

POLICY FOR DEALING WITH AND REPORTING POSSIBLE MISCONDUCT IN RESEARCH

I. Basic Policy

- A. This policy statement and the rules and regulations it promulgates are intended to comply with the Code of Federal Regulations at 42 CFR Part 50. Each institution which receives or applies for a research, research-training, or research-related grant or cooperative agreement under the Public Health Service Act must submit an annual assurance certifying that the institution has established administrative policies as required by the Final Rule (42 CFR Part 50, Subpart A), and that it will comply with those policies and the requirements of the final Rule as published in the Federal Register at 54 FR 32446, August 8, 1989.
- B. Definition of Misconduct

"Misconduct" or "Misconduct in Research" means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic community for proposing, conducting or reporting research. It also includes violation of the University's Financial Conflict of Interest Policy as detailed in Faculty Policy Series #33a (1996). It does not include honest error or honest differences in interpretations or judgments of data.

II. The Commencement of Disciplinary Proceedings

- A. Disciplinary action shall be governed by the procedures established in this Faculty Policy.
- B. Proceedings for disciplinary action shall be initiated only by a statement in writing from the President and the Provost, which shall state:
 - 1. the information, facts or allegations in the possession of the President or Provost, which, if true, could constitute possible misconduct in research;
 - 2. which facts and allegations on which the President or Provost relies are grounds for disciplinary action;
 - 3. that the University proposes to refer the matter to a committee pursuant to this Faculty Policy.
- C. Except as otherwise provided, the statement described in II-B, and all other information relating to the charge of misconduct, shall be held confidential by the

President's and the Provost's office. Nothing herein shall prohibit the communication of its contents to a person consulted for legal advice by the parties involved.

- D. The statement required by II-B shall be sent to the person (faculty member or administrator) who is the subject of possible disciplinary action for misconduct in research, together with a copy of this Faculty Policy, as it may be amended from time to time, and any other notices or information required to be sent to the person charged.
- E. The President or the Provost, acting on behalf of the President, shall discuss the matter of potential disciplinary action with the person charged in a personal conference.

The President or Provost may, and upon the request of the person charged shall, provide the person with information concerning the charges contained in the II-B letter, including sources of information, so as to enable the person to respond to the charges and to make an informed decision as to the person's course of action. The President and the person charged may each select an additional person to be present at the conference. The matter may be terminated by mutual consent of the President and the person charged at this stage (or at any stage of the proceeding) subject to the conditions agreed to by the person charged and the University. At the faculty member's request, notice of such termination will be transmitted to the Board of Trustees.

- F. In the event there is no agreement to conclude the matter and the University believes that further proceedings are warranted, the President or the Provost, as the case may be, shall proceed in accordance with the provisions of II-G.
- G. The President or the Provost, acting on behalf of the President, will forward to the Speaker of the Faculty, to the Chair of the University Senate Executive Committee, to the Chair of the Senate Grievance Committee, and to the Chair of the Faculty Affairs Committee and to the person charged:
 - 1. a copy of the statement required by II-B; and
 - 2. Any additional statement or information which modifies the content of the II-B statement.

III. The Operation of the Senate Grievance Committee

- A. The first duty of the Senate Grievance Committee will be to seek informally a resolution of the matter agreeable to the person charged and the University. If this cannot be accomplished expeditiously, the committee will so advise the President.

- B. Upon being so advised, the President shall, within five business days after receiving the notice from the Senate Grievance Committee under III-A, provide both the person charged and the Committee with a written specification of the charges, together with copies of all evidentiary documents, including witnesses' statements and summaries of statements in the President's possession. Reference will be made to appropriate statutes, policies, bylaws, laws, ordinances, or other rules or regulations and standards which the President alleges were violated. The President also will provide, in writing, a statement of the action the President contemplates taking in the event the charges are sustained, subject to modification upon receipt of the Committee's report.
- C. Within five business days of receiving the charges and specifications under III-B, the Committee shall set a date and time for a formal hearing. The Committee shall serve written notice of the time and place of the formal hearing simultaneously on the person charged and on the University at least twenty (20) days prior to the scheduled hearing date unless a lesser time is agreed to in writing by the President and person charged. In setting the date for the hearing, the committee shall afford the person charged sufficient and reasonable time to prepare a defense. Prior to the formal hearings and insofar as it is possible, the Committee will determine the schedule, agenda and rules (consistent with the provisions of this Faculty Policy) which will govern its proceedings.
- D. The person charged also will be advised by the Committee in writing, accompanying the notice of hearing, of the following rights: to address the Committee; to present evidence; to examine and cross-examine witnesses; and to be represented by legal counsel, at his or her own expense, or an academic adviser or consultant. The Committee also will inform the person charged and the President in writing of the schedule, agenda and rules. The faculty member shall inform the committee in writing within ten business days of receiving the notice of hearing whether she or he wishes to appear and address the Committee. Appearance before the Committee is the person's unqualified right, and he or she also has the right to respond in writing to the President's allegations prior to the date of the formal hearing. The President may designate a representative to present the evidence concerning the charges to the Committee.
- E. The decision whether all or part of the hearings will be private and confidential or whether they will be open to other members of the University community will be made by the Committee after consultation with the person charged and with the President. In making its determination as to whether or not the proceedings shall be open, in the absence of good cause, the Committee ordinarily should honor the preference of the individual who is the subject of the proceeding. Nothing herein shall preclude the Committee from limiting attendance or closing the hearing in the interest of maintaining good order.
- F. The Committee shall have full access to all information in the University's possession or control pertaining to the case under consideration. In an expeditious

manner, the Committee will attempt to augment and refine its understanding of the factual basis of the case. The Committee may question witnesses and will, if necessary, secure relevant evidence.

