Appendix NN

MSUN Policy 1140

MONTANA STATE UNIVERSITY NORTHERN

Administrative Policy and Procedures Manual

Section 1100: Research, Sponsored Projects & Public Service

1140 Misconduct in Research and Creative Activity

Effective: Interim 2002
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Responsible Party: Provost/Vice Chancellor

Policy

It is the policy of Montana State University-Northern to require the highest ethical standards in the research/creative activity of its faculty and staff; to inquire into and, if necessary, investigate and resolve promptly and fairly all instances of alleged or apparent misconduct; and, as appropriate, to comply in a timely manner with requirements for reporting cases of possible misconduct to sponsoring agencies when sponsored research funds are involved. Misconduct in research or creative activity shall be considered a breach of contract between the employee and the University. This policy applies to any research/creative activity undertaken by faculty or professional staff. Cases of research/academic misconduct involving students are subject to the disciplinary rules governing students, but may be reviewed, where appropriate, under this policy. In conducting any inquiry or investigation into allegations of misconduct, the University shall protect, to the maximum extent possible under the law, the privacy of individuals who, in good faith, report apparent misconduct.

Definitions:

A. **Complainant**: The person who makes an allegation of research misconduct or the person who cooperates with an inquiry or investigation.
B. **Evidence**: Includes, but is not limited to, research records, transcripts, or recordings of interviews, committee correspondence, administrative records, grant applications and awards, manuscripts, publications, expert analyses, and electronic data.
C. **Inquiry**: Preliminary information gathering and fact finding to determine if an allegation, or apparent instance of research misconduct, warrants an investigation.
D. **Investigation**: Formal collection and evaluation of information and facts to determine if research misconduct can be established, to assess its extent and consequences, and to recommend appropriate action.
E. **Research Misconduct**: Fabrication, falsification, or plagiarism, in proposing, performing, or reviewing research, or in reporting research results.
F. **Respondent**: The person against whom an allegation of research misconduct has been made, or the person whose actions are the focus of the inquiry or investigation.

RIGHTS OF RESPONDENT

Any Respondent shall be afforded:

- Confidential treatment to the maximum extent possible under the law,
- A prompt and thorough investigation, and
- An opportunity to comment on all allegations and findings of any inquiry and/or investigation. Faculty and staff are expected to cooperate with those persons conducting the inquiry and/or investigation.

RESPONSIBILITIES OF THE UNIVERSITY

In cases of alleged misconduct, the University will:

- Take precautions against any real or apparent conflicts of interest on the part of those involved in the inquiry and investigative hearing,
- Take administrative action(s) as deemed appropriate, to protect federal funds and insure that the purposes of federal financial assistance are carried out,
- Undertake diligent efforts to restore the reputations of persons accused of misconduct when allegations are not confirmed by investigation and protect the positions and reputations of those persons who in good faith made allegations, and
- Impose appropriate sanctions on individuals when allegations of misconduct have been substantiated.

REPORTING THE ALLEGATION

An allegation of misconduct in research/create activity should be made to the appropriate department head or dean who shall report the allegation to the Provost/Senior Vice Chancellor. The Provost/Senior Vice Chancellor shall notify the person accused of misconduct, his or her dean or department head, and the President of Faculty Senate, in writing, than an inquiry will be conducted. The notification shall include a statement of the alleged misconduct reported.

ASSESSMENT OF ALLEGATIONS

Upon receiving an allegation of research misconduct, the Provost will immediately assess the allegation to determine whether it is sufficiently credible and specific so that potential evidence of research misconduct may be identified and whether the allegation falls within the definition of research misconduct adopted by the university and the federal sponsor. An inquiry must be conducted if these criteria are met.

The assessment period should be brief, preferably concluded within a week. In conducting the assessment, the Provost need not interview the Complainant, Respondent, or other witnesses, or gather data beyond any that may be haven submitted with the allegation, except as necessary to determine whether the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

INQUIRY PROCESS

A. **Purpose**
The purpose of the inquiry is to conduct an initial review of the available evidence to determine whether to conduct an investigation. An inquiry does not require a full review of all the evidence related to the allegation.

B. **Notice to Respondent; Sequestration of Research Records**
At the time of or before beginning an inquiry, the Provost must make a good faith effort to notify the Respondent in writing, if the Respondent is known. If the inquiry subsequently identifies additional Respondents, they must be notified in writing. On or before the date on which the Respondent is notified, or the inquiry begins, whichever is earlier, the Provost must 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.

