investigation shall strive to maintain confidentiality of information, respondents, complainants, and research subjects that may be identified from research records or evidence.

16.7.3.2. INTERIM ADMINISTRATIVE ACTION

As provided by federal regulations, at any stage in the process of inquiry, investigation, formal finding and disposition, NKU may take interim administrative action to protect the welfare of human or animal subjects of research, to prevent the inappropriate use of funds, or to protect the interest of students, colleagues, or the University. A suspension or restriction of activities does not in any way imply that research misconduct has taken place. This action will be temporary and used as an interim measure prior to the conclusion of the formal investigation.

16.7.3.3. EXTRAMURAL ASSURANCE AND REPORTING REQUIREMENTS

If applicable, NKU will fully and continually cooperate with the appropriate federal agency during its oversight review or any subsequent administrative hearings or appeals. This may include providing research records and evidence under the institution's control, custody, or possession and access to all persons within its authority necessary to develop a complete record of relevant evidence. If required by a funding agency, the Institutional Official (IO) or designee shall submit written assurance that the institution is in compliance with the agency's

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requirements for handling allegations of misconduct. If the research is supported by an extramural funding agency, the IO or designee is responsible for ensuring compliance with the applicable funding agency's reporting requirements.

16.7.3.4. STATUTE OF LIMITATION

There is no statute of limitation on investigations of research misconduct at Northern Kentucky University.

However, Federal agencies do not require assurance and reporting of research misconduct allegations made more than six (6) years after publication or submission of the final report on a project for which data was collected. Exceptions to the federal six (6) year limitation are as follows:

- 1) Subsequent use by the respondent by continuation or renewal of any incident of alleged research misconduct that occurred before the six (6) year limitation through the citation, republication or other use for the potential benefit of the respondent of the research record that is alleged to have been fabricated, falsified or plagiarized.
- 2) If the appropriate funding agency or the University in consultation with the funding agency, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public.

16.7.3.5. CONFLICT OF INTEREST

Individuals responsible for carrying out any part of the research misconduct proceeding must not have any real or apparent unresolved, personal, professional, or financial conflicts of interest with the complainant, respondent, or witnesses. Any conflict of interest must be disclosed.

A conflict of interest may include, but is not limited to, co-authorship on a paper or book, a professional or personal relationship, professional or personal relationship or antagonism, financial ties, or contact regarding possible employment with either the respondent or the complainant.

16.7.3.6 ABSENCE OF THE RESPONDENT OF THE ALLEGATION

Should the respondent leave NKU before the case is resolved, the dean, on behalf of NKU, when possible, shall continue the examination of the allegation and reach a conclusion. NKU shall cooperate with the process of another institution to resolve such questions to the extent possible under state and federal law.

16.7.3.7. RESTORING REPUTATION

The dean, or designee, or Provost shall undertake all practical and reasonable efforts to protect and restore the reputation of the individual(s) alleged to have engaged in research misconduct but against whom no finding of research misconduct has been made, if requested by the individual(s) as appropriate. The dean, or designee, or Provost shall undertake reasonable and practical efforts to protect or restore the position and reputation of the individual(s) who in

good faith, made an allegation of research misconduct, if requested by the individual(s) and as appropriate. The dean, or designee, or Provost shall undertake reasonable and practical efforts to protect or restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against these individuals.

16.7.3.8. FALSE ACCUSATIONS

Regardless of the outcome of an inquiry or investigation, it is the policy of the University that no individual who, in good faith, has reported apparent research misconduct shall be subject to retaliation by the University or by any member of the University community. However, if it is determined that the charges were brought against the respondent with malicious or dishonest intent such that the complainant had a clear understanding that they were probably untrue and that they were designed to harm the respondent, the dean may recommend to the provost that appropriate administrative action be taken against the complainant consistent with the University's governing and administrative regulations.

16.7.4. PROCEDURES

16.7.4.1. ALLEGATIONS OF RESEARCH MISCONDUCT

It is the policy of Northern Kentucky University to treat fairly both the complainant and the respondent. All allegations of research misconduct will be treated seriously and, to the extent possible, the confidentiality of those who submit allegations will be maintained.

Though allegations of research misconduct may be by any means of communication to an institutional or federal official, the allegation of misconduct shall initially be documented in writing by either the complainant or the person receiving the allegation. If the allegation is made through the Ethics and Compliance Helpline, the person receiving the allegation should document the allegation in writing. Any other person receiving an allegation of research misconduct should relay the information to the appropriate dean for preliminary inquiry. The Provost may receive reports of research misconduct in situations where the appropriate dean may have a conflict of interest.

Either before or when the institution notifies the respondent of the allegation, inquiry or investigation, the institution must promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except that where 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. Respondents may be given supervised access to the research records throughout the inquiry and/or investigation.

