

UC Berkeley

RESEARCH MISCONDUCT: POLICIES, DEFINITIONS AND PROCEDURES

The University of California , Berkeley has a long history of effective and thoughtful policy development regarding the professional conduct of its members. In order to comply with Federal sponsor regulations and reassure the public and ourselves that our traditional standards are being upheld, we need to reaffirm our policies, to specify procedures and appropriate safeguards for handling investigations, and to foster an environment that discourages misconduct in all research. The following procedures conform to the Public Health Service {Department of Health and Human Services} 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 (PHS), campus policy applies to all individuals engaged in University research whatever the funding source.

INVESTIGATION OF ALLEGED RESEARCH MISCONDUCT

I.A. DEFINITION OF RESEARCH MISCONDUCT

Research misconduct means fabrication, falsification, or plagiarism, in proposing, performing, or reviewing research, or in reporting research results.

- a. **Fabrication** is making up data or results and recording or reporting them.
- b. **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.
- c. **Plagiarism** is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- d. Research misconduct does not include honest error or differences of opinion. ' (§ 93.103, 42 CFR Part 93).

Research misconduct under Berkeley campus policy also includes failure to comply with requirements for the protection of human or animal research subjects.

I.A.1 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; and
- b. The misconduct be committed intentionally, knowingly, or recklessly; and
- c. The allegation be proven by a preponderance of the evidence.

I.B DELEGATION OF AUTHORITY AND RESPONSIBILITY

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

- Coordination of all procedures related to allegations of research misconduct by anyone performing research under the campus' aegis.
- 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; or (3) require other actions to assure compliance. The Vice Chancellor for 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 a full and complete inquiry, investigation, and resolution process. Assurance that no real or apparent conflicts of interest arise in those appointed to pursue this process 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 university policy, relating to the investigation and resolution of incidents of misconduct in research.
- If appropriate or required, the Vice Chancellor 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.
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The Vice Chancellor for Research may designate a Research Integrity Officer (RIO) for assessing allegations of research misconduct and determining when such allegations warrant inquiries and for overseeing inquiries and investigations. Alternatively, the Vice Chancellor can, at his or her discretion, serve as the campus RIO .

I.C INQUIRIES AND INVESTIGATIONS INTO ALLEGATIONS OF MISCONDUCT IN RESEARCH

Existing campus policy and procedures assert the responsibility of Principal Investigators in maintaining ethical standards, and direct reporting of allegations to The Chancellor, The Vice Chancellor, Deans, Office of Student Conduct, or Internal Audit as appropriate.

All individuals associated with the campus should report observed or suspected research misconduct to the Vice Chancellor for Research and/or the designated Research Integrity Officer.

An allegation should, in addition to stating the nature of the suspected misconduct, present the evidence that leads the reporting individual to believe that an incident of research misconduct has occurred.

The VCR or RIO will 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 should contact the Office of the Vice Chancellor for Research (VCRO) (642-7540) and ask to speak with the Research Integrity Officer so as to discuss the suspected misconduct informally. If the circumstances described do not meet the definition of research misconduct, the RIO will refer the individual or allegation to other offices or officials with responsibility for resolving the problem.

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

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

(1) PRELIMINARY ASSESSMENT

A. The Vice Chancellor for Research and /or the RIO promptly assesses the reported incident to determine if it constitutes a bona fide 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 bona fide allegation of research misconduct has been made, the misconduct procedure enters its inquiry phase.

(2) INQUIRY

A. Upon receiving an allegation of research misconduct, the Vice Chancellor for Research 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 purpose of the inquiry is not to reach a final conclusion as to whether misconduct occurred or who was responsible. This preliminary phase of information gathering and fact-finding should take no more than sixty calendar days from the receipt of the allegation unless circumstances clearly warrant a longer period. If the inquiry phase must be extended beyond sixty days, the reasons for doing so should be documented.

B. The RIO notifies the Respondent (the individual about whom misconduct allegations have been made) 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).

B.1. The Respondent has five days to challenge, in writing, the committee's membership based on bias or conflict of interest. The RIO and/or the VCR will determine whether to replace the challenged member with a qualified substitute.

C. At the time of notification, and in the course of the inquiry, or of any subsequent investigation, the Office of the Vice Chancellor for Research will sequester such information as is necessary to protect the integrity of the investigation.

C.1. Where appropriate, the respondent will be provided copies of, or reasonably supervised access to, the research records.

C.2. All records of the Berkeley research misconduct proceeding will be retained for seven years after the proceeding's conclusion, or for seven years after any Office of Research Integrity proceeding – whichever is later.

D. If the research at issue receives or has received Federal funding, and, at any point during an inquiry or subsequent investigation, it is ascertained that any of following five conditions pertain, the campus will 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.

D. 1. In the case of federally funded research, the campus will take appropriate interim administrative actions to protect Federal funds and insure that the purpose of the Federal financial assistance is carried out.

E. Matters pertaining to the inquiry will be treated confidentially to the maximum extent possible consistent with fact finding and required reporting to funding agencies.

F. A written report of the inquiry shall be prepared that describes the evidence that was reviewed, summarizes any interviews that were conducted, and includes the conclusion of the inquiry.

