MISCONDUCT IN SCHOLARSHIP AND RESEARCH

Effective Date: 1/1/2012

Definition: A policy for investigating allegations of possible misconduct in all research including research funded by external sponsors administered by the University.

Authority: 42 CFR Part 93 and the President of the University.

Scope: This set of policy and procedures apply to individuals at CSUSM engaged in research projects including those governed by federal funding regulations. This policy applies to any person paid by, under the control of, or affiliated with CSUSM, such as scientists, trainees, technicians and other staff members, students, fellows, guest researchers, or collaborators.

Karen S. Haynes, President

Approval Date 1/19/12

Emily F. Cutrer, Provost & VP for Academic Affairs

Approval Date 1/13/12

Approved by the Academic Senate 04/06/2011
I. PURPOSE

A. It is the policy of California State University, San Marcos ("University") to adhere to and promote the highest ethical standards of conduct in research and creative activities. Despite extremely rare occurrences, misconduct in research can have a significant impact on the reputation and credibility of the University, its faculty and students, and therefore it cannot be tolerated. However, unsubstantiated allegations of misconduct can severely damage the reputation of the researcher. Thus, the purpose of this policy is to provide the University with a set of procedures for investigating and reporting instances of alleged or apparent misconduct in research and creative activity, while safeguarding the reputations and professional standings of those alleged to have engaged in research misconduct as well as of those who make allegations of misconduct.

This policy is also intended to conform to the requirements of the appropriate funding agencies (e.g., Health and Human Services [HHS], National Science Foundation [NSF], National Institutes for Health [NIH]) pursuant to the United States Office of Research Integrity (ORI) [45 CFR, Part 689] and the Public Health Service (PHS) Policies on Research Misconduct [42 Code of Federal Regulations (CFR) 93].

This policy shall apply to University administrators, faculty, and staff conducting any research including research funded by external sponsors administered by the University.

Every effort has been made to ensure compliance with current Collective Bargaining Agreements for University employees. No part of this policy is intended to be a substitute for or supersede any part of such Agreements. Collective Bargaining Agreements do not supplant 42 CFR Part 93 requirements.

II. DEFINITIONS

A. Research misconduct is defined as fabrication, falsification, plagiarism, in proposing, of reviewing research, or in reporting research results. Fabrication is making up data or results or recording or reporting them. Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or research results such that research is not accurately represented in the research record. Plagiarism is the appropriation of another person’s ideas, processes, results, or words without giving appropriate credit. Misconduct does not include honest error or honest differences in opinion.

B. Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true.
than not (42 CFR 93.219).

III. GENERAL PROVISIONS

A. The University shall make a good faith effort to protect the privacy of all individuals involved in research misconduct proceedings. Disclosure of identity of those involved in the proceedings shall be limited, to the extent possible, to those who need to know, consistent with a thorough, competent, objective and fair research misconduct proceeding, and as allowed by law. Misconduct of externally funded research must be reported to the relevant funding agency, as requested or required by the agency. The University must disclose the identity of individuals against whom allegations of research misconduct are made and complainants of research misconduct related to PHS-supported activities to the United States Office of Research Integrity (“ORI”). Except as may otherwise be prescribed by applicable law, confidentiality must be maintained for any record or evidence from which research subjects might be identified and disclosure of the record or evidence shall be limited to those who have a need to know to carry out the research misconduct proceeding.

B. Finding of research misconduct under this policy requires that:

1. There be a significant departure from accepted practices of the relevant research community; and
2. The misconduct be committed intentionally, knowingly, or recklessly; and
3. The allegation(s) be proven by a preponderance of the evidence.

C. The University has the burden of proof for making a finding of research misconduct. The destruction, absence of, or failure by the individual against whom allegations are made to provide research records adequately documenting the questioned research is evidence of misconduct only if the University establishes by a preponderance of evidence that:

1. the individual intentionally, knowingly, or recklessly had such records and destroyed them; or
2. had the opportunity to maintain the records but did not do so; maintained the records and failed to produce them in a timely manner;
3. and that the individual’s conduct constitutes a significant departure from accepted practices of the relevant research community.

