

CALIFORNIA STATE UNIVERSITY, BAKERSFIELD
ACADEMIC SENATE

Policy on the Disposition of Allegations of Research Misconduct

RES 161702

FAC

RESOLVED: That the Academic Senate of CSU, Bakersfield recommends to the President the approval of the attached policy on “Disposition of Allegations of Research Misconduct” and that the appropriate procedures to implement this policy be established.

RATIONALE: Major Federal funding agencies (NIH, CDC, NSF, etc.) require that institutions receiving grant and contract funds have such policy in place.

Distribution:

Office of Grants, Research, and Sponsored Programs
Wide-distribution to the campus community including to the
Department Chairs Leadership Council

Approved by the Academic Senate on October 27, 2016
Sent to the President for approval on November 2, 2016
Approved by the President on November 29, 2016



Policy on the Disposition of Allegations of Research Misconduct

[This document contains substantial word-for-word excerpts of materials from sources cited in References (Section II)]

I. Purpose

The purpose of this policy is to ensure that all research and/or scholarly activity conducted under the auspices of California State University Bakersfield (CSUB) (including the CSUB Auxiliary for Sponsored Programs Administration and the CSUB Foundation), adhere to the highest attainable ethical and moral standards, and comply with federal and other government (local and state) regulations, and guidelines required by external sponsors, governing the disposition of Allegations of Research Misconduct.

II. References

1. Federal government regulations (42 CFR Part 93 (PHS: Public Health Service) and 45 CFR 689 (NSF: National Science Foundation)) and the California State University Office of the Chancellor (ICSUAM 11000.01 §2.2) require that each campus conducting research, instruction, and/or other sponsored work under grants, and other agreements with the Federal government must comply with the specific guidelines required by the external sponsor of a project with regard to the disposition of Allegations of Research Misconduct and related matters, as applicable.
2. Other government (local and state) regulations and/or sponsor guidelines may require that each campus conducting research, instruction, and/or other sponsored work under grants, and other agreements with non-Federal governments and/or other external sponsors must comply with the specific guidelines required by the external sponsor of a project with regard to the disposition of Allegations of Research Misconduct and related matters, as applicable.

3. Research misconduct policies at the City University of New York (2015), Boston University (2012), and California State University, Fresno, were used as references in the formulation of this policy.

III. Terms and Definitions

1. *Allegation* means a disclosure of possible Research Misconduct through any means of communication. The disclosure may be by written or oral statement or other communication.
2. *Auxiliary for Sponsored Program Administration* means the CSUB Auxiliary for Sponsored Program Administration.
3. *Complainant* means a person who makes an Allegation of Research Misconduct.
4. *Evidence* means any document, tangible item, or testimony offered or obtained during a Research Misconduct Proceeding that tends to prove or disprove the existence of an alleged fact.
5. *Fabrication* means making up data or results and recording or reporting them.
6. *Falsification* means 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.
7. *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 policy. A committee member does not act in good faith if her/his 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.
8. *Inquiry* means preliminary information-gathering and preliminary fact-finding to determine whether an Allegation has substance and if an Investigation is warranted. An Investigation must be undertaken if an Inquiry determines an Allegation has substance.

9. *Inquiry Committee* means the committee consisting of two or more members of the faculty, together with such technical, administrative, or other staff as may be deemed appropriate, who are appointed by the Provost to conduct the Inquiry of an Allegation.

10. *Investigation* means the formal development, examination, and evaluation of a factual record to determine whether Research Misconduct has taken place, to assess its extent and consequences, and to evaluate appropriate action.

11. *Investigation Committee* means the committee consisting of at least three members of University tenured faculty at any School actively involved in research in the same field or related field as the Respondent, who are appointed by the Provost, in consultation with the Research Council of the University (RCU), to investigate charges of Research Misconduct against faculty, staff, post-doctoral associates, and/or students. A member of the University confidential staff may be assigned to the committee.