16.7.4.2. PRELIMINARY INQUIRY

The purpose of the preliminary inquiry is to conduct an initial review of evidence to determine if there are sufficient grounds to warrant a formal investigation of the charge of research misconduct. The preliminary inquiry will be conducted by the dean of the college in which the respondent faculty member is appointed. If the allegation of misconduct is brought against a

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dean, the provost will appoint another dean to conduct the preliminary inquiry. The dean will notify university legal counsel and the provost regarding the nature of the allegations. University counsel shall determine whether the research at issue is governed by any federal legal regulations, and shall instruct the dean to ensure that the preliminary inquiry is conducted in compliance with any applicable regulations. When deemed necessary, the dean may select one or two other individuals to assist in the preliminary inquiry. Any such individuals should have no real or apparent conflict of interest related to the case in question. A conflict of interest may include, but is not limited to, co-authorship on a paper or book, professional or personal relationship or antagonism, financial ties, or contact regarding possible employment with either the respondent or the complainant.

The preliminary inquiry should begin with an informal discussion with the complainant to verify that the allegation should be classified as possible research misconduct. Within ten (10) business days after this discussion with the complainant, the dean shall begin an informal discussion with the respondent regarding the allegations. If federal or state regulations so require, the dean shall also present the respondent with a letter that states: the nature of the allegations; the focus of the inquiry; an invitation to the respondent to provide comments and other relevant information to the dean; other relevant information; and a statement that the respondent has the right to be represented by an attorney.

The preliminary inquiry should be completed within sixty (60) days of receipt of the written allegation of misconduct. If the preliminary inquiry determines that there are not sufficient grounds within the context of the definition of misconduct for a formal investigation, the respondent and the complainant will be sent letters informing them of the results. All records will be sent to the office of the provost.

A formal investigation will be found to be warranted if:

- c. A reasonable basis for concluding that the allegation falls within the definition of research misconduct; and
- d. Preliminary information-gathering and preliminary fact-finding from the inquiry indicates the allegation may have substance

If the preliminary inquiry determines that there are sufficient grounds for a formal investigation within the context of the definition of misconduct, the respondent and the complainant will be sent letters informing them of this decision. The letter to the respondent may include (or be deemed) the "draft preliminary inquiry report." The letter to the respondent (i.e., "the draft preliminary inquiry report") must include, but is not limited to, the following:

- The name and position of the respondent(s);
- That a formal investigation is to be conducted;
- Information pertaining to federal agencies involved including funding numbers, grant applications, contracts, etc., if applicable;
- The nature of the allegation, including a summary of all evidence that currently exists and the right to review it;
- The basis for recommending that the alleged actions warrant an investigation;
- That the respondent will have an opportunity to respond to the charges; and
- That the respondent has the right to be represented by an attorney.

The respondent shall have the opportunity to respond to this letter, in writing, within thirty (30) calendar days of the date on which the respondent receives it. The draft preliminary inquiry report, combined with any comments received from the respondent, shall constitute the preliminary inquiry report.

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In the event a formal investigation is deemed to be warranted, the dean shall inform the following individuals and/or organizations: university legal counsel, chairs of any departments that may be involved, the provost, and appropriate regulatory bodies. As required by law or regulation, University counsel shall notify appropriate government agencies when a formal investigation is convened.

If a formal investigation is judged to be unwarranted and it is determined that the charges were brought against the respondent with malicious or dishonest intent such that the complainant had a clear understanding that they were probably untrue and that they were designed to harm the respondent, the dean may recommend to the provost that appropriate administrative action be taken against the complainant. Such appropriate administrative action shall be consistent with the University's governing and administrative regulations.

Any records produced during the preliminary inquiry stage, including the preliminary inquiry report, must be maintained by University Counsel for at least seven (7) years and, upon request, be provided to the applicable government agencies.

16.7.4.3. FORMAL INVESTIGATION

Before any formal investigation commences, the respondent(s) and any involved collaborators must be notified by written statement of allegations that an investigation is to be conducted. The written statement shall:

- Include a copy of the preliminary inquiry report, which includes information on the nature of the allegations and the focus of the investigation, and inform those being investigated of the opportunity to provide comments and other relevant information to the dean
- Inform the respondent(s), prior to beginning the investigation, of his or her right to be represented by an attorney in preparing and/or giving his or her response in this and all subsequent phases of the investigation.
- Give the respondent a copy of or refer to the institution's policies and procedures related to research misconduct.
- Indicate there can be no actions that are, or could be perceived as, retaliatory against the investigation committee members, witnesses, or the person who raised an allegation or is thought to have raised an allegation.

The dean shall appoint an Investigative Body (IB) with three or more members to initiate an investigation thirty (30) calendar days after receipt of the preliminary inquiry report. IB members must be tenured faculty members with sufficient expertise in the area of investigation to insure a sound base from which to evaluate the nature of the charges. One member of the IB may be from outside the University if necessary to insure an accurate and knowledgeable evaluation of the evidence. All IB members must be free of real or apparent conflicts of interest regarding the investigation. The dean shall document the rationale for selecting IB members based on their expertise and impartiality. All IB members shall be required to sign a statement that they will maintain the confidentiality of the investigation, and that they have no interest that would conflict with those of the respondent, the complainant, the University, or the sponsoring agency for the research. Prior to the beginning of the formal investigation, the respondent shall be given the opportunity to object in writing to the appointment of any member of the IB, based on conflict of interest. If the member is appointed to the IB despite the respondent's objection, this fact shall be noted in the IB's final report.

