

Professional Concerns Committee

Minutes for September 19, 2024

Hybrid Meeting (SU 109 and Zoom Conferencing Software), 3:15 pm

Members in Attendance: Deborah Amend, Amanda Brockman, Whitney Darnell, Kathleen Fuegen, Shannon Fredrick, Roxanne Gall, Jaesook Gilbert, Rich Gilson, Patrick Hare, Rachelle Janning, Ken Katkin, Alexis Miller, Jered Moses, Makoto Nakamura, Joe Nolan, Tamara O’Callaghan, Michael Providenti, Holly Riffe (Chair), Amal Said, Gang Sun, Emily Taylor, Jessica Taylor, Maggie Whitson

Guests in Attendance: Janel Bloch, Jacqueline Emerine, Grant Garber, Grace Hiles, Suk-hee Kim, Provost Diana McGill, Steve Slone, Andrea South, Anita Southwick, Jason Vest

Members Not in Attendance: Ihab Saad, History representative

1. Call to Order, Adoption of the Agenda
 - The meeting was called to order at 3:16pm. The agenda was adopted as distributed.
2. Adoption of the minutes from the September 5, 2024 meeting
 - The September 5 minutes were adopted as distributed.
3. Chair’s Report and Announcements
 - Reminder that Faculty Senate meetings are open, people are welcome to attend. There is nothing to report from Executive Committee.
4. Voting Item: Research Misconduct mandated update
 - Guests: Grant Garber (NKU Legal), Andrea South (IRB Chair), and Anita Southwick (RCG Compliance Officer).
 - BACKGROUND: An audit by the Office of Research Integrity (ORI) determined that NKU’s Research Misconduct policy is out of federal compliance. 3 changes are required: 1) provide detail about how we protect public health services equipment and data sequestered during an investigation (see VI. Interim Administrative Action, first paragraph); 2) explain why an inquiry would be warranted (see XIII. Procedures, B. Preliminary Inquiry, first 3 bullet points); 3) notification when the process moves forward from allegation to inquiry (see XIII. Procedures, B. Preliminary Inquiry, paragraph added that begins “On or before the date...”). The three proposed updates are word-for-word what was recommended by ORI.
 - DISCUSSION:
 - What would be the consequences if PCC failed to approve these updates?
ANSWER: A failure to approve the changes would interfere with our

- ability to receive federal funding. Some funding that is not federal also requires compliance with federal guidelines.
- This policy is located on the NKU Policy page. There is also a section of the Faculty Handbook regarding research misconduct.
 - The policy can be in both places as long as it is compliant with federal minimum guidelines.
 - AMENDMENTS OFFERED: Three amendments were offered in addition to the changes needed for federal compliance. NKU can have higher standards than the federal minimums. These amendments would restore the Faculty Handbook to what was approved by Faculty Senate on October 28, 2019. At that time, the Board of Regents rejected the recommendation of Faculty Senate and accepted the recommendation of President Vaidya which created a “safe harbor” for research misconduct. The amendments address the definition of self-plagiarism and the statute of limitations for research misconduct allegations.
 - Amendment 1 is an addition to section IV of the policy or 16.7.2.5 of the Handbook (“*Substantial recycling of material in redundant publications compounded by a failure to cite....*”); amendment 2 is also an addition to section IV of the policy or 16.7.2.5 of the Handbook (“*...this policy should be supplemented by...applicable substantive standards of the relevant research community....*”); and amendment 3 addresses section VIII of the policy or Handbook 16.7.3.4 with revised language beginning with “*There is no statute of limitations on investigations of research misconduct....*”
 - DISCUSSION:
 - Some publications reprint journal articles in books. Would this violate the self-plagiarism language? ANSWER: No. Deception would be required to violate the policy and it would have to deviate from standard practices in the discipline.
 - Would each discipline have different standards under the proposed amendments? ANSWER: Yes. And it was that way before 2019.
 - Why revert to the 2019 policy when we could make it better now? ANSWER: Including these statements does make the policy better by making self-plagiarism impermissible.
 - IRB Chair: Amendment 3 is acceptable in stating that we do not have a statute of limitations on investigation of research misconduct.
 - Would faculty need to retain data beyond six years? ANSWER: Retaining data is not addressed in the amendments. The self-plagiarism issue could be investigated with available evidence by looking at the publications themselves.
 - These proposed amendments are serious issues. PCC should look at this –issues should be examined anytime the Board rejects the recommendation of Faculty Senate.