D. The person against whom allegations of research misconduct are made has the burden of proving by a preponderance of evidence, any and all defenses raised. The determination of whether the burden of proof is met shall give due consideration to credible evidence of honest error or difference of opinion. At all
times, the burden of proving research misconduct remains with the University.

E. The person against whom allegation of research misconduct is made has the burden of going forward with and proving by a preponderance of evidence any mitigating factors that are relevant to a decision to impose administrative actions following a research misconduct proceeding.

F. The University shall undertake all reasonable and practical efforts, if requested by the respondent(s), to restore the reputation of individuals alleged to have engaged in research misconduct but against whom no finding of research misconduct is made.

G. The University shall undertake all reasonable and practical efforts to protect, restore the position and reputation, and to counter potential or actual retaliation against those individuals who, in good faith, make allegations of research misconduct and other participants in part of a research misconduct proceeding.

H. The University shall take all necessary precautions to ensure that individuals responsible for carrying out any part of the research misconduct proceedings are selected based on scientific expertise that is pertinent to the matter and do not have unresolved personal, professional, or financial conflicts of interest with the individual against whom allegations are made, the individual(s) making the allegation, or witnesses participating in the proceedings. Any conflict, which a reasonable person would consider to demonstrate potential bias, shall disqualify the individual from selection.

I. Whenever necessary and appropriate to ensure a thorough, competent, objective and fair evaluation of all the evidence during an inquiry or investigation, individuals with special expertise will be consulted.

J. The University will notify the appropriate funding agency, where applicable, of any decision to terminate an inquiry or investigation before completion of the process outlined here or required by law. The notice will include the reasons for such early termination. The procedural requirements of funding agencies do vary, and the investigating body is cautioned to review the current legal requirements at the time of any inquiry or investigation under this policy.

K. Requests for extensions of time by the respondent shall be granted for cause, following which all related deadlines set forth in this policy shall be extended.

IV. RESPONSIBILITY

A. The University shall be responsible for all of the following actions:
1. Taking all necessary actions to foster a research environment that promotes research integrity and discourages research misconduct;

2. Taking all reasonable and practicable steps to ensure the cooperation of those against whom the allegations are directed and other members of the University with research misconduct proceedings, including, but not limited to, their providing information, research records, and evidence;

3. Cooperating with funding agencies, to the extent required by law and/or in response to any agency request or requirement, during any research misconduct proceeding or compliance review and provide administration and enforcement of actions imposed by the agency on the University;

4. Filing the required assurances of compliance and aggregated information on research misconduct proceedings as required by the funding agency;

5. Establishing and maintaining appropriate policies and procedures for monitoring compliance with the provisions of this policy and upon request, and as appropriate, provide compliance information to funding agencies and members of public, informing University faculty and administrative staff of this policy;

6. Informing any research project team members on externally funded projects of the policies and procedures of the funding agency for responding to allegations of research misconduct, and the University’s commitment to comply with the funding agency’s policies and procedures;

7. Taking immediate action in accordance with the provisions of this policy as soon as misconduct on the part of employees or individuals within the University’s control is alleged;

8. Directing the maintenance and custody of and access to documents, evidence, reports, research records, and any other materials generated in the course of research misconduct proceedings;

9. Providing the respondent(s) with access to all materials collected and generated in the course of the research misconduct proceedings. Respondent(s) shall enjoy the same rights relating to all materials collected and generated in the course of the research misconduct proceedings as those enumerated in collective bargaining agreement articles 11.11, 11.12, and 11.13 relating to PAFs, except that, should respondent(s) request a copy of such materials, the appropriate administrator shall provide such a copy within seven (7) days of the receipt of a written request from respondent(s).  

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1 The collective bargaining agreement referred to in this policy is the May 15, 2007-June 30, 2010 collective bargaining agreement between the CFA and the CSU. The relevant articles (11.11, 11.12, and 11.13) state:

11.11 A faculty unit employee may request an appointment(s) for the purpose of inspecting his/her Personnel Action File. Such appointment(s) shall be scheduled promptly during normal business hours. The manner of inspection shall...
10. Notifying the ORI or the appropriate funding agency if it is ascertained at any stage of an inquiry or investigation of a project funded by a specified funding agency that any of the following conditions exist:
   a. Health or safety of the public is at risk, including an immediate need to protect human or animal subjects,
   b. Agency resources or interest are threatened,
   c. Research activities should be suspended,
   d. There is a reasonable indication of violations of civil or criminal law,
   e. Federal action is required to protect the interest of those involved in the research misconduct proceedings,
   f. There is a belief that the research misconduct proceedings may be made public prematurely, so that appropriate steps may be taken to safeguard evidence and protect the rights of those involved,
   g. There is a belief that the research community or public should be informed.

