

# RESEARCH MISCONDUCT: POLICIES, DEFINITIONS AND PROCEDURES

## I. INTRODUCTION

The purpose of these procedures is to provide policy and information to UC Merced faculty, staff, and students on the methods and principles for assessing allegations of research misconduct, conducting inquiries and investigations related to possible research misconduct and reporting the results to federal sponsors.

This policy applies to all individuals at UC Merced engaged in research, including any person paid by, under control of, or affiliated with UC Merced, including faculty, scientists, trainees, postdoctoral scholars, technicians and other staff members, students, fellows, and guest researchers or collaborators at UC Merced.

The policy and associated procedures shall be followed when a UC Merced official receives an allegation of research misconduct. Circumstances in an individual case may dictate variation from these procedures. Any significant variation shall be approved by the Vice Chancellor for Research.

The following procedures conform to the Public Health Service Final Rule 42 Code of Federal Regulations (CFR) Part 93

While 42 CFR Part 93 applies to all individuals who may be involved with a project supported by, or who have submitted a grant application to the Public Health Service, campus policy applies to all individuals engaged in University research regardless of funding source.

## II. DEFINITIONS OF RESEARCH MISCONDUCT ([42 CFR 93.103](#))

- A. **Research misconduct** means fabrication, falsification, or plagiarism, in proposing, performing, or reviewing research, or in reporting research results.
- B. **Fabrication** is making up data or results and recording or reporting them.
- C. **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.
- D. **Plagiarism** is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- E. Research misconduct does not include honest error or differences of opinion.

## III. REQUIREMENTS FOR FINDINGS OF RESEARCH MISCONDUCT

A finding of research misconduct 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 need only be proven by a preponderance of the evidence.

## IV. DELEGATION OF AUTHORITY AND RESPONSIBILITY

The Chancellor delegates to the Vice Chancellor of Research (VCR) responsibility for:

- Coordination of all procedures related to allegations of research misconduct by anyone performing research under the campus' aegis. If however, the allegation of research misconduct is made against the Vice Chancellor for Research, the Executive Vice Chancellor will assume all of the administrative responsibilities delineated above and in subsequent sections of this document.

- Fostering a research environment that discourages misconduct in all research.
- Dissemination of policy and maintenance of records related to misconduct in research.
- Appointment of an individual or a committee to conduct inquiries and investigations into allegations of research misconduct. If extramural funds are involved the Vice Chancellor determines whether law, regulation, or the terms or conditions of the award:
  - (1) require notification of the sponsor;
  - (2) specify time limits; and
  - (3) require other actions to assure compliance. The Vice Chancellor of Research coordinates with the appointees, the Chancellor's Office, the Sponsored Projects Office, and other concerned parties to assure compliance.
- Assurance of appropriate confidentiality or anonymity, fairness and objectivity of proceedings.
- Assurance of an appropriate level of inquiry, investigation, and resolution process.
- Assurance that no real or apparent conflicts of interest arise in those appointed to pursue this process, and that they have the appropriate disciplinary expertise and that due regard is given to the prevailing standards of the field.
- Maintenance of confidentiality of records, in accord with established state, university, or any applicable agency policy, relating to the investigation and resolution of incidents of misconduct in research.
- If appropriate or required, the Vice Chancellor for Research shall notify concerned parties such as sponsors, co-authors, collaborators, editors, licensing boards, professional societies, and criminal authorities of the outcome of investigations, taking care to clear the name of anyone falsely charged.
- Protecting, to the maximum extent possible, the positions and reputations of those persons who, in good faith, make allegations of research misconduct, and those against whom allegations of misconduct are not confirmed.
- Efforts to restore the reputation of persons alleged to have engaged in misconduct when allegations are not confirmed.

The Vice Chancellor for Research may designate a Research Integrity Officer for assessing allegations of research misconduct and determining when such allegations warrant inquiries and for overseeing inquiries and investigations. Alternatively, the Vice Chancellor for Research may, at his or her discretion, serve as the campus Research Integrity Officer.

## **V. INQUIRIES AND INVESTIGATIONS INTO ALLEGATIONS OF MISCONDUCT IN RESEARCH**

Existing University of California policy and procedures assert the responsibility of Principal Investigators in maintaining ethical standards, and direct reporting of allegations to the Chancellor, the Vice Chancellor for Research, Deans, Office of Student Affairs or Internal Audit as appropriate.