- MOTION to postpone further discussion of the proposed amendments to a later meeting determined by the PCC Chair to allow members to take these amendments back to their departments for feedback.
 - VOTE on MOTION to Postpone further discussion on the three amendments:
 - Passed unanimously
- VOTE to APPROVE FEDERALLY MANDATED REVISIONS:
 - Passed unanimously.
- 5. Voting item: Human Subjects Policy
 - BACKGROUND: There are multiple versions of this policy. One on the NKU Policies page (1996), another in the Faculty Handbook (which has outdated procedural information), and procedures in IRB office. The proposal is to have consistency and minimal information in the policy regarding the procedures maintained by the IRB office.
 - DISCUSSION:
 - PCC needs to know how this policy will look in the Faculty Handbook.
 - MOTION to POSTPONE VOTE to a later PCC meeting in which that Handbook language will be shared.
 - Passed unanimously.
- 6. Voting item: Grievances (2 friendly amendments since discussion on Sept 5)
 - BACKGROUND: Handbook section 14.1. Proposed additions include a definition of “grievance” (first sentence: “*A grievance is an allegation that existing University policies, rules, regulations, practices, and/or procedures have been violated, misinterpreted, and/or improperly applied.*”) and, the first bullet under 14.2.1: “*Negative recommendation from the provost on an application for Denial of reappointment, promotion or tenure; candidates receiving a negative recommendation from any previous level are to follow the guidelines set forth in Section 3.2.14 for formal reconsideration*”.
 - DISCUSSION:
 - Replace the term “illegal” (2nd bullet point 14.2.1) with “wrongful.” (Agreed)
 - In the last paragraph, after “*no person who receives an administrative contract (e.g.*” add “*school director/chair*” in place of “*director.*”
 - Question from Provost: there were no school directors when this part of the Handbook was written. Directors were not school directors (e.g., Director of the Kentucky Center for Mathematics, Director of CINSAM). An associate professor could be a director and then go up for full professor. Was the intent to not include department chairs who were not mentioned in the original language?
 - Is the list of who is excluded meant to be definitive (i.e.) or representative (e.g.)?

- PCC is not bound to the intent of faculty 20 years ago. We could remove the reference to “director” rather than add “chair.”
 - Chairs already have more power than the faculty. Why should we allow chairs to use the faculty grievance policy?
 - Some chairs are not full professors who may go up for promotion under the guidelines in the Faculty Handbook.
 - Motion to strike the word “director” from the e.g. list of those who are excluded from the grievance process. (Agreed)
 - Leave the list “e.g.” in the last paragraph of 14.2.1. Add comma after the e.g. (Agreed)
 - Remove the “appeals” language (it appears twice, once in the first and once in the last paragraphs of 14.2.1). In the first paragraph replace “appealed to or heard by” with “grieved through the.” In the second, strike “appeals and.” (Agreed)
 - Chairs generally lose their voting rights in Faculty Senate as they have more than a 25% teaching reduction for administrative purposes as defined in the Senate Constitution.
 - Add sub-bullet point under first bullet in 14.2.1 to contain information after the semicolon in the first bullet point. (Agreed)
 - VOTE on changes to Grievances policy with revisions:
 - Passed unanimously.
7. Can we get an update from the Provost on implementation of Handbook sections 1.3 and 1.4?
- There is guidance in the Handbook for section 1.3 for how teaching faculty titles could be assigned. Faculty are being renamed based on their rank. It is taking time to get that through HR and IT’s systems. The challenge is for full-time visiting professors. The Handbook does not provide guidance on promotions from assistant to Visiting Teaching Professor. Visiting faculty were not meant to be renewed annually so there was no promotion process in the Handbook. Technically, those positions end each year and then faculty have been rehired. Currently, departments could hire visiting teaching faculty at different ranks.
 - Question: Why have there been some NTTTs who have been here for 20 years?
ANSWER: This is a base funding issue. Teaching faculty (formerly NTTRs) are included in base funding. When money is not available in base funding for a position, a variety of funds can be pulled together for visiting teaching faculty (formerly NTTT) positions.
 - Background from Teaching Faculty Proposal Subcommittee member: There was an idea to recommend converting NTTT positions to NTTR after a certain period of time but NTTR positions require searches – A faculty member in an NTTT position could not have simply been reclassified as NTTR. Those NTTT faculty would have needed to reapply for an NTTR position.
8. Discussion item: 3.2.3 RPT policy update as schools merge
- Postponed to next agenda.
9. Discussion items: 3.2.15 Candidate Clarification during RPT Process