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The IB shall conduct a formal examination and evaluation of all relevant facts to determine if the allegations of misconduct are valid. In order to maintain the integrity of the review process and avoid any appearance of institutional influence over the panel's deliberations or decision-making, the IB shall be insulated from any administrative influence and any *ex parte* communications with the parties. The IB shall seek the advice of university counsel and may engage in, but is not limited to, the following investigative procedures:

- Interviewing witnesses;
- Sequestering and examining research data (both published and unpublished) and other evidence;
- Seeking expert counsel both inside and outside the University; and
- Conducting a hearing in which the respondent may respond to the charges, call witnesses, and question the complainant.

The IB shall pursue diligently all significant issues and leads discovered that are determined relevant to the investigation. A written summary or transcript of each interview conducted must be completed. A copy of the interview summary or transcript shall be provided to the interviewed party for comment.

The investigation must be completed within 120 days of beginning it, including conducting the investigation, preparing the report findings, providing the draft report for comment, and, if applicable, sending the final report to the appropriate federal agency. If a federal agency is to be involved, the IB must notify the Provost, who will facilitate arrangements for the report to be sent. If the IB is unable to complete the investigation in time, a written request for extension that includes an explanation for the delay shall be submitted to and approved by the Provost and be included in the investigation record. Except: if no federal or state regulation requires the investigation to be completed within 120 days, then the timeline for a particular investigation shall automatically be extended until the IB completes the investigation, without any need for written request of extension.

A finding of research misconduct requires that acts constitute research misconduct as defined above and that:

- 4) There is a significant departure from accepted practices of the relevant research community;
- 5) The misconduct is committed intentionally, or knowingly, or recklessly; and
- 6) The allegation is proven by a preponderance of evidence.

The IB shall prepare a draft Investigation Report. The draft report will be sent to all respondents, and all respondents shall be afforded the opportunity to comment upon the draft report and have the comments included in the formal record of the investigation. Any comments shall be submitted in writing within thirty (30) calendar days of the date on which the respondents received the draft report. The IB shall review all respondents' comments prior to issuing the final Investigation Report.

At the completion of the investigation, the IB shall submit its findings, comments from the respondents, and recommend institutional actions (also known as the Investigation Report) in writing to the dean who shall provide a copy to the respondents of the investigation, the

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Provost, Legal Counsel, and chair(s) of the affected department(s). The dean shall ensure that publishers and editors of journals are informed if manuscripts emanating from fraudulent research have been submitted or published.

The Investigation Report will include the following:

- 8) Description of the nature of the allegations of research misconduct
- 9) Description and documentation of federal financial support, if applicable (e.g., grant numbers, grant applications, contracts, etc.)
- 10) Institutional charge (e.g., description of specific allegations of research misconduct for consideration in the investigation)
- 11) Copy of the institutional policies and procedures under which the investigation was conducted
- 12) Research records and evidence. Identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody but not reviewed.
- 13) Statement of findings. For each separate allegation of research misconduct identified during the investigation, provide
 - a. A finding as to whether research misconduct did or did not occur as follows:
 - i. Identify whether research misconduct was falsification, fabrication, plagiarism, or other serious deviation from accepted practices and if it was intentional, knowing, or in reckless disregard;
 - ii. A finding that serious research irregularities have occurred, but that the irregularities are insufficient to constitute misconduct; or
 - iii. A finding that no research misconduct or research irregularities were committed.
 - b. A summary of the facts and the analysis that support the conclusion and consideration of the merits of any reasonable explanation by the respondent;
 - c. Information about the specific federal support affected, if applicable
 - d. Identification of any publications in need of correction or retraction;
 - e. Identification of the person(s) responsible for the misconduct; and
 - f. Listing of any current support or known grant proposal applications that the respondent has pending with federal agencies.
- 14) Comments. Include and consider any comments made by the respondent and complainant on the draft investigation report.

The investigation must be thorough and sufficiently documented including examination of all research records and evidence relevant to reaching a decision on the merits of the allegations. The IB must ensure that it maintains and provides all records from the investigation to the Provost. This is necessary so that they can be provided to any applicable federal agencies, which may request all relevant research records and records of the institution's research misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

16.7.4.4. DOCUMENTATION

At the conclusion of an allegation assessment, inquiry, or investigation, the dean shall forward all documentation pertaining to the allegation assessment, inquiry, or investigation to the Provost who shall arrange that the documentation be maintained for seven (7) years and ensure that documentation is provided to the appropriate federal agency upon request, if

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appropriate. Documentation to be maintained for federal agencies must include the following, as applicable:

- 7) Allegation assessment statement
- 8) Preliminary Inquiry final report
- 9) Formal Investigation Report, including a copy of the report, all attachments, and any appeals
- 10) Findings: statement whether or not the institution accepts the investigation's findings
- 11) Final institutional action: statement if the institution found research misconduct, and if so, who committed the misconduct
- 12) Institutional administrative actions: description of any pending or completed administrative actions against the respondents

The institution must notify the relevant federal agency (if applicable), if the institution plans to close out a case at the inquiry, investigation, or appeal stage on the basis that the respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason, except the closing of a case at the inquiry stage on the basis that an investigation is not warranted.