All individuals associated with the campus shall report observed or suspected research misconduct to the Vice Chancellor for Research and/or the designated Research Integrity Office (RIO). An allegation shall, in addition to stating the nature of the suspected misconduct, present evidence that leads the reporting individual to believe that an incident of research misconduct has occurred.

The Vice Chancellor for Research shall immediately respond, as outlined below, to each allegation or other evidence of possible misconduct.

If an individual is unsure whether a suspected incident falls within the definition of research misconduct he or she may contact the Office of the Vice Chancellor for Research to discuss the suspected misconduct informally. If the circumstances described do not meet the definition of research misconduct, the Vice Chancellor for Research shall refer the individual or allegation to another office or official with responsibility for resolving the problem.

The informal discussion of possible research misconduct, as well as all subsequent stages in this procedure, shall be treated as strictly confidential.

The following describes procedures to be followed once an allegation or other evidence of research misconduct is received.

### **A. Preliminary Assessment**

The Vice Chancellor for Research and/or the RIO promptly assesses the reported incident to determine if it constitutes an allegation of research misconduct—i.e., does the alleged incident fit the definition of research misconduct and is the evidence sufficiently credible and specific so that potential evidence of research misconduct may be identified? If it is concluded that a credible allegation of research misconduct has been made, the misconduct procedure enters into the inquiry phase.

### **B. Inquiry**

1. Upon receiving the written allegation of research misconduct, the Vice Chancellor for Research (or in the event that the Vice Chancellor for Research is the respondent, the Executive Vice Chancellor for Academic Affairs) appoints one or more persons to conduct an inquiry to determine whether there is sufficient substance to the allegation to warrant a formal investigation. The Vice Chancellor for Research may carry out the inquiry in lieu of appointing someone else. The purpose of the inquiry is **not** to reach a final conclusion as to whether misconduct occurred or who was responsible. This initial phase of information gathering and fact-finding shall take no more than fourteen calendar days from the receipt of the allegation unless circumstances clearly warrant a longer period. If the inquiry phase must be extended beyond fourteen days, the reasons for doing so shall be documented.
2. The Vice Chancellor for Research or Research Integrity Officer, if one is appointed, shall notify the Respondent (the individual about whom misconduct allegations have been made) in writing that an inquiry is being undertaken and of the procedure that will be followed, indicates the membership of the inquiry committee, and describes the nature of the misconduct allegation(s).
3. The Respondent has five working days to challenge, in writing, the committee's membership based on bias or conflict of interest. The Vice Chancellor for Research and/or the Research Integrity Officer shall determine whether or not to replace the challenged member with a qualified substitute. The Respondent shall be notified of the Vice Chancellor's decision in writing.
4. If the research at issue receives or has received federal funding, and, at any point during a subsequent investigation, it is ascertained that any of following seven conditions pertain, the Vice Chancellor for Research shall notify the sponsoring federal agency. (For example, the Office of Research Integrity (ORI) of the Department of Health and Human Service (DHHS).
  - a. Health or safety of the public is at risk, including an immediate need to protect human or animal subjects.

- b. HHS resources or interests are threatened.
  - c. Research activities should be suspended.
  - d. There is reasonable indication of possible violations of civil or criminal law.
  - e. Federal action is required to protect the interests of those involved in the research misconduct proceeding.
  - f. The research institution believes the research misconduct proceeding may be made public prematurely so that HHS may take appropriate steps to safeguard evidence and protect the rights of those involved.
  - g. The research community or public should be informed.
5. In the case of federally funded research, the campus shall take appropriate interim administrative actions to protect federal funds and insure that the purpose of the federal financial assistance is carried out.
  6. Matters pertaining to the inquiry shall be treated confidentially to the maximum extent possible consistent with fact-finding and required reporting to funding agencies.
  7. The entire Inquiry process shall normally be completed within sixty (60) calendar days following the appointment of the Inquiry committee. Any extension of this time limit requires approval of the RIO, must be documented in the final Inquiry report, and should comply with the applicable requirements of external funding agencies
  8. A written report of the inquiry will be prepared and submitted to the RIO that describes the evidence that was reviewed, summarizes any interviews that were conducted, and includes the conclusion(s) of the inquiry.
  9. The individual(s) against whom the allegation was made shall be given a copy of the report of inquiry, and shall be given ten calendar days to comment in writing. When comments are provided they shall be included in the record.
  10. Records of the inquiry, including all documentary evidence, interview notes, and the inquiry report, shall be maintained in a secure manner for at least three years or for that time period to conform with the most restrictive time limits prescribed by university, state or federal regulations (e.g., the Office of Research Integrity of DHHS requires 7 years).
  11. If the inquiry determines that an investigation is not warranted, the inquiry documents will be provided to relevant authorized federal funding agency personnel upon request.
  12. If the inquiry finds sufficient evidence to warrant a formal investigation, the Vice Chancellor for Research promptly (within 30 calendar days) initiates the process as follows:

### **C. Investigation**

1. An investigative committee with a designated Chairperson shall be appointed by the Vice Chancellor for Research to determine whether there exists sufficient evidence to support that research misconduct has occurred and, if so, to make recommendations with respect to the imposition of disciplinary sanctions. The investigation phase shall be completed within 120 days from the appointment of the investigative committee, unless circumstances warrant a longer period. If the investigation stage is extended beyond 120 days the reasons for doing so shall be documented.

- a. **In the case of a faculty member being accused**, the investigative committee shall be appointed by the Vice Chancellor for Research. It will be constituted from members of the Academic Senate, and contain from one to three members. A larger committee may be appointed if in the opinion of the Vice Chancellor for Research it would facilitate the investigation.
  - b. **In the case of academic researchers (visiting scholars, post-doctoral fellows, professional researchers, non-faculty academics, etc.)**, the Vice Chancellor of Research appoints an investigative committee that, typically, will include a member of the researcher's relevant peer group plus one or two members of the Academic Senate.
  - c. **In the case of a student being accused**, the Vice Chancellor of Research appoints an investigative committee of from one to three members of the Academic Senate.
  - d. In the case of the Vice Chancellor for Research being accused, the investigative committee shall be appointed by the Executive Vice Chancellor for Academic Affairs. It will be constituted from members of the Academic Senate, and contain from one to three members. A larger committee may be appointed if, in the opinion of the Executive Vice Chancellor, it would facilitate the investigation.
2. When Federal funding is involved, the pertinent agency will be informed that an investigation will be initiated within thirty calendar days of the submission of the inquiry report.
    - a. When it is required by federal funding agencies, such as ORI of DHHS, an extension of the investigation beyond 120 days shall be coordinated with the relevant agency. A request for extension shall include an explanation for the delay and an estimated date of completion.
  3. The Vice Chancellor for Research or RIO shall notify the Respondent(s) that an investigation is being undertaken, inform him/her of the allegations that are under investigation, as well as of the composition of the investigative committee, and the procedures that shall be followed in the course of the investigation.
  4. The Respondent has five days to challenge, in writing, the committee's membership based on bias or conflict of interest. The Vice Chancellor for Research shall determine whether to replace the challenged member with a qualified substitute.
  5. The investigation may include examination of pertinent documents, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda. Typically, the investigative committee conducts interviews as part of its fact-finding process, including interviews with those making allegations of research misconduct and with the individual(s) against whom the allegations are made. Investigators should create and maintain a record of their interviews either through recordings or written notes. Transcriptions of the recordings of the interviews shall not be made unless ordered by the Vice Chancellor for Research.
  6. All individuals affected by the investigation shall be accorded confidential treatment to the maximum extent possible in an investigation. The Respondent is not entitled to an opportunity to attend the investigation committee's interviews or deliberations. The Respondent may have an attorney or other representation present if interviewed. However, the attorney or representation may attend to listen only but not to participate.
  7. If an investigation is terminated before its completion, a report of the termination, including the reasons for such an action, shall be made to those federal funding agencies that require it (for example, the Office of Research Integrity of DHHS).