The person charged shall have the procedural rights set forth in the 1940 Statement of Principles of Academic Freedom and Tenure, as amended, and shall have the aid of the Committee, when needed, in securing the attendance of witnesses and obtaining evidence.

The person charged or his or her representative and the President or the representative of the President shall have the right, within reasonable limits as determined by the Committee, to question all witnesses who testify orally. The person charged ordinarily shall have the opportunity to confront personally all witnesses, but where the Committee determines there are unusual and compelling reasons to withhold this right or in cases in which the witness(es) cannot appear, the Committee may receive written statements from witnesses, but the identity of the witnesses and their statements shall be disclosed to the person charged. He or she or his/her representative has the right to present his or her position orally or in writing. The Committee is not bound by the rules of evidence but may receive and consider any probative evidence and shall be the sole judge of the weight to be given the evidence.

- G. Every person shall be presumed innocent of the charges against him or her and shall be presumed capable of fulfilling his or her professional obligations properly unless and until the contrary is established by clear and convincing evidence based on the record as a whole.
- H. Upon his or her request, the person charged shall be provided with a tape recording or other verbatim record of the proceedings (exclusive of deliberations) at the end of each day and a copy of every document received or offered in evidence at the time it is offered in evidence.

IV. Recommendations and Findings; Action

- A. Before commencing its deliberations after the hearing, the Committee shall afford both the person charged or his or her counsel and the representative of the President an opportunity to present oral argument. The parties may submit written argument in lieu of, or in addition to, oral argument and the Committee may request the submission of written argument.
- B. The Committee shall deliberate in closed session and make its findings and recommendations solely on the evidence adduced at the hearing.
- C. If additional material, facts or expert opinions become available after the conclusion of the hearing and prior to the time the Committee has sent its written findings and recommendation, the Committee chair shall be advised of the

availability of such evidence and the chair shall so advise the Committee. The Committee may determine to proceed with its deliberations without receiving or considering the additional evidence or to reconvene the hearing to receive and consider the additional evidence subject to the same conditions and requirements applicable to the hearing when originally convened.

- D. On each of the written specifications required by III-B the Committee shall make specific written findings and recommendations which the President will transmit to the Board of Trustees. A statement of reasons also will be provided. The Committee will hold in confidence its deliberations, the recommendation and the statement of reasons.
- E. The Committee will make its recommendation in a timely manner, allowing the President and the Board to fulfill their responsibilities to all members of the University community, including the individual under consideration. The committee shall make a full report and recommendation which the President will transmit to the Board and to the person charged.
- F. If the Committee concludes that the burden for establishing adequate cause for disciplinary action has not been sustained, it will recommend that no disciplinary action be taken. The President will transmit the recommendations to the Board and to the person charged.
- G. If the Committee finds that the burden for establishing adequate cause for disciplinary action has been sustained, it shall recommend to the Board with notice to the President:
 - 1. That the person charged be dismissed from University service;
or
 - 2. that the person charged be suspended from University service without compensation, but subject to future review, modification, or rescission as future circumstances warrant;
or
 - 3. that the person charged be suspended from University service with compensation, but subject to review, modification, or rescission, as future circumstances warrant;
or
 - 4. that the person charged be assigned to other professional duties;
or

5. that some lesser action specified by Committee is warranted;

or

6. that a decision on disciplinary action be delayed until additional factual material or expert opinion is received, specifying the nature of the additional material;

or

7. that no disciplinary action be taken.

H. Acceptance of the faculty hearing Committee's decision would normally be expected. If the Board chooses to review the case, its review should be based on the record of the previous hearing, accompanied by opportunity for arguments, oral or written or both, by the principals at the hearing or their representatives. The decision of the Committee should either be sustained or the proceeding be returned to the Committee with objections specified. In such a case the Committee should reconsider, taking account of the stated objections and receiving new evidence if necessary. It should frame its decision and communicate it in a timely manner to the Board, the President and the person charged. Only after study of the Committee's reconsideration should the Board of Trustees make a final decision overruling the Committee. In no event shall action taken against the person charged involve a penalty greater than the President contemplated imposing as stated in the specifications required by III.B.

V. Resignation by Person Charged

After the commencement of disciplinary proceedings pursuant to II of this Faculty Policy, an individual's resignation of his position shall not preclude the prosecution of the proceeding to its conclusion unless the University and the individual agree in writing that no further action shall be taken by the University. An agreement that no further action be taken by the University may include additional terms and conditions agreeable to both parties, including, but not limited to, an acknowledgement by the individual that he or she engaged in misconduct which may, or may not, be specified in the written agreement of resignation.

VI. Claims Against the Senate Grievance Committee or Its Members

With respect to any claims against the Committee or members of the Committee arising from action by the Committee or actions by members of the Committee as members of the Committee, the Committee and its members will be covered by the University in the same manner as the President and the Provost and Dean of Faculties under University policies concerning the defense of any lawsuits or any other claims arising from their acts as agents and representatives of the University.