11. Taking appropriate interim actions at any time during a research misconduct proceeding, to protect public health, federal funds and equipment, and the integrity of the PHS-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.

12. Reporting to appropriate federal agencies any proposed settlements, admissions of research misconduct, or institutional findings of misconduct that arise at any stage of a misconduct proceeding involving federally-funded research, including the allegation and inquiry stages.

be subject to reasonable conditions. The faculty unit employee shall have the right to have another person of the employee's choosing accompany him/her to inspect the Personnel Action File.

11.12 Following receipt of a faculty unit employee's written request, the appropriate administrator shall, within fourteen (14) days of the request, provide a copy of all requested materials. The faculty unit employee may be required to bear the cost of duplicating such materials.

11.13 If, after examination of the Personnel Action File, the faculty unit employee believes that any portion of the file is not accurate, s/he may request in writing a correction of the material and/or a deletion of all or a portion of the material. Such a request shall be addressed to the custodian of the file, with copies to the appropriate faculty committee, if such material was generated by a faculty committee, and the appropriate administrator. The request shall include a written statement by the faculty unit employee describing corrections and/or deletions that s/he believes should be made, and the facts and reasons supporting such request. Such request shall become part of the Personnel Action File, except in those instances in which the disputed material has been removed from the file.
V. ALLEGATIONS OF MISCONDUCT IN RESEARCH

A. Any individual who alleges that an act of misconduct in research has occurred or is occurring by an employee of the University or University Auxiliary Research & Services Corporation (UARSC) shall disclose such allegations through any means of communication to the Associate Vice President for Research (AVPR) and Provost to determine whether the allegation warrants an investigation. Upon receipt of any allegation of misconduct in research or creative activity, the AVPR shall promptly (within 5 working days) assess the allegation to determine if an inquiry is warranted. An inquiry is warranted if the allegation: (1) meets the definition of research misconduct in section II of this policy; and (2) is sufficiently credible and specific so that potential evidence of research misconduct may be identified, and (3) for externally funded research it satisfies the external agencies’ research misconduct applicability requirements.

B. If the AVPR determines that an inquiry is warranted, the AVPR shall immediately prepare a written description of the allegations and notify the individual(s) against whom the allegations are asserted, prior to initiating the inquiry. The notification shall include a copy of the description of the allegations together with a copy, or reference, to this policy statement and a copy of any applicable external agency policy. In addition the individual(s) against whom the allegations are asserted shall be advised in writing that they have the right to union representation and legal counsel.

VI. THE INQUIRY

A. Upon determination that an inquiry is warranted the AVPR shall immediately begin an inquiry into the allegations. The purpose of the inquiry is an initial review of the evidence to determine if the criteria for conducting an investigation are met.

B. The AVPR on the notification date of the individual(s) against whom allegations are made, shall promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceedings, inventory the records and evidence, and sequester them in a secure manner, except that where the research record 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. The same steps shall be taken regarding the custody of additional research records and evidence discovered during the course of the research misconduct proceeding, including at the inquiry and investigation stages, or if new allegations arise.
C. Within 15 working days of notification of the individual(s) against whom allegations of research misconduct is made, the AVPR and the chair of the Academic Senate shall jointly appoint a panel of three members, with appropriate expertise under provisions of sections 3.8 and 3.9 of this policy, to conduct the inquiry. A minimum of two members of the panel shall be full-time tenured faculty members of the University. Whenever possible at least one panel member shall represent the field or discipline from which allegations of research misconduct is made. Within five working days after the panel has been selected, the respondent shall be allowed to strike the name of one panel member for any reason during the inquiry process, in which case that panel member shall not be allowed to serve, and an alternate panel member shall be appointed. In all cases, panel members shall be appointed subject to the provisions of III. H. and III. I of this policy.