16.7.4.5. DISCIPLINARY ACTION

If the findings of the investigation substantiate allegations of research misconduct, the Provost, in consultation with Legal Counsel, shall determine appropriate administrative action, consistent with the University's governing and administrative regulations.

16.7.4.6. APPEAL

The respondent may appeal the decision of the investigative committee in writing to the provost. The respondent shall have thirty (30) days to file an appeal. A reinvestigation of the case will be warranted if one or more of the following conditions are judged by the provost to exist:

- Significant omission of new evidence that was not known or reasonably available at the time of the formal investigation;
- A member of the committee had a conflict of interest; or
- A member of the committee did not accurately interpret the evidence due to lack of expertise concerning the research topic.

The provost must rule within fifteen (15) days of receipt of the respondent's written appeal on whether or not an appeal is warranted. If the provost determines that an appeal is warranted, a new investigative committee will be appointed by the Provost to reexamine the case. The provost's ruling on the issue of appeal is final. The criteria for appointing members to the original investigative committee shall also apply to the qualifications of members of the new investigative committee. The procedures that applied to the original investigative committee will also apply to the new investigative committee. The new committee shall have one hundred twenty (120) days to complete the investigation. The decision of this review committee is final.

16.9. SCIENTIFIC/RESEARCH MISCONDUCT

16.9.1. PREAMBLE AND POLICY STATEMENT

The preeminent principle in all research is the quest for truth. The credibility of such research must be above reproach if the public trust is to be maintained. Any compromise of the ethical standards required for conducting academic research cannot be condoned. While breaches in such standards are rare, these must be dealt with promptly and fairly by all parties in order to preserve the integrity of the research community.

A critical element of any policy on research misconduct is that it be a fair and effective process for distinguishing instances of genuine and serious misconduct from insignificant deviations from acceptable practices, technical violations of rules, or simple carelessness. The policy defined in this Handbook will allow such distinctions to be made in a manner that minimizes disruption and protects the honest researcher from false or mistaken accusations.

Research misconduct, as defined in Section 16.7.2., below, is not condoned at Northern Kentucky University and allegations of such misconduct will be investigated in accordance with the procedures described below. The policy and procedure discussed herein do not restrict or limit any legal options available to any of the parties through appropriate courts and/or administrative agencies. NKU must comply with federal regulations, and additional policies may apply to faculty engaged in federally sponsored research or submitting work to a federal agency.

16.9.2. DEFINITION OF RESEARCH MISCONDUCT

Research “misconduct,” as used herein, is defined as:

- Fabrication, falsification, plagiarism, or other serious deviations from those accepted practices in proposing, carrying out, or reporting results from research;
 - 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.
- Material failure to comply with federal requirements that are uniquely related to the conducting of research.
- Failure to comply with federal requirements for protection of researchers, human subjects, or the public, or for insuring the welfare of laboratory animals or
- Failure to meet other material legal requirements governing research.

Research misconduct does include honest error or difference of opinion.

In cases of allegations involving activities submitted to or supported by a federal agency and definitions or procedures for research misconduct specified in the agency's regulations differ from those in this policy, the definitions and procedures in the agency's regulations will be used.

16.9.3. POLICIES

16.7.3.1. CONFIDENTIALITY

All parties involved in the inquiry and investigation shall strive to maintain confidentiality of information, respondents, complainants, and research subjects that may be identified from research records or evidence.

16.7.3.2. INTERIM ADMINISTRATIVE ACTION

As provided by federal regulations, at any stage in the process of inquiry, investigation, formal finding and disposition, NKU may take interim administrative action to protect the welfare of human or animal subjects of research, to prevent the inappropriate use of funds, or to protect the interest of students, colleagues, or the University. A suspension or restriction of activities does not in any way imply that research misconduct has taken place. This action will be temporary and used as an interim measure prior to the conclusion of the formal investigation.

16.7.3.3. EXTRAMURAL ASSURANCE AND REPORTING REQUIREMENTS

If applicable, NKU will fully and continually cooperate with the appropriate federal agency during its oversight review or any subsequent administrative hearings or appeals. This may include providing research records and evidence under the institution's control, custody, or possession and access to all persons within its authority necessary to develop a complete record of relevant evidence. If required by a funding agency, the Institutional Official (IO) or designee shall submit written assurance that the institution is in compliance with the agency's requirements for handling allegations of misconduct. If the research is supported by an extramural funding agency, the IO or designee is responsible for ensuring compliance with the applicable funding agency's reporting requirements.

16.7.3.4. STATUTE OF LIMITATION

Federal agencies do not require assurance and reporting of research misconduct allegations made more than six (6) years after publication or submission of the final report on a project for which data was collected. Exceptions to the six (6) year limitation are as follows:

- 3) Subsequent use by the respondent by continuation or renewal of any incident of alleged research misconduct that occurred before the six (6) year limitation through the citation, republication or other use for the potential benefit of the respondent of the research record that is alleged to have been fabricated, falsified or plagiarized.
- 4) If the appropriate funding agency or the University in consultation with the funding agency, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public.