12. *Legal Affairs Designee* means the individual at the University designated by the President to deal with legal issues at the University in conjunction with the CSU Office of the General Counsel.

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

14. *Policy* means this Policy regarding the Disposition of Allegations of Research Misconduct.

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

16. *Research Integrity Officer* ("RIO") means the official designated by the Provost to be responsible for receiving Allegations of Research Misconduct, determining whether such Allegations warrant Inquiries, supporting the Inquiry Committee, receiving the Inquiry reports, recommending to the Provost whether or not Investigations are warranted, and assisting in the investigations by the Investigation Committee. The RIO must be an administrator or tenured faculty member of the University with experience in research, and will be provided appropriate training to carry out his or her responsibilities under this Policy.

17. *Research Misconduct* means Fabrication, Falsification, or Plagiarism in proposing or performing research, reviewing research, or in reporting research results when these acts involve a person who, at the time of the alleged misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with CSUB. Research Misconduct does not include honest error or differences of opinion. A finding of Research Misconduct made under this Policy requires that: (a) there be a significant departure from accepted practices of the relevant research community; (b) the misconduct be committed intentionally, knowingly, or recklessly; and (c) the Allegation be proven by a Preponderance of the Evidence.

18. *Research Misconduct Proceeding* means any action related to alleged Research Misconduct taken under this Policy, including but not limited to, determinations of whether or not an Inquiry is warranted, Inquiries, Investigations, and regulatory agency or research sponsor oversight reviews, hearings, and administrative appeals.

19. *Research Record* means the record of data or results that embody the facts resulting from a research 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 in the course of a Research Misconduct Proceeding.

20. *Respondent* means the person against whom an Allegation of Research Misconduct is directed or who is the subject of a Research Misconduct Proceeding.

21. *Retaliation* means an adverse action taken against a Complainant, witness, or other participant in a Research Misconduct Proceeding in response to (a) a good faith Allegation of Research Misconduct, or (b) good faith cooperation with a Research Misconduct Proceeding.

22. *School* means an educational unit of the University, including all research centers and institutes.

23. *University* means the California State University, Bakersfield (CSUB), including the CSUB Auxiliary for Sponsored Program Administration, and the CSUB Foundation.

IV. Statement of Policy

It is the policy of the California State University, Bakersfield, that all research and/or scholarly activity conducted by members of the University community adhere to the highest attainable ethical and moral standards, and comply with federal and other government regulations, and guidelines required by external sponsors, governing the disposition of Allegations of Research Misconduct.

V. Statement of Requirements

- A. **Accountability:** The administration, faculty, students, and staff of the University share responsibility for promoting and preserving the integrity of research and scholarly activity, and for holding members of the University community accountable to this policy. Such accountability requires that there be appropriate University procedures by which allegations of misconduct in research and scholarly activity may be fairly and thoroughly examined to expose and correct misconduct, and to protect the researcher,

scholar, and other members of the University community against false charges. It also requires that such procedures contain appropriate measures to protect from reprisal those individuals who, in good faith, wish to bring forward evidence of improper conduct, ensuring that all allegations of research misconduct will be reviewed fairly and accurately, and ensuring that scholarship and research performed under the auspices of CSUB meet the standards of academic integrity and truth expected by the academic community.

- B. **Applicability:** This Policy establishes the procedures to be followed by the University in responding to any Allegation that University faculty, staff, post-doctoral associates, and/or students, whether paid by the University or through other funding sources, may have engaged in Research Misconduct. It will be used, at the discretion of the Provost, in consultation with the chair of the CSUB Academic Senate and the RIO, to respond to any Allegation of Research Misconduct. It applies to all research and scholarly activity conducted by University faculty, staff, post-doctoral associates, and/or students, regardless of the academic discipline of the researcher or the sponsorship or source of support for the research. This Policy does not supersede or establish an alternative to any existing University or governmental regulations, procedures, or policies regarding fiscal improprieties, conflicts of interest, ethical treatment of human or animal subjects, or criminal matters, all of which remain in effect.