D. Changes to the membership of the inquiry panel shall be made only through joint decision of the AVPR and the Academic Senate Chair.

E. The inquiry shall be completed within 60 calendar days of its initiation unless circumstances clearly warrant a longer period. This inquiry period includes submission of the report and giving the individual(s) against whom allegations were asserted a reasonable opportunity (normally 10 working days) to provide a rebuttal or comment. If the inquiry takes longer than 60 calendar days to complete, documentation of the reasons for delay shall be included in the inquiry record.

F. A written inquiry report shall be prepared that includes:
1. The name and position of those against whom allegations of misconduct was asserted.
2. The name and position of the accuser(s) if requested by the respondent(s).
3. A full description of the allegations of research misconduct;
4. The basis for recommending that the alleged actions do or do not warrant an investigation;
5. Any comments on the report by the person(s) making the allegation
6. Any comments or rebuttals on the report by those against whom the allegations were asserted;
7. Any additional agency requirement for externally funded projects.

G. An investigation is warranted if:
1. there is a reasonable basis for concluding that the allegation falls within the definition of research misconduct, and
2. preliminary information-gathering and preliminary fact-finding from the inquiry, as well as careful consideration of the respondent’s rebuttal and comment, indicates that the allegation may have substance.
H. The final inquiry report shall be provided to the AVPR for review, who will make a written determination of whether an investigation is warranted. If the AVPR disagrees with a determination by the inquiry panel that an investigation is unwarranted, then a Dean from a college other than one to which the respondent(s) belongs who is not involved with any other part of the misconduct proceedings in any way shall make the determination as whether an investigation is warranted. The selection of the Dean shall be in accordance with the provisions of III. H and III. I. The AVPR (and the Dean, if applicable) shall indicate in writing the reasons for his/her agreement or disagreement with the inquiry panels' recommendation. If a determination is made that an investigation is warranted, the AVPR shall within 30 calendar days:

1. Report the findings to the Associate Vice President for Faculty Affairs, appropriate unit administrator (e.g., College Dean), and to the Provost.
2. Provide written notification to the individuals against whom allegations of research misconduct are raised of the specific allegations to be investigated. The notification shall include a copy of the inquiry report and include a copy or reference to this policy statement for comment within 10 days.
3. On a need to know basis, contact the Dean/Director or Unit Head regarding the inquiry results. For PHS-supported activities, within 30 days of finding that an investigation is warranted; the AVPR shall provide ORI with a written finding and a copy of the inquiry report.

I. The AVPR may notify those who made the allegations whether the inquiry found that an investigation is warranted and may provide a copy of the relevant portions of the inquiry report to them.

J. For externally funded projects the AVPR shall: follow the reporting and notification and disclosure requirements of the agency and comply with agency requirements for maintenance and transfer of records to the funding agency.

VII. INVESTIGATION

A. An investigation is the formal development of a factual record and the examination of that record leading to a decision not to make a finding of research misconduct or to a recommendation for a finding of research misconduct, which may include a recommendation for other appropriate actions including administrative actions.

B. Within 15 working days after the determination that an investigation is warranted the AVPR and the Chair of the Academic Senate shall jointly appoint a panel of five members, with appropriate expertise subject to provisions of III. H. and III. I.
of this policy, to conduct the investigation. None of the members of the inquiry panel are eligible to serve on the investigation panel. A minimum of three members of the panel shall be full-time tenured faculty members of the University. Within five working days after the panel has been selected, the respondent shall be allowed to strike the name of one panel member for any reason during the investigation process, in which case that panel member shall not be allowed to serve, and an alternate panel member shall be appointed.

C. Changing the membership of the investigation panel shall be made only through joint decision of the AVPR and the Academic Senate Chair.

D. An investigation following inquiry must be undertaken within 30 calendar days of the completion of the inquiry. All aspects of an investigation must be completed within 120 calendar days of beginning it, including conducting the investigation, preparing the report of findings, providing draft report for comments, and incorporation of all comments received. If it becomes apparent that the investigation cannot be completed within 120 calendar days, the reasons for delay shall be documented and included in the final report of the investigation. For externally funded projects, the external agency requirements for requesting extension to investigation period shall be followed.