16.7.3.5. CONFLICT OF INTERESESET

Individuals responsible for carrying out any part of the research misconduct proceeding must not have any unresolved, personal, professional, or financial conflicts of interest with the complainant, respondent or witnesses. Any conflict of interest must be disclosed.

A conflict of interest may include, but is not limited to, co-authorship on a paper or book, a professional or personal relationship, professional differences of opinion, financial ties, or contact regarding possible employment with either the accused or the complainant.

16.7.3.6 ABSENCE OF THE RESPONDENT OF THE ALLEGATION

Should the respondent leave NKU before the case is resolved, the dean, on behalf of NKU, when possible, shall continue the examination of the allegation and reach a conclusion. NKU shall cooperate with the process of another institution to resolve such questions to the extent possible under state and federal law.

16.7.3.7. RESTORING REPUTATION

The dean, or designee, or Provost shall undertake all practical and reasonable efforts to protect and restore the reputation of the individual(s) alleged to have engaged in research misconduct but against whom no finding of research misconduct has been made, if requested by the individual(s) as appropriate. The dean, or designee, or Provost shall undertake reasonable and practical efforts to protect or restore the position and reputation of the individual(s) who in good faith, made an allegation of research misconduct, if requested by the individual(s) and as appropriate. The dean, or designee, or Provost shall undertake reasonable and practical efforts to protect or restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against these individuals.

16.7.3.8. FALSE ACCUSATIONS

Regardless of the outcome of an inquiry or investigation, it is the policy of the University that no individual who, in good faith, has reported apparent research misconduct shall be subject to retaliation by the University or by any member of the University community. However, if it is determined that the charges were brought against the accused with malicious or dishonest intent such that the complainant had a clear understanding that they were probably untrue and that they were designed to harm the accused, the dean may recommend to the provost that appropriate administrative action be taken against the complainant consistent with the University's governing and administrative regulations.

16.7.4. PROCEDURES

16.7.4.1. ALLEGATIONS OF RESEARCH MISCONDUCT

It is the policy of Northern Kentucky University to treat fairly both the complainant and the respondent. All allegations of research misconduct will be treated seriously and, to the extent possible, the confidentiality of those who submit allegations will be maintained.

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Though allegations of research misconduct may be by any means of communication to an institutional or federal official, the allegation of misconduct shall initially be documented in writing by either the complainant or the person receiving the allegation. If the allegation is made through the Ethics and Compliance Helpline, the person receiving the allegation should document the allegation in writing. Any other person receiving an allegation of research misconduct should relay the information to the appropriate dean for preliminary inquiry. The Provost may receive reports of research misconduct in situations where the appropriate dean may have a conflict of interest.

Either before or when the institution notifies the respondent of the allegation, inquiry or investigation, the institution must promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except that where 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. Respondents may be given supervised access to the research records throughout the inquiry and/or investigation.

At any point in the process, the Provost may alter this process when warranted or to avoid conflicts of interest.

16.7.4.2. PRELIMINARY INQUIRY

Allegations should first be assessed to determine if an inquiry is needed considering the following:

- Whether the alleged conduct meets the definition of research misconduct
- Whether there is sufficient information to initiate an inquiry

If there is insufficient information and additional information is not available or the allegation does not meet the definition of research misconduct, the allegation assessment ends and no further action is needed.

If the allegation is determined to be sufficiently credible and specific so that potential evidence of research misconduct may be identified, an inquiry will be initiated. The purpose of the inquiry is to conduct an initial review of evidence to determine whether to conduct an investigation.

The inquiry will be conducted by the dean of the college in which the alleged misconduct occurred. If the allegation of misconduct is brought against a dean, the provost will appoint another dean to conduct the inquiry. The dean will notify university legal counsel and the Provost regarding the nature of the allegations. When deemed necessary, the dean may select one or two other individuals to assist in the inquiry. Any such individuals should have no real or apparent conflict of interest related to the case in question.

The dean, or designee, must make a good faith effort to notify in writing the individual(s) and any collaborators, about whom allegations have been made that an inquiry has been initiated. If the inquiry subsequently identifies additional respondents, the dean, or designee, must notify them. A statement of the allegations will be presented within ten (10) business days of the determination to proceed with an inquiry. This statement shall include:

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- The nature of the allegations
- The focus of the inquiry
- A statement that the respondent can provide comments and other relevant information to the inquiring body
- Other relevant information
- That the accused has the right to be represented by an attorney.

The inquiry **will, if appropriate**, begin with an informal discussion with the complainant to verify that the allegation should be classified as possible research misconduct. Prior to the conclusion of the preliminary inquiry, there shall be an informal discussion with the accused regarding the allegations.

The inquiry should be completed within sixty (60) calendar days of its initiation unless circumstances clearly warrant a longer period. If the inquiry takes longer than sixty (60) days to complete, the inquiry record must include documentation of the reasons for exceeding the sixty (60) day period.

If the preliminary inquiry determines that there are not sufficient grounds within the context of the definition of misconduct for a formal investigation, the accused and the complainant will be sent letters informing them of the results. A determination to not investigate must be sufficiently documented including the reason/s for that determination. All records will be sent to the office of the provost.