C. **Appointing Faculty Member to Conduct Inquiry**
The Provost/Senior Vice Chancellor, in consultation with the President of Faculty Senate, shall appoint an impartial faculty member with expertise in the area of research/creative activity to conduct the inquiry. The purpose of the inquiry is to determine whether there is reasonable cause to believe misconduct occurred, the seriousness of the alleged misconduct, and whether a formal investigative hearing is recommended. Upon appointment, the Faculty Inquirer will receive a briefing from the Provost/Senior Vice Chancellor and the Montana State University Legal Counsel on the relevant misconduct guidelines, federal regulations, and the legal parameters of the inquiry.

D. **Conducting the Inquiry/Submitting Written Report**
The Faculty Inquirer shall review documents, data, proposals, publications and correspondence relevant to the allegation and shall conduct interviews as necessary to determine whether there is reason to believe misconduct occurred.

The Faculty Inquirer shall submit a written report to the Provost/Senior Vice Chancellor summarizing the allegation, the documents reviewed, the relevant interviews, his or her findings and recommendations for a course of action. The Respondent and the Complainant will be given a copy of the report and allowed an opportunity to submit written comments, which will be appended to the report. The report, and any comments, shall be submitted to the Provost/Senior Vice Chancellor and the President of Faculty Senate. The inquiry shall be completed within sixty (60) calendar days of its initiation, unless circumstances clearly warrant a longer period. If the inquiry is not completed within sixty (60) days, the Faculty Inquirer's report shall include documentation of the reasons for exceeding

the sixty (60) day period. The Inquirer's report will be maintained in the office the Provost/Senior Vice Chancellor for three (3) years.

DETERMINING WHETHER OR NOT TO PROCEED WITH INVESTIGATIVE HEARING

The Provost/Senior Vice Chancellor shall review the report and, after consultation with the President of Faculty Senate, determine whether to proceed with an investigative hearing. In making his or her determination, the Provost/Senior Vice Chancellor may take into account the information provided by the Inquirer and any oral or written statements made by the person accused of misconduct. The Provost/Senior Vice Chancellor may choose not to proceed with an investigative hearing if there is no reason to believe the misconduct occurred or if the person accused of misconduct admits the misconduct occurred and waives his or her right to an investigative hearing. The Provost/Senior Vice Chancellor shall notify the person who reported the alleged misconduct and the person accused of misconduct of his or her determination and recommendations in writing. If an investigative hearing is to be conducted, the notification shall include a clear statement of the allegations to be investigated by the investigating committee.

If a decision not to investigate is rendered, the Complainant may appeal to the Chancellor who will render the final decision of the University. The Provost/Senior Vice Chancellor will notify granting agencies supporting the research/creative activity under investigation as may be required by the granting agency.

INVESTIGATION

The investigation shall be completed within 120 days of the appointment of the committee unless circumstances clearly warrant a longer period in which to complete the investigation. If the investigation is not completed within 120 days, the Complainant, Respondent and agency (if required) shall be notified.

A. **University Representative**

The Provost/Senior Vice Chancellor, or his or her designee, shall act as the University representative in all aspects of the Investigative Hearing. The University representative will be responsible for gathering documentation relevant to the allegations of misconduct, including research data and proposals, publications, correspondence and memoranda of phone calls.

B. **Selection of the Investigation Committee**

1. The committee shall be composed of three (3) faculty members, at least one of whom has expertise in the subject area. The Chancellor will appoint a tenured faculty member as the non-voting Chair for the committee.

2. The Chair will select committee members from a list of names submitted by the University representative and the Respondent.

3. Initially, each party will submit three (3) names of recommended committee members, at least two (2) of whom are recognized to have expertise in the area of alleged misconduct. When appropriate, the Chair may appoint experts from outside the University to serve on the committee; however, the committee should include at least one (1) faculty member.

4. Members who may have a conflict of interest on a specific case shall be excused. Each party shall have the right to challenge any person appointed for cause. The chair shall rule on all challenges for cause. If at any time there are fewer than three (3) persons available for selection to the committee, the parties will submit an additional list of names as requested by the Chair.