G. The individual(s) against whom the allegation was made shall be given a copy of the report of inquiry, and shall be invited to comment in writing. When comments are provided they will be included in the record.

H. Upon receipt of the inquiry report, the VCR or RIO will make, in writing, the determination of whether an investigation is warranted. Records of the inquiry, including all documentary evidence, interview notes, the inquiry report, and the VCR's or RIO 's written determination shall be maintained in a secure manner for at least seven years.

H.1. If an inquiry is terminated before its completion, a report of the planned termination, including the reasons for such an action, should be made to those Federal funding agencies that require it (the Office of Research Integrity of DHHS, for example).

H.2. The inquiry report and supporting documentation will be provided to relevant authorized federal agencies upon request.

I. If it is determined that there is sufficient evidence to warrant a formal investigation, the VCR or RIO shall (within 30 calendar days) initiate the process as follows:

(3) INVESTIGATION

A. An Investigative Committee is appointed to determine whether research misconduct has occurred, and, if so, to make recommendations with respect to the imposition of disciplinary sanctions. The investigation phase should 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 should be documented.

A.1. **In the case of a faculty member** , the investigative committee is appointed by the Vice Chancellor for Research (VCR). 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 VCR it would facilitate the investigation.

A.2. In the case of academic researchers (visiting scholars, post-doctoral fellows, professional researchers, non-faculty academics, etc.), the Vice Chancellor for 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.

A.3. In the case of a student, the Vice Chancellor for Research appoints an investigative committee of from one to three members of the Academic Senate.

B. When Federal funding is involved; the pertinent agency shall be informed that an investigation will be initiated within 30 days of the VCR's determination that there exists sufficient evidence to warrant an investigation of research misconduct.

B.1. When it is required by Federal funding agencies, such as ORI of DHHS, an extension of the investigation beyond 120 days must be requested from the relevant agency. The extension request should include an explanation for the delay, an interim report on the progress to date, an outline of what remains to be done, and an estimated date of completion.

C. The RIO will notify the Respondent(s) in writing that an investigation is being undertaken, will inform him/her of the allegations that are under investigation, as well as of the composition of the investigative committee and the procedures that will be followed in the course of the investigation. In the event that new allegations arise in the course of the investigation, the respondent will be so notified in writing.

C.1. The Respondent has five days to challenge, in writing, the committee's membership based on bias or conflict of interest. The RIO will determine whether to replace the challenged member with a qualified substitute.

D. The investigation will normally include examination of pertinent documents, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda. Typically, the investigative committee will conduct 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. Whenever it is feasible, investigators shall create and maintain recorded records of their interviews.

D.1. All individuals affected by the investigation will be accorded confidential treatment to the maximum extent possible in an investigation.

D.2. If an investigation is terminated before its completion, a report of the planned termination, including the reasons for such an action, should be made to those Federal funding agencies that require it (the Office of Research Integrity of DHHS, for example).

D.3. 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.

E. 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 VCR shall make the report available to the Respondent(s) for comment. In a separate communication to the VCR, the investigative committee shall offer its recommendations with respect to disciplinary sanctions, if any.

E.1. The respondent (s) shall have twenty-one calendar days to submit to the VCR comments on the investigative report.

F. When the investigative committee's report, and the respondent's comments, have been received, the Vice Chancellor for Research will:

F.1. If appropriate and/or required, communicate the committee's report and findings to relevant agencies external to the University.

F.2 Based upon a reading of the Investigative Report and any comments thereon, the Vice Chancellor for Research (VCR) will make a determination of whether or not research misconduct has been committed. The VCR will issue a Final Report to the ORI or any external funding agency that requires it. The final report to ORI, for example, must 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 an accurate summary of the views of any individual(s) found to have engaged in 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.

F.3. The VCR decides whether or not to recommend the imposition of disciplinary sanctions to the Executive Vice Chancellor (EVC).

(4) DISCIPLINARY PROCEDURE

A. If, **in the case of a faculty member**, 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 will proceed in accordance with the provisions of the [Faculty Code of Conduct and Disciplinary Procedures for the Berkeley Campus](#), as set forth in pages 8-12.

B. If, in the case of an academic researcher (Visiting Scholars, Post-Doctoral Fellows, Professional Researchers, Non-Faculty Academics, etc.), the VCR intends to impose disciplinary sanctions, the researcher is notified in writing of such intention, and is invited to respond to the allegations and proposed discipline in a personal conference with the VCR or RIO.

B.1. The researcher and the VCR or RIO , shall each be entitled to bring a representative of their choice to such a conference. If the VCR and the researcher arrive at a mutually agreeable settlement, the matter is disposed of in accordance therewith.

B.2. If discipline is to be imposed upon the researcher pursuant to the settlement, or if there is no settlement, but the researcher has informed the Vice Chancellor for Research that he/she does not intend to contest the proposed discipline, the Vice Chancellor may thereupon impose such discipline.

B.3. If discipline is imposed without the agreement of the researcher, 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, 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 Conduct, which following its procedures, decides with respect to the matter of discipline.

D. The VCR shall report any disciplinary actions taken by the campus to ORI and to any other external funding agency that requires it.