If it is determined that the charges were brought against the accused with malicious or dishonest intent such that the complainant had a clear understanding that they were probably untrue and that they were designed to harm the accused, the dean may recommend to the provost that appropriate administrative action be taken against the complainant. Such appropriate administrative action shall be consistent with the University's governing and administrative regulations.

An investigation will found to be warranted if:

- e. A reasonable basis for concluding that the allegation falls within the definition of research misconduct; and
- f. Preliminary information-gathering and preliminary fact-finding from the inquiry indicates the allegation may have substance

The respondent and the complainant will be sent the draft inquiry report with the inquiry determination. The respondent shall have the opportunity to comment on the draft report, and the comments will become part of the final record. Any comments must be submitted in writing within thirty (30) calendar days of the date on which the respondent receives the draft report. The respondent's comments shall be reviewed before issuing the final report.

The draft inquiry report must contain, at a minimum:

- The name and position of the respondent
- Information pertaining to federal agencies involved including funding numbers, grant applications, contracts, etc., if applicable
- A description of the allegations of research misconduct
- A summary of all evidence that currently exists

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- The basis for recommending that the alleged actions warrant an investigation The draft inquiry report, comments from the respondent, and the final determination shall constitute the final inquiry determination. The final inquiry determination shall be completed within thirty (30) calendar days of receiving the final comments from the respondent in the inquiry process.

In the event a formal investigation is deemed to be warranted, the dean shall inform the following individuals and/or organizations: University legal counsel, chairs of any departments that may be involved, the provost, and appropriate regulatory bodies. If applicable, the IO will notify the appropriate federal agency in writing with a copy of the inquiry report within 30 days of the finding.

Any records produced during the inquiry stage including the final inquiry report must be maintained for at least seven (7) years and, upon request, be provided to the applicable federal agency.

16.7.4.3. FORMAL INVESTIGATION

The individual(s) about whom allegations have been made and any involved collaborators that an investigation is to be conducted must be notified in writing via a statement of allegations before the investigation begins. The statement shall:

- Include a copy of the inquiry report, which includes information on the nature of the allegations and the focus of the investigation, and inform those being investigated of the opportunity to provide comments and other relevant information to the dean
- Inform the respondent(s), prior to beginning the investigation, of his or her right to be represented by an attorney in preparing and/or giving his or her response in this and all subsequent phases of the investigation.
- Give the respondent a copy of or refer to the institution's policies and procedures related to research misconduct.
- Indicate there can be no actions that are, or could be perceived as, retaliatory against the investigation committee members, witnesses, or the person who raised an allegation or is thought to have raised an allegation.

The dean shall appoint a three-person Investigative Body (IB) to initiate an investigation thirty (30) calendar days after receipt of the formal inquiry report. Committee members must be tenured faculty with sufficient expertise in the area of investigation to insure a sound base from which to evaluate the nature of the charges. One member of the committee may be from outside the University if necessary to insure an accurate and knowledgeable evaluation of the evidence. The dean shall document the rationale for selecting committee members based on their expertise and impartiality. All committee members shall be required to sign a statement that they will maintain the confidentiality of the investigation, and that they have no interest that would conflict with those of the accused, the complainant, the University, or the sponsoring agency for the research. The respondent shall be given the opportunity to comment in writing on the membership of the IB.

The IB shall conduct a formal examination and evaluation of all relevant facts to determine if the allegations of misconduct are valid. The IB shall seek the advice of university counsel and may engage in, but is not limited to, the following investigative procedures:

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- Interviewing witnesses;
- Sequestering and examining research data (both published and unpublished) and other evidence;
- Seeking expert counsel both inside and outside the University; and
- Conducting a hearing in which the accused may respond to the charges, call witnesses, and question the complainant.

The IB shall pursue diligently all significant issues and leads discovered that are determined relevant to the investigation. A written summary or transcript of each interview conducted must be completed. A copy of the interview summary or transcript shall be provided to the interviewed party for comment.

The investigation must be completed within 120 days of beginning it, including conducting the investigation, preparing the report findings, providing the draft report for comment, and, if applicable, sending the final report to the appropriate federal agency. If a federal agency is to be involved, the IB must notify the Provost, who will facilitate arrangements for the report to be sent. If the IB is unable to complete the investigation in time, a written request for extension that includes an explanation for the delay shall be submitted to and approved by the Provost and be included in the investigation record.

A finding of research misconduct requires that acts constitute research misconduct as defined above and that:

- 7) There is a significant departure from accepted practices of the relevant research community;
- 8) The misconduct is committed intentionally, or knowingly, or recklessly; and
- 9) The allegation is proven by a preponderance of evidence.

The IB shall prepare a draft Investigation Report. The draft report will be sent to all respondents, and all respondents shall be afforded the opportunity to comment upon the draft report and have the comments included in the formal record of the investigation. Any comments shall be submitted in writing within thirty (30) calendar days of the date on which the respondents received the draft report. The IB shall review all respondents' comments prior to issuing the final Investigation Report.

At the completion of the investigation, the IB shall submit its findings, comments from the respondents, and recommend institutional actions (also known as the Investigation Report) in writing to the dean who shall provide a copy to the respondents of the investigation, the Provost, Legal Counsel, and chair(s) of the affected department(s). The dean shall ensure that publishers and editors of journals be informed if manuscripts emanating from fraudulent research have been submitted or published.