E. The individual(s) against whom allegations of misconduct were directed shall be given written notice of any new allegations raised during the investigations within a reasonable time (5 working days) after determining to pursue allegations not addressed in the inquiry or the initial notice of the investigation.

F. In conducting the investigation, the investigation panel shall:
1. make 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 the allegation;
2. take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical;
3. interview both the individual(s) making the allegation and those against whom the allegations were made and any other available person who has been reasonably identified as having information regarding any relevant aspect of the investigation, providing the recording or transcript to the interviewee for correction, and include the recording or transcript in the record of investigation;
4. pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence either challenging the assumption of misconduct or of additional instances of possible research misconduct, and continue the investigation to completion; and
5. for externally funded research, comply with all requirements of the supporting agency for conducting research misconduct investigation.
G. The panel shall notify the individual(s) being investigated sufficiently (minimum of 10 working days) in advance of the scheduled interview date so that the individual(s) may adequately prepare for the interview and arrange for the attendance of legal counsel if desired.

H. Within 90 calendar days of initiation of the investigation, the draft investigation report should be submitted to the AVPR.

I. The individual(s) who raised the allegation may be given a copy of the draft investigation report or relevant portions of the report. If a written comment is submitted within 30 calendar days, the comment shall be made part of the final investigation report.

J. A copy of the draft investigation report shall be provided to the individual(s) being investigated and concurrently a copy of, or supervised access to, the evidence on which the report is based. Any rebuttals or comments by the individual(s) being investigated that are submitted within 30 calendar days following the receipt of the draft investigation report shall be included and addressed as part of the final investigation report.

K. The final investigation report shall:
   1. describe the nature of the allegations of research misconduct;
   2. describe the specific allegations of research misconduct considered in the investigation;
   3. identify and summarize the research records and evidence reviewed, and identify evidence taken into custody but not reviewed. The report shall also describe any relevant records and evidence not taken into custody and explain why;
   4. provide a finding as to whether research misconduct did or did not occur for each separate allegation of research misconduct identified during the investigation, and if misconduct was found,
      a. identify it as falsification, fabrication, or plagiarism and whether it was intentional, knowing, or in reckless disregard,
      b. summarize the facts and the analysis supporting the conclusion
      c. address the merits of any reasonable explanation, evidence and rebuttal evidence provided by those against whom the allegations were asserted,
      d. identify any external or internal support in conducting the research,
      e. identify any publications that need correction or retraction;
      f. identify the person(s) responsible for the misconduct,
      g. list any current support or known applications or proposals for support that the person responsible for misconduct has pending
5. include and respond to any comments or rebuttals made by the respondent;
6. include and address any comments made by the persons who made the allegations.

L. Copies of the final investigation report shall be provided to the AVPR and the individual(s) against whom allegations of research misconduct were raised. The AVPR shall review the report to ensure that it complies with the provisions of this policy. If, based on the AVPR’s review, additional changes to the final report are required, the respondent will be provided with a copy of the revised report.

M. The AVPR shall forward the final investigation report to the Associate Vice President for Faculty Affairs and the College Dean/Unit Director. The Associate Vice President for Faculty Affairs shall make recommendations for corrective actions, if any, to the Provost. The final decision is to be made by the Provost, President, or President’s designee. If the President chooses a designee other than the Provost, the President’s designee cannot be anyone who was previously involved with the misconduct proceedings in any way, and will be subject to the provisions of III. H. and III. I.

N. For externally funded projects, the external agency requirements for the maintenance and provision of relevant research records and records of the University’s research misconduct proceedings, including results of all interviews and the transcripts or recordings of such interviews shall be followed.

VIII. COOPERATION WITH ORI

The University shall cooperate with ORI during its oversight review under 42 CFR 93.400 et seq., or any subsequent administrative hearings or appeals under 42 CFR 93.500 et seq., with respect to research integrity and misconduct issues related to PHS-supported activities. This includes providing all research records and evidence under the University’s control, custody, or possession and access to all persons within its authority necessary to develop a complete record of relevant evidence.