8. The campus will notify relevant federal funding agencies if, during the course of the investigation, facts are disclosed that may affect current or potential federal funding for individual(s) under investigation or that the federal agency needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.
9. When the investigation is completed, the Chair of the investigative committee shall prepare, and submit to the Vice Chancellor for Research, a written report of the results, reviewing the facts, and stating the committee's findings. The Vice Chancellor of Research shall make the report available to the Respondent(s) for comment. In a separate communication to the Vice Chancellor for Research, the investigative committee shall offer its recommendations with respect to disciplinary sanctions, if any.
  - a. The Respondent (s) shall have twenty-one calendar days to submit to the Vice Chancellor for Research comments on the investigative report.
10. When the investigative committee's report and the accused response have been received, the Vice Chancellor for Research shall:
  - a. If appropriate and/or required, communicate the committee's findings to relevant agencies external to the University within ten days.
  - b. The campus shall follow the regulations of the relevant federal funding agency in preparing its report. The final report to ORI, for example, shall describe the policies and procedures under which the investigation was conducted, how and from whom information was obtained, the findings, and the basis for the findings, and include the actual text or an accurate summary of the views of any individual(s) found to have engaged in research misconduct, as well as a description of any sanctions taken by the campus. Documentation to substantiate an investigation's findings will also be made available to the Director of ORI.
  - c. Decide whether or not to recommend the imposition of disciplinary sanctions to the Executive Vice Chancellor.

## VI. DISCIPLINARY PROCEDURE

- A. If, **in the case of a faculty member being accused**, the Vice Chancellor for Research together with the Executive Vice Chancellor intend to file charges pursuant to the imposition of disciplinary sanctions, the processing of those charges shall proceed in accordance with the provisions of the [UC Academic Personnel Manual under University Policy on Faculty Conduct and the Administration of Discipline \(APM 016\)](#).
- B. If, **in the case of an academic researcher being accused** (Visiting Scholars, Post-Doctoral Fellows, Professional Researchers, Non-Faculty Academics, etc.), the Vice Chancellor for Research intends to impose disciplinary sanctions, the Respondent is notified in writing of such intention, and is invited to respond to the allegations and proposed discipline in a personal conference with the Vice Chancellor for Research.
  1. The Respondent and the Vice Chancellor for Research, each shall be entitled to bring a representative of their choice to such a conference. If the Vice Chancellor for Research and the Respondent arrive at a mutually agreeable settlement, the matter is disposed of in accordance therewith.

2. If discipline is to be imposed upon the Respondent pursuant to the settlement, or if there is no settlement, but the Respondent has informed the Vice Chancellor for Research that he/she does not intend to contest the proposed discipline, the Vice Chancellor for Research may thereupon impose such discipline.
  3. If discipline is imposed without the agreement of the Respondent, the appeal process described in the Academic Personnel Manual section 140 (Non-Senate Academic Appointees/Grievances) may be invoked.
- C. If, **in the case of students being accused**, the investigative committee makes a finding of research misconduct, its report, the student's response, and the recommendation of the Vice Chancellor for Research as to appropriate disciplinary sanctions, if any, are forwarded to the Office of Student Affairs for an undergraduate student or the Graduate Dean and School's Dean if a graduate student, which following its procedures, decides with respect to the matter of discipline.

## VII. OTHER ACTIVITIES

- A. **Data Sequestration:** The RIO shall make arrangements for obtaining and securing any original Research Records necessary for an Inquiry or Investigation. Research Records belong to the University and those involved in an Allegation must be surrendered to the RIO upon request. The RIO may engage Audit & Management Advisory Services to take possession of potentially relevant evidence.
- B. **Record Retention:** Records of the investigation, including all documentary evidence, interview notes, and the investigation report, shall be maintained in a secure manner for at least three years or for that time period to conform with the most restrictive time limits prescribed by university, state or federal regulations (e.g., the Office of Research Integrity of DHHS requires 7 years.)
- C. **Restoring Reputations:**
  1. **Respondents:** We shall undertake all reasonable, practical, and appropriate efforts to protect and restore the reputation of any person alleged to have engaged in research misconduct, but against whom no finding of research misconduct was made, if that person or his/her legal counsel or other authorized representative requests that we do so.
  2. **Complainants, Witnesses, and Committee Members:** We shall undertake all reasonable and practical efforts to protect and restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against those complainants, witnesses and committee members.

**Further Review by Funding Source:** Regardless of the conclusions reached by the institution after the inquiry or investigation phases, the funding source may undertake its own investigation (See, for example, 42 CFR 93.403 for the Office of Research Integrity of DHHS). All records shall be made available to that funding agency after receiving assurance of confidentiality of all people involved in the allegation or subsequent proceedings.