

Doc. T91-035A
Passed by the BoT
12/4/91

PROCEDURES FOR DEALING WITH CHARGES OF
MISCONDUCT IN RESEARCH AND SCHOLARLY ACTIVITIES
AT THE UNIVERSITY OF MASSACHUSETTS AMHERST

I. PURPOSE OF GUIDELINES

Misconduct in scholarly activities is injurious to the University's teaching, research, and public service missions and cannot be tolerated. This document provides guidelines proposed by the Research Council for investigations of allegations of misconduct in scholarly activities. It is written to comply with federal regulations requiring such procedures and also to maintain and enhance the integrity of research on our campus.

II. DEFINITIONS

A. Scholarly Activity

Scholarly activity is to be broadly construed to include all activities of University personnel on official duty involving research, scholarship and creative activities, such as those involved in laboratory research, field work, observational studies, experimentation, research and scholarship in the humanities and artistic expression.

B. Scholarly and Research Misconduct

Scholarly and research misconduct is defined as misrepresentation of the procedures and outcomes of research to gain some advantage. Misconduct may often be hard to distinguish from error or poor judgment, from which it is marked off by the intentions of the person(s) involved.

Although there is no definitive and exhaustive list of examples, those outlined below may serve as guides in identifying scholarly and research misconduct.

1. Falsification of data. Data falsification may range from the fabrication of data to selective reporting of data. Falsification covers the omission of data as well as the modification of data.
2. Plagiarism. This form of misconduct consists of any attempt to receive credit for the work of another, including taking credit for someone else's work, ideas, or methods, copying the writing of others without proper acknowledgment, or otherwise taking credit falsely.
3. Abuse of confidentiality. Includes the use or release of information given to one under the understanding of confidentiality. Examples include taking ideas from documents to which access was given, under rules of confidentiality, such as in the reviewing of grant proposals, award applications, manuscripts submitted for publication, scholarly prizes or journals.
4. Violations of rules and regulations concerning the conduct of research. Examples include violations of federal, state or local governmental regulations, or University regulations dealing with protection of human subjects, use of dangerous or hazardous substances, improper use of recombinant DNA, and careless handling of radioactive materials.

5. Misrepresentations in publication. This form of misconduct involves the publishing or public circulation of material intended to mislead the readers. Examples include misrepresenting data (particularly its origins) or adding or deleting the names of other authors without the latter's consent.
6. Violations of Research-related Property Rights. Examples include the deliberate taking or destroying the research related property of others, such as data, research papers, notebooks, equipment, or supplies.

III. TIMELINESS

Timeliness in investigating a complaint is of the essence of just and fair procedures. In the interest of the parties concerned, all matters should be handled as expeditiously as possible. Deadlines cited in this document are intended to serve as outside limits for actions to occur. All persons charged with administering this process will endeavor to meet all deadlines, but failure to do so will not prevent the process from continuing. The complainant or the respondent must demonstrate to the Chair of the Scholarly and Research Misconduct Board some prejudice stemming from a delay before this process will be stopped.

A complainant will have sixty days following the discovery of an alleged violation to file a complaint unless he or she can show good reason (as determined by the Chair of the Scholarly and Research Misconduct Board) for having that deadline waived.

If a respondent fails to answer a charge or to participate in a hearing, his or her Vice Chancellor will be notified of that fact by the Vice Chancellor for Research. Failure to respond to a charge or to appear at a hearing will be considered a breach of an employee's or graduate student's responsibility. Furthermore, a respondent will not prevent this process from proceeding by his or her silence or absence. Failure to respond may result in the hearing proceeding solely on the basis of the complainant's testimony and evidence.

A complainant may withdraw a charge after it has been filed, provided the respondent agrees to the withdrawal.

IV. RETALIATION

No individual will be penalized by the University or by any person for participating in the procedures described here. Any act of retaliation directed against either a complainant or a respondent will be subject to this grievance procedure. Complaints of retaliation should be addressed to the Vice Chancellor for Research who will advise the grieving party of his or her rights in this matter. The Ombuds Office will assist the victim of retaliation in preparing a complaint which will then be processed in the same manner as a Scholarly and Research Misconduct complaint.

V. PROCEDURES

The office of the Vice Chancellor for Research will be responsible for administering this policy and its procedures. A University Research and Scholarly Misconduct Board, consisting of each and every college Dean, and two members from each college nominated by the college Deans and appointed by the Vice Chancellor for Research, shall constitute the University body for interpreting misconduct policy and for the recommendation of policy or procedural changes to the Faculty Senate and Research Council. The Vice Chancellor for Research shall chair the Research and Scholarly Misconduct Board.

It is the responsibility of all members of the University community to inform the University when a situation involving possible misconduct is encountered. Such circumstances involving possible misconduct in scholarly activities should normally be referred to the appropriate Dean or the Vice Chancellor for Research. Any other

person associated with the institution receiving a report or formal complaint alleging misconduct in scholarly activities shall forward it on a timely basis to the appropriate Dean or the Vice Chancellor for Research. It is not necessary that someone filing a complaint be directly affected negatively by the action in question; it is sufficient that the complainant believe that the rules concerning misconduct have been violated. The Dean shall promptly inform the Vice Chancellor for Research of all reports or formal complaints alleging misconduct in scholarly activities.

These procedures are intended to provide a fair, prompt and reliable determination whether the University's scholarly and research misconduct policy has been violated. No one associated with the University is exempt from the jurisdiction of this policy.

As in any grievance procedure, justice requires that the legal rights as well as the right to academic freedom of any complainant and the person who has allegedly violated the misconduct rules, the respondent, be fully assured. The University will make every effort to protect these rights and will undertake any action that threatens or compromises them.

This procedure is not intended to impair or limit the right of anyone to seek a remedy available under state or federal law. A complainant may file a complaint with an external body to meet that body's deadlines without jeopardizing his or her right to a University hearing. However, if a complainant seeks relief outside the University, the University will not be obliged to continue processing a grievance while the case is being considered by an outside agency or court.

The Office of the Vice Chancellor for Research will maintain general information on the subject of misconduct in scholarly activities and make this information available to faculty, students, administrators and other employees of the University. Informal requests for information or consultation