The Investigation Report will include the following:

- 15) Description of the nature of the allegations of research misconduct

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- 16) Description and documentation of federal financial support, if applicable (e.g., grant numbers, grant applications, contracts, etc.)
- 17) Institutional charge (e.g., description of specific allegations of research misconduct for consideration in the investigation)
- 18) Copy of the institutional policies and procedures under which the investigation was conducted
- 19) Research records and evidence. Identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody but not reviewed.
- 20) Statement of findings. For each separate allegation of research misconduct identified during the investigation, provide
 - a. A finding as to whether research misconduct did or did not occur as follows:
 - i. Identify whether research misconduct was falsification, fabrication, plagiarism, or other serious deviation from accepted practices and if it was intentional, knowing, or in reckless disregard;
 - ii. A finding that serious research irregularities have occurred, but that the irregularities are insufficient to constitute misconduct; or
 - iii. A finding that no research misconduct or research irregularities were committed.
 - b. A summary of the facts and the analysis that support the conclusion and consideration of the merits of any reasonable explanation by the respondent;
 - c. Information about the specific federal support affected, if applicable
 - d. Identification of any publications in need correction or retraction;
 - e. Identification of the person(s) responsible for the misconduct; and
 - f. Listing of any current support or known grant proposal applications that the respondent has pending with federal agencies.
- 21) Comments. Include and consider any comments made by the respondent and complainant on the draft investigation report.

The investigation must be thorough and sufficiently documented including examination of all research records and evidence relevant to reaching a decision on the merits of the allegations. The IB must ensure that it maintains and provides all records from the investigation to the Provost. This is necessary so that they can be provided to any applicable federal agencies, which may request all relevant research records and records of the institution's research misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

16.7.4.4. DOCUMENTATION

At the conclusion of an allegation assessment, inquiry, or investigation, the dean shall forward all documentation pertaining to the allegation assessment, inquiry, or investigation to the Provost who shall arrange that the documentation be maintained for seven (7) and ensure that documentation is provided to the appropriate federal agency upon request, if appropriate. Documentation to be maintained for federal agencies must include the following, as applicable:

- 13) Allegation assessment statement
- 14) Preliminary Inquiry final report
- 15) Formal Investigation Report, including a copy of the report, all attachments, and any appeals
- 16) Findings: statement whether or not the institution accepts the investigation's findings

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- 17) Final institutional action: statement if the institution found research misconduct, and if so, who committed the misconduct
- 18) Institutional administrative actions: description of any pending or completed administrative actions against the respondents

The institution must notify the relevant federal agency (if applicable), if the institution plans to close out a case at the inquiry, investigation, or appeal stage on the basis that the respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason, except the closing of a case at the inquiry stage on the basis that an investigation is not warranted.

16.7.4.5. DISCIPLINARY ACTION

If the findings of the investigation substantiate allegations of research misconduct, the Provost, in consultation with Legal Counsel, shall determine appropriate administrative action, consistent with the University's governing and administrative regulations.

16.7.4.6. APPEAL

The accused may appeal the decision of the investigative committee in writing to the provost. The accused shall have thirty (30) days to file an appeal. A reinvestigation of the case will be warranted if one or more of the following conditions are judged by the provost to exist:

- Significant omission of new evidence that was not known or reasonably available at the time of the formal investigation;
- A member of the committee had a conflict of interest; or
- A member of the committee did not accurately interpret the evidence due to lack of expertise concerning the research topic.

The provost must rule within fifteen (15) days of receipt of the accused's written appeal on whether or not an appeal is warranted. If the provost determines that an appeal is warranted, a new investigative committee will be appointed by the Provost to reexamine the case. The provost's ruling on the issue of appeal is final. The criteria for appointing members to the original investigative committee shall also apply to the qualifications of members of the new investigative committee. The procedures that applied to the original investigative committee will also apply to the new investigative committee. The new committee shall have one hundred twenty (120) days to complete the investigation. The decision of this review committee is final.



POLICY REQUEST FORM

Northern Kentucky University

POLICY DETAILS

Proposed Policy Title: Research Misconduct

Primary Contact Name: Anita R. Southwick, Manager of Research Compliance

Primary Contact Email: southwicka1@nku.edu

Responsible Official Title: Director of Research, Grants and Contracts

*Avoid names of specific people, use Titles. **If unknown, leave blank.** A responsible official will be designated by the University Policy Administrator.*

Responsible Office: Research, Grants and Contracts

*The name of the Office or Department in which the Responsible Official works. **If unknown, leave blank.** A responsible office will be designated by the University Policy Administrator.*

Is this a new policy, revision to an existing policy, review of an existing policy, or retirement of an existing policy?

- New** *(skip to section I)*
 Revision *(complete Revision Type)*
 Retirement *(complete Sections I & VIII only)*
 Review With No Changes To Policy *(complete Section VI. only)*

Revision Type

Changes that significantly alter the effect or nature of the policy (e.g. changing student payment requirements) would be considered Major Revisions. Minor revisions may alter the policy, but do not have broad or sweeping implications. Editorial changes to a policy do not alter the effect of the policy and are grammatical, style, or formatting changes. (e.g. Changing "Bursar's Office" to "Student Account Services"). If unsure, do not check any box.