C. **Committee Responsibilities**

The committee shall determine whether misconduct occurred and shall make recommendations regarding what sanctions should be applied to address the misconduct. To determine that the Respondent committed research misconduct, the committee must find that a preponderance of the evidence establishes that: (1) research misconduct, as defined in this policy, occurred (Respondent has the burden of proving by a preponderance of the evidence any affirmative defenses raised, including honest error or a difference of opinion); (2) the research misconduct is a significant departure from accepted practices of the relevant research community; and (3) the Respondent committed the research misconduct intentionally, knowingly, or recklessly.

The findings of fact and recommendations of the committee shall be in writing and based solely on the evidence presented at the hearing. The report of the committee shall be forwarded to the Chancellor and a copy shall be submitted to the person accused of misconduct.

D. **Investigation Process**

The Investigation Committee must:

1. Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research records and evidence relevant to reaching a decision on the merits of each allegation;

2. Take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical;

3. Interview each Respondent, Complainant, and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the respondent, and record or transcribe each interview, provide the recording or transcript to the interviewee for correction, and include the recording or

transcript in the record of the investigation; and

4. Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of any additional instances of possible research misconduct, and continue the investigation to completion.

E. THE INVESTIGATION REPORT

1. Elements of the Investigation Report

   The Investigation Committee is responsible for preparing a written draft report of the investigation that:

   a. Describes the nature of the allegation of research misconduct, including identification of the Respondent;

   b. Describes and documents the federal, state or private financial, including, for example, the numbers of any grants that are involved, grant applications, contracts, and publications listing PHS support;

   c. Describes the specific allegations of research misconduct considered in the investigation;

   d. Includes the institutional policies and procedures under which the investigation was conducted, unless those policies and procedures were provided to ORI previously;

   e. Identifies and summarizes the research records and evidence reviewed and identifies any evidence taken into custody but not reviewed; and

   f. Includes a statement of findings for each allegation of research misconduct identified during the investigation. Each statement of findings must:

      - Identify whether the research misconduct was falsification, fabrication, or plagiarism, and whether it was committed intentionally, knowingly, or recklessly;
      - Summarize the facts and the analysis that support the conclusion and consider the merits of any reasonable explanation by the Respondent, including any effort by Respondent to establish by a preponderance of the evidence that he or she did not engage in research misconduct because of honest error or a difference of opinion;
      - Identify the specific federal, state or other grant support;
      - Identify whether any publications need correction or retraction;
      - Identify the person(s) responsible for the misconduct; and

- List any current support or known applications or proposals for support that the Respondent has pending with federal state or private agencies.
- Includes any comments made by the Complainant and Respondent on the draft investigative report.

ADMINISTRATIVE RESPONSIBILITIES

Upon receipt of the report of the committee, the Chancellor will have twenty (20) days to render the final decision of the University. The Chancellor's decision will be based solely upon the record of the Investigative Hearing. If the Chancellor finds misconduct has not occurred, he or she will dismiss the complaint and direct the Provost/Senior Vice Chancellor to undertake actions to restore the reputations of the persons accused of misconduct. If the Chancellor finds that misconduct has occurred, he or she shall impose appropriate sanctions considering the nature and seriousness of the misconduct. The Chancellor's decision may be appealed to the President of Montana State University, the Commissioner of Higher Education and to the Board of Regents, subject to their policies and procedures.

RECORD KEEPING

The University shall maintain all records of the research misconduct proceeding for seven (7) years after completion of the proceeding, or any subsequent related proceeding conducted by the sponsoring agency, whichever is later, unless the University transferred custody of the records and evidence to the agency and the agency has advised the university that it no longer needs to retain the records.

Interim Protective Actions
At any time during a research misconduct proceeding, the University shall take appropriate interim actions to protect federal funds and equipment, and the integrity of the supported research process.

The necessary actions will vary according to the circumstances of each case, but examples of actions that may be necessary include delaying the publication of research results, providing for closer supervision of one or more researchers, requiring approvals for actions relating to the research that did not previously require approval, auditing pertinent records or taking steps to contact other institutions that may be affected by an allegation of research misconduct.

RESEARCH FUNDED BY FEDERAL AGENCIES

The Provost/Senior Vice Chancellor shall notify the appropriate federal agency or other federal offices when required to do so under existing federal regulations. Any additional requirements or regulations that pertain to research misconduct proceedings related to grants funded by that agency will be applied to any research misconduct investigation undertaken that pertain to those grants.

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