- Postponed to next agenda.
10. New Business
- None at this time.
11. Adjournment (4:32pm)

Submitted,
M. Providenti, Secretary

Proposal to update 3.2.3 to accommodate new school configurations

3.2.3. Departmental/School Committee

Each department or school, or in the case of School of the Arts (SOTA), program, shall have a reappointment, promotion, and tenure (hereinafter, RPT) committee consisting of at least five tenured faculty members elected at a regular or special department or school faculty meeting. If necessary, a separate committee may be formed to consider promotion to Professor. Each department or school, or, in the case of SOTA, program, committee must have the same membership in a given year, with the exception of additional external members (see Section 3.2.4). Additionally, for promotion committees, these five faculty members must be at least one rank above the level of the applicants.

New proposed language

3.2.3. Departmental/School Committee

*Each department, school, or program (in the case of schools with multiple programs desiring and able to create separate committees) shall have a reappointment, promotion, and tenure (RPT) committee consisting of at least five (5) tenured faculty members elected at a regular or special department or school faculty meeting. ~~These five (5) faculty~~ All committee members must be at least one rank above the level of the applicant. Therefore, if all members of the committee are not at the rank of Professor, a separate Professor RPT committee shall be formed to consider candidates applying for promotion to Professor. Each RPT committee must have the same membership in a given year, with the exception of additional external members (see Section 3.2.4) and additional NKU faculty relating to the **candidate's** discipline (see below, this section).*

Research Misconduct Policy required updates

Hi PCC Members,

We need a vote on September 19th to approve 3 federally mandated updates to our research misconduct policy (see below). I am asking us to vote on this and later to review and update our entire research misconduct policy. Updating these three issues is not our consent that our research misconduct policy is good, it is simply that without approving these issues, all our federal funding could be in jeopardy. Also, to be clear, I don't have any issue with the updates put forward by our Office of Research, Grants and Contracts; however, I want to acknowledge that we have work to do to revise the overarching policy.

Please talk to your schools and/or departments and let me know if there are any issues with the changes below. If there are any specific questions, please contact Anita Southwick or Craig Holloman in RGC. Thanks, Holly

Issue 1

Comment from ORI:

The institutional policies and procedures do not address/discuss the institution's reasonable and practical efforts to take custody of additional research records and evidence that is discovered during the course of a research misconduct proceeding in compliance with §93.305(c).

Response:

Added this wording to the policy:

On or before the date on which the respondent is notified, or the inquiry begins, whichever is earlier, taking all reasonable and practical steps to obtain custody of all research records and evidence needed to conduct the research misconduct proceeding, inventorying the records and evidence and sequestering 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 the instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.

Issue 2

Comment from ORI:

The institutional policies and procedures are not consistent with this provision because there are elements of this provision that have been omitted or not satisfied. Unchecked boxes below indicate elements of this provision that have been omitted or not satisfied.

