

UNIVERSITY SENATE
UNIVERSITY AT ALBANY
STATE UNIVERSITY OF NEW YORK

Introduced by: Committee on Ethics in Research and Scholarship

Date: May 8, 2009

Changes to University at Albany
Policy and Procedures on Misconduct in Research and Scholarship

IT IS HEREBY PROPOSED THAT THE FOLLOWING BE ADOPTED:

1. That the attached revised policy become effective immediately.
2. That this proposal be forwarded to the Interim President for approval.

RATIONALE:

History:

In the summer of 2007, CERS began considering some issues of streamlining inquiries and removing barriers to consultation with and within CERS. Discussion in fall 2007 included issues of timeliness of notification to complainant and respondent, and the fact that the standards of misconduct included the requirement that "the misconduct be committed intentionally, knowingly, or recklessly," while no such clause exists for student academic dishonesty. (This requirement was not changed, to be consistent with federal guidelines.)

In the spring of 2008 President Phillip became concerned about cases which he felt should have been dismissed or handled differently and recommend to CERS that it form an ad hoc committee including the Provost, Vice President for Research, the Compliance Officer, and University Counsel. CERS changed the ad hoc committee, which also included the membership of CERS, to investigate issues including "clarifying and/or providing guidelines of what does and does not ordinarily fall under "research and scholarship", and submit to CERS a draft of proposed changes, which it did in early June of 2008. CERS reviewed the proposal in fall 2008 and circulated the changes in December to the full senate. After feedback from University Counsel in March, two sets of changes were deleted pending further discussion. The remaining changes are summarized below. It is anticipated that additional changes will be proposed next year, however the changes proposed in this bill solve several ongoing issues in the current policy and do not interfere with additional discussion. It is expected that additional consultation with administration may be required before this bill can be signed, however passage at this time allows the option of providing some interim fixes.

Issues:

The policy revision was drafted to address several issues that have arisen in recent years. One has been a lack of clarity about what kinds of activities meet the definition of misconduct in research and scholarship applicable to this policy.

Lines 9-11, 277-281: This clarifies that this policy is not meant to cover misconduct in areas outside of research and scholarship, for which other mechanisms (CAFECOR, student grievances, etc.) exist. More clarification has also been added to the definition of misconduct in research in scholarship here

and in the appendix. The change at line 11 is intended to specifically exclude fabrication to obtain employment, for which other procedures are more appropriate.

Lines 705-709: The definition of misconduct has been further clarified by adding language specifying what is NOT misconduct to which this policy would apply. The first two items to be excluded, honest error and disputes about relative credit (e.g. who should be first or second author), are from the federal guidelines. The third clarifies that this policy is not applicable to informal lectures or classroom presentations.

Lines 749-762: Research and scholarship is defined inclusively of the federal definition.

Conversely, in cases in which there is significant evidence, the inquiry stage has been overly prolonged. The inquiry phase was intended only to establish whether the allegation falls under the definition of misconduct in research and scholarship and whether credible evidence exists. Several changes were introduced to clarify this process, and move expeditiously to a full investigation.

Lines 53-54: Notes a change that has been made in section IV (see below)

Several questions have arisen about confidentiality. One concerns "outside" complainants (persons who are not employees or students at this university), who may in the past not have taken confidentiality seriously and inappropriately circulated documents pertaining to the allegation. The current policy gives any complainant full access to all documentation. The full documentation might include materials that have not yet been patented or otherwise protected and to which a complainant might not otherwise have had access. In order to protect the respondent, the complainant's access to full documentation of the case is not automatic. Policy changes also remove an ambiguity and excludes from indefinite confidentiality documents that had been in the public record prior to the allegation, e.g. two identical published books.

Lines 86-104 (also 230, 339, 378, 516): Limits the access of a complainant to the review of the record of his or her own testimony, to the original record of the decision whether to initiate an inquiry, and to statement of the final determination. In addition, any complainant will be informed when and whether an inquiry and investigation is initiated. The President may elect to supply any complainant with the full record after the final determination. Wording from the federal guidelines is inserted noting that the complainant's role is that of a witness.

Line 98,126: Confidentiality is restricted to the proceedings and information and documents created as part of the proceedings.

Line 155: Gives the VPR slightly more flexibility to notify or consult with other officials "as necessary" instead of "in exceptional situations." The VPR is still bound with protecting the respondent by limiting the knowledge of the investigation as much as possible.

Line 158: Inserts language, parallel to that for cases in which allegations were not brought in good faith, allowing sanctions for violation of confidentiality.

Line 230: Limits access of the complainant to the full documentation, except at the discretion of the president noted above.

Changes were made to streamline the assessment and inquiry process and to clarify the types of cases to which this policy should be applied:

Line 254: Clarifies that a prior case may be reopened if significant new evidence is presented.

Line 257: Defines "a reasonable basis" for inquiry in accordance with federal language.

Line 267-71: Allows the VPR and CERS chair, if in agreement, in cases in which the allegation clearly falls under the definition of warranting an investigation (see below), to recommend to the

President that the case proceed directly to investigation without an inquiry. This is not an option for federally funded research.

Lines 288-298 (also 360): Uses the federal language to define whether an investigation is warranted: "An investigation is warranted if the allegation falls within the definition of misconduct in research and scholarship, and preliminary information-gathering indicates that the allegation may have substance." The requirement to collect testimony is removed because that becomes an unnecessarily protracted process in cases in which an investigation is clearly warranted by the clarified definition.

Lines 328, 354, 398, 446, 471, 552: In addition to streamlining the inquiry process, a requirement is added to notify the respondent and complainant if delays occur.

In cases in which the president chooses to go against the recommendation of the investigation committee, the existing policy requires that president first consult with CERS. However, it has occurred that the constraints apparently imposed by confidentiality requirements prevented an effective consultation. These constraints are removed at line 569 and 611.