This policy, and the procedures established pursuant to it, do not apply to (a) authorship or credit disputes; (b) conduct which deviates from institutional or governmental standards to protect the safety and well-being of human subjects, animals, or the laboratory work environment; (c) scholarship or research performed by a student for academic credit while not working on a project funded by an external research sponsor and not otherwise engaged to perform services for the University; or (d) misuse of funds dedicated to support research or scholarship.

- C. **Public Health Service (PHS) Requirements:** When the procedures established through this policy are being used to carry out CSUB's responsibilities under the PHS regulations, they apply only in the following situations:

- (1) PHS-supported biomedical or behavioral research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information;
- (2) applications or proposals for PHS support for biomedical or behavioral research, research training or activities related to that research or research training; or
- (3) plagiarism of research records produced in the course of PHS-supported research, research training, or activities related to that research or research training. This includes any research proposed, performed, reviewed, or reported, or any

research record generated from that research, regardless of whether an application or proposal for PHS funds resulted in a grant, contract, cooperative agreement, or other form of PHS support.

Further, these procedures apply only to Research Misconduct alleged to have occurred within six (6) years of the date CSUB receives an allegation, except to the extent the respondent continues or renews any incident of alleged research misconduct that occurred before the six-year limitation (for example, through citation, republication or reuse of the research record), or if it is determined that the alleged misconduct could have a substantial adverse effect on the health or safety of the public.

- D. **Responsibility to Report Misconduct:** All members of the CSUB community have the responsibility to report observed, suspected, or apparent research misconduct to the RIO. Any other University official who receives an allegation of research misconduct must report it immediately to the RIO. Reports may be made to the RIO by telephone, electronic means, writing in hard-copy, or in-person meeting.

Individuals from outside the University (including other scientists, journal editors, or research subjects) should also report to the RIO any allegations of research misconduct involving persons employed by or affiliated with CSUB.

- E. **Prohibition of Retaliation for Reporting in Good Faith:** Allegations should not be made capriciously, but evidence of misconduct should not be ignored. An individual with information indicating misconduct in scholarship or research should be able to report in good faith such allegations without retribution. This policy prohibits retaliation by the University or one of its members against a complainant because of his or her good faith reporting of an allegation or involvement in an inquiry or investigation. Members of the CSUB community should immediately report any alleged or apparent retaliation to the RIO. Conversely, an individual who makes an allegation that is not in good faith may be referred to the Provost for administrative action.
- F. **Confidentiality:** Because of the potential jeopardy to the reputation of the individual(s) against whom allegations of misconduct have been made, the reporting of allegations and the following procedures for investigating them should be handled with care to avoid unnecessary disclosure of the identity of respondents, complainants, and research subjects to the maximum extent consistent with the obligations of the University to the academic and scientific community and to any sponsors and external institutions that have provided support for the research.
- G. **Disclosure of Complainant's Identity:** The RIO may disclose the identity of the complainant to the respondent *if* such disclosure is necessary in order for the respondent to be able to defend him- or herself against the charges. Therefore, if a

potential complainant wishes to have confidential discussions and consultations about concerns of possible misconduct with an assurance of complete confidentiality, he/she is encouraged to speak with the University Ombudsperson, who does not act as an agent for the University and who can provide confidential informal advice to the potential complainant about options for reporting. All contacts, records and communication with University Ombudsperson are confidential within State laws and CSU policies. See <http://www.csub.edu/counselingcenter/ombudsman/> .