- Major** *(complete Section I.)*
 Minor *(complete Section I.)*
 Editorial *(complete section VII only)*

I. JUSTIFICATION

A. Reason for Policy Introduction/Revision/Retirement

More than one may be selected. If additional documentation is needed, please attach to this form.

- Legal purposes
 Regulatory/Compliance
 Financial
 Current policy outdated
 Technological
 Operational efficiency
 Other: Click here to enter text.

B. Is there a law or regulation that requires NKU to create, revise, or retire the policy?

- Yes** *(Complete item C)*
 No *(Skip to item D)*

C. List the name and citation for the law/regulation.

Public Health Service, 42 C.F.R Part 93

D. Explain the reason for the proposed new policy, revision or retirement of a policy.

Per 42 C.F.R. Part 93 Subpart C 93.300 (a), each institution that applies for or receives PHS support for biomedical or behavioral research, research training or activities must have written policies and procedures for addressing allegations of research misconduct that meet the requirements of 42 C.F.R. Part 93.

II. IMPACT

A. List the entities, offices, divisions, and/or other University members affected by this policy.

Examples can include: faculty, staff, students, minors on campus, members of the public on campus, accounts payable, or graduate students.

Any staff, faculty or student involved in sponsored or non-sponsored research.

B. Describe the resources needed to implement and comply with this policy. If applicable, list the name and title of the individual responsible for ensuring compliance with this policy.

Examples can include financial, human, technological, facilities, or operational resources.

Anita R. Southwick, Manager of Research Compliance

C. List the titles of any currently existing NKU policies related to this policy.

Research Misconduct

D. Suggested implementation date: Thursday, June 01, 2017

This implementation date is due to a compliance or legal mandate. *(Leave unchecked if unknown)*

III. TRAINING

A. Will this policy require training?

(e.g. Title IX Sexual Harassment training required of all university employees)

Yes *(Complete items B & C)* No *(Skip to section IV. Review Cycle)*

B. List the titles of the individuals responsible for implementing/conducting the training.

Click here to enter text.

C. Is the training required to be tracked?

Yes No

IV. REVIEW CYCLE

A. Are there any circumstances that would necessitate a regularly recurring review of this policy prior to four years after policy approval?

(e.g. Annual changes in state appropriations to the university)

Yes *(Complete item B)* No *(Skip to section V. Suggested Policy Type & Signatures)*

B. Suggested Review Cycle

Annually Bi-annually Every three years

V. SUGGESTED POLICY TYPE & SIGNATURES

Policy Type:

- Academic & Admissions Policy Committee Graduate Council
 Academic Administrative
 Hybrid (Academic/Administrative)

I suggest that this policy be:

- Reviewed by the I.T. Policy Council Reviewed by the Professional Concerns Committee
 Reviewed by Human Resources Reviewed by Compliance/Legal

Anita R. Southwick 4/27/17
Signature, Policy Initiator Date

Policy Initiator Name: Anita R. Southwick

Policy Initiator Title: Manager of Research Compliance

Samantha Langley
Signature, Direct Supervisor/Department Head Date
(If different than policy initiator)

Direct Supervisor/Department Head Name: Samantha Langley

Direct Supervisor/Department Head Title: Vice Provost for Graduate Education, Research & Outreach

Division Vice President/Provost or Equivalent, Date
(If different than policy initiator, and Direct Supervisor/Department head)

Vice President/Provost or Equivalent Name: Click here to enter text.

Vice President/Provost or Equivalent Title: Click here to enter text.

Make sure that all appropriate and relevant information is included and that the form is signed and dated with all appropriate signatures. You can forward a completed policy request form to policy@nku.edu as a Microsoft Word or PDF document. You can also forward a hard copy of a completed policy request form via Interdepartmental Mail to:

Policy Coordinator, Administration & Finance, LAC 812.

Once a policy request form has been submitted, the Senior Vice President (SVP) for Administration & Finance and the Provost/Executive Vice President for Academic Affairs (Provost) will coordinate with the Executive Team regarding the details of the proposed policy.

Once confirmed, the policy initiator, owner, and responsible official will be notified and directed to develop a full draft of the policy using the policy template. The draft will proceed through the appropriate process as outlined by the NKU Policy Process Map.

STOP – END OF FORM


UNIVERSITY POLICY ADMINISTRATOR SIGNATURE

Policy Type:

- Academic & Admissions Policy Committee
- Graduate Council
- Academic
- Administrative
- Hybrid (Academic/Administrative)


This policy should be:

- Reviewed by the I.T. Policy Council
- Reviewed by the Professional Concerns Committee
- Reviewed by Human Resources
- Reviewed by Compliance/Legal



Signature for Academic/Hybrid Policies 5/8/17
Date

Name: Sue Ott Rowlands
Title: Provost/Executive Vice President for Academic Affairs



Signature, University Policy Administrator 5/4/17
Date

Policy Administrator Name: Sue Hodges Moore
Policy Administrator Title: Senior Vice President, Administration & Finance