Allegation falls within the definition of research misconduct under 42 C.F.R. Part 93

Allegation is within Sec. 93.102, and

Allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

Response:

Added this wording to the policy:

An inquiry is warranted if the allegation:

- Falls within the definition of research misconduct
- Is within Sec. 93.102, and
- Is sufficiently credible and specific so that potential evidence of research misconduct may be identified

Issue 3

Comment from ORI:

The institutional policies and procedures do not address/discuss appropriate interim institutional actions to protect public health, Federal funds and equipment, and the integrity of the PHS-supported research process in compliance §93.304(h).

Response:

Added this wording to the policy:

“Throughout the research misconduct proceeding, the Dean (or designee) or Provost will review the situation to determine if there is any threat of harm to public health, federal funds and equipment, or the integrity of the PHS supported research process. In the event of such a threat, will, in consultation with other institutional officials and ORI, take appropriate interim action to protect against any such threat. Interim action might include additional monitoring of the research process and the handling of federal funds and equipment, reassignment of personnel or of the responsibility for the handling of federal funds and equipment, additional review of research data and results or delaying publication. The Dean (or designee) or Provost shall, at any time during a research misconduct proceeding, notify ORI immediately if he/she has reason to believe that any of the following conditions exist:

- Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;
- HHS resources or interests are threatened;

- Research activities should be suspended;
- There is a reasonable indication of possible violations of civil or criminal law;
- Federal action is required to protect the interests of those involved in the research misconduct proceeding;
- The research misconduct proceeding may be made public prematurely and HHS action may be necessary to safeguard evidence and protect the rights of those involved; or
- The research community or public should be informed

RESEARCH MISCONDUCT

POLICY NUMBER: HYB-RESMISCONDUCT

POLICY TYPE: HYBRID

RESPONSIBLE OFFICIAL TITLE: PROVOST & EXEC. VICE PRESID. FOR ACADEMIC AFFAIRS

RESPONSIBLE OFFICE: VICE PROVOST, GRADUATE EDUCATION, RESEARCH, & OUTREACH

EFFECTIVE DATE: UPON BOARD APPROVAL – 5/13/2020

NEXT REVIEW DATE: ~~BOARD APPROVAL~~PREVIOUS REVIEW PLUS FIVE (5) YEARS =
XX/20295/13/2025

UPDATES POLICY: FACULTY HANDBOOK SECTION 16.7, SCIENTIFIC/RESEARCH MISCONDUCT

BD. OF REGENTS REPORTING: PRES. RECOMMENDATION (CONSENT AGENDA/VOTING ITEM)

I. 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. This policy allows 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 IV below, is not condoned at Northern Kentucky University (NKU) 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 those engaged in federally sponsored research or submitting work to a federal agency.

II. ENTITIES AFFECTED

All faculty and staff engaged in research at Northern Kentucky University.

This policy has been adapted from Section 16.7 “Scientific/Research Misconduct” of the [Faculty Handbook](#).

NOTE: If the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding does not report through the Dean/Provost channel, then in the processes and procedures described throughout this policy, the appropriate supervisor (or designee) and appropriate Vice President shall be involved rather than the Dean and the Provost.

III. AUTHORITY

Public Health Services Policies on Research Misconduct, Department of Health and Human Services, Title 42 Code of Federal Regulations (CFR) Part 93 ([42 CFR Part 93](#))

IV. DEFINITIONS

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

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 their 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.

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

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

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 differences 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.

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.

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

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.

V. CONFIDENTIALITY

All parties involved in the inquiry and investigation shall strive to maintain confidentiality of the following, which may be identified from research records or evidence:

- information
- respondents
- complainants, and
- research subjects.

VI. INTERIM ADMINISTRATIVE ACTION

Throughout the research misconduct proceeding, the Dean (or designee) or Provost will review the situation to determine if there is any threat of harm to public health, federal funds and equipment, or the integrity of the Public Health Services (PHS)-supported research process. And in the event of such a threat, will, in consultation with other institutional officials and the Office of Research Integrity (ORI), take appropriate interim action to protect against any such threat. Interim action might include additional monitoring of the research process and the handling of federal funds and equipment, reassignment of personnel or of the responsibility for the handling of federal funds and equipment, additional review of research data and results or delaying publication. The Dean (or designee) or Provost shall, at any time during a research misconduct proceeding, notify ORI immediately if there is reason to believe that any of the following conditions exist:

- Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;
- Department of Health and Human Services (HHS) resources or interests are threatened;
- Research activities should be suspended;
- There is a reasonable indication of possible violations of civil or criminal law;
- Federal action is required to protect the interests of those involved in the research misconduct proceeding;
- The research misconduct proceeding may be made public prematurely and HHS action may be necessary to safeguard evidence and protect the rights of those involved; or
- The research community or public should be informed.

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.

VII. 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.

VIII. STATUTE OF LIMITATION

NKU will only investigate research misconduct that has occurred within six (6) 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.

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

X. ABSENCE OF THE RESPONDENT OF THE ALLEGATION

Should the respondent leave NKU before the case is resolved, the Dean (or supervisor if the respondent does not report to a 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.

XI. 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.

As stated in Section II above, if the individual does not report through the Dean/Provost channel, then the appropriate supervisor (or designee) and appropriate Vice President shall be involved rather than the Dean and Provost.

XII. 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 University policy (see NOTE in Section II above).

XIII. PROCEDURES

A. 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 (or other supervisor if the individual does not report to a Dean) for preliminary inquiry. The Provost (or other Vice President if the individual does not report to a Dean) may receive reports of research misconduct in situations where the appropriate Dean or supervisor 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.

B. 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. An inquiry is warranted if the allegation:

- Falls within the definition of research misconduct
- Is within 42 CFR Part 93.102, and
- Is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

The preliminary inquiry will be conducted by the Dean of the college in which the respondent faculty or staff member is appointed.

As stated in Section II above, if the respondent does not report through the Dean/Provost channel, then the appropriate supervisor (or designee) and appropriate Vice President shall be involved rather than the Dean and Provost.

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. 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, a professional or personal relationship or antagonism, financial ties, or contact regarding possible employment with either the accused or the complainant (see Section IX Conflict of Interest above).

On or before the date on which the respondent is notified, or the inquiry begins, whichever is earlier, taking all reasonable and practical steps to obtain custody of all research records and evidence needed to conduct the research misconduct proceeding, inventorying the records and evidence and sequestering 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 the instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.

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 indicate 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, 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/directors of any departments/schools 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.

As described in Section XII False Accusations above, 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 University policy.

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.

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C. 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 their right to be represented by an attorney in preparing and/or giving their 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 (or supervisor, if the respondent does not report to a 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 ensure 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 ensure 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 (or supervisor) shall document the rationale for selecting committee 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 accused, 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 one hundred twenty (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 (or appropriate Vice President), 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 (or appropriate Vice President) and be included in the investigation record. Exception: 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:

- 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.

D. INQUIRY REPORT AND INVESTIGATION DETERMINATION

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 (or supervisor, if the respondent does not report to a Dean), who shall provide a copy to the respondents of the investigation, the provost, legal counsel, and chair(s)/director(s) of the affected department(s)/school(s). The Dean (or supervisor) shall ensure that publishers and editors of journals are informed if manuscripts emanating from fraudulent research have been submitted or published.

E. INVESTIGATION REPORT

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 and retraction;
 - e) Identification of the person(s) responsible for the misconduct;
 - 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 the results of all interviews and the transcripts or recordings of such interviews.

XIV. 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. As stated in Section II above,

if the individual does not report through the Dean/Provost channel, then the appropriate supervisor (or designee) and appropriate Vice President shall be involved rather than the Dean/Provost.

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.

XV. DISCIPLINARY ACTION

If the findings of the investigation substantiate allegations of research misconduct, the Provost (or appropriate Vice President), in consultation with legal counsel, shall determine appropriate administrative action, consistent with University policy.

XVI. APPEAL

The respondent 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.

As stated in Section II above, if the individual does not report through the Dean/Provost channel, then the appropriate Vice President shall be involved rather than the Provost.

REVISION HISTORY

REVISION TYPE	MONTH/YEAR APPROVED
<u>Additions to sections VI and XIII(B) per PHS audit</u>	<u>XX, 2024</u>
Formatting and minor edits to adapt Faculty Handbook section 16.7 to University-wide policy	June 29, 2021
Faculty Handbook section 16.7 “Scientific/Research Misconduct” revision	May 13, 2020

RESEARCH MISCONDUCT

PRESIDENTIAL APPROVAL

PRESIDENT

Signature

Date

Cady Short-Thompson

BOARD OF REGENTS APPROVAL

BOARD OF REGENTS (IF FORWARDED BY PRESIDENT)

- This policy was forwarded to the Board of Regents on the **Presidential Report (information only)**.
Date of Board of Regents meeting at which this policy was reported: ____/____/____.
- This policy was forwarded to the Board of Regents as a **Presidential Recommendation (consent agenda/voting item)**.
 - The Board of Regents approved this policy on ____/____/____.
(Attach a copy of Board of Regents meeting minutes showing approval of policy.)
 - The Board of Regents rejected this policy on ____/____/____.
(Attach a copy of Board of Regents meeting minutes showing rejection of policy.)

SECRETARY TO THE BOARD OF REGENTS

Signature

Date

Tammy Knochelmann

3.2.15 Candidate Clarification during RPT process

If a candidate does not wish to request a reconsideration of a negative recommendation by a previous level but does want to point out an error or oversight or clarify an issue brought up in a letter at the preceding level, the candidate may submit a response within the first 3 business days of receiving the letter. The response will be added to the file for consideration by the subsequent levels.

14. GRIEVANCES

14.1. DEFINITION

A grievance is an allegation that existing University policies, rules, regulations, practices, and/or procedures have been violated, misinterpreted, and/or improperly applied. For the purposes of this Handbook, there are two categories of grievances:

- ~~Major~~ issues concerning a faculty member's professional appointment that are heard by the peer review committees (Section 14.2 below), and
- All others (see Section 14.3 below, Complaint Process)

14.2.1. MATTERS SUBJECT TO PEER REVIEW

Only the following matters, all of which affect a faculty member's professional employment at the University, may be appealed to or heard by the Peer Review Process:

- Negative recommendation from the provost on an application for~~Denial of~~ reappointment, promotion or tenure; candidates receiving a negative recommendation from any previous level are to follow the guidelines set forth in Section 3.2.14 for formal reconsideration
- Cases involving alleged illegal discrimination, except for cases of alleged sexual discrimination which are covered in Section 16.8, Sexual Harassment/Gender Discrimination, of this Handbook;
- Cases involving alleged violation of professional ethics and responsibilities, as set forth in Section 16.32, Professional Ethics and Responsibilities, in this Handbook;
- Termination for medical reasons, as set forth in Section 10.5, Termination for Medical Reasons, in this Handbook;
- Program reduction and faculty reassignment, as set forth in Section 10.6 in this Handbook;
- Termination for cause, as set forth in Section 10.8, Termination For Cause, in this Handbook; and
- Cases involving disagreement with a post-tenure review development plan, as set forth in Section 9.6.4 in this Handbook.

The Peer Review Process will deal with appeals and grievances of matters listed above only for persons who receive a faculty contract; no person who receives an administrative contract (e.g. director, dean, associate provost, vice president) may utilize the Peer Review Process. Section 14.3, Complaint Process, applies to all other complaints, grievances, and appeals by faculty members.