- H. **Cooperation with Research Misconduct Proceedings:** Members of the CSUB community will cooperate with the RIO and other institutional officials in the review of allegations and in the conduct of Inquiries and Investigations. Institutional members, including respondents, have an obligation to provide evidence relevant to Research Misconduct Allegations to the RIO or other institutional officials.
- I. **Interim Administrative Actions and Notifications:** Throughout the research misconduct proceeding, the RIO will review the situation to determine if there is any threat of harm to public health, funds and equipment, or the integrity of the research process. In the event of such a threat, the RIO will, in consultation with the Provost, other institutional officials, and the appropriate funding agency, take appropriate interim action to protect against any such threat. Interim action might include additional monitoring of the research process and the handling of funds and equipment, reassignment of personnel or of the responsibility for the handling of funds and equipment, additional review of research data and results or delaying publication. The RIO in consultation with the Provost shall, at any time during a research misconduct proceeding, notify the appropriate funding agency immediately if he/she has reason to believe that:
- Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;
 - Funding agency resources or interests are threatened;
 - Research activities should be suspended;
 - There is a reasonable indication of possible violations of civil or criminal law;
 - Funding agency 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 agency action may be necessary to safeguard evidence and protect the rights of those involved;
- or
- The research community or public should be informed.

Otherwise, notification of relevant federal agency (or agencies) will be made upon completion of an Inquiry, if (a) the Allegation involves Federally funded research (or an application for Federal funding) and (b) meets the Federal definition of research misconduct, as stated in Section III (17) of this Policy.

- J. **Restoration of the Respondent's Reputation:** If at the end of an investigation, misconduct has not been found, any necessary efforts will be made by the RIO or the Provost, as appropriate, to restore the reputations of individual(s) alleged to have engaged in misconduct.

- K. **Determination of Personnel Action:** If at the end of an investigation, misconduct has been found, the Provost in consultation with the University's Legal Affairs Designee, will make a determination of appropriate personnel action to be taken. Appropriate personnel action, including discipline, is governed by California law, university policies, and applicable collective bargaining agreements.

VI. Statement of Procedures

In implementing the processes and procedures established pursuant to this policy, the University and each review committee shall maintain a clear distinction between Inquiry and Investigation: An Inquiry is intended to be a preliminary process leading to a decision that there are, or are not, sufficient grounds to conduct an Investigation. An Investigation is the process that may result in a finding of misconduct.

Consistent with the provisions of this Policy, CSUB's procedure for responding to Allegations of Research Misconduct will consist of at least three distinct phases:

1. **Allegation.** When an Allegation is received, the RIO assesses whether the allegation falls under the definition of Research Misconduct and is sufficiently credible and specific so that potential evidence of research misconduct may be identified. If these criteria are met, the Provost will establish and charge an Inquiry Committee. The RIO will oversee the sequestration of original documents and materials if necessary to protect the integrity of the proceedings.

2. **Inquiry.** The Inquiry Committee determines whether the Allegation of misconduct provides a sufficient basis to warrant conducting an Investigation. The outcome of an Inquiry is not a finding of guilt, but is a finding that the grounds to proceed to an investigation are either present or absent. The Inquiry Committee will submit a written report of its findings to the RIO, as specified in the University's *Procedure for the Disposition of Allegations of Research Misconduct*.

3. **Investigation.** An Investigation is a more exhaustive review of the Allegation: the outcome of an Investigation may be a finding by the University that a researcher is guilty of misconduct and that sanctions are in order, or that a researcher is not guilty of misconduct. If the outcome of an Inquiry is a determination that there is a basis for an Investigation, the Provost will

establish and charge an Investigation Committee, and the sponsors of research will be notified about the investigation, as appropriate (45 CFR 689.4 requires immediate notification, while 42 CFR 93.309 requires notification within 30 days).

Upon completion of the investigation, the Investigation Committee will submit a written report of its findings to the Provost, as specified in the University's *Procedure for the Disposition of Allegations of Research Misconduct*.

The Provost, in consultation with the RIO and other University officials, will take appropriate action to respond to and dispose of the Allegation of Research Misconduct, in accordance with applicable collective bargaining agreements, CSU and governmental regulations, and other external funding agency agreements. Records of all Research Misconduct Proceedings shall be maintained by the RIO for at least seven years.

Detailed information on the procedure for responding to Allegations of Research Misconduct is available in a separate document, *Procedure for the Disposition of Allegations of Research Misconduct*, and on the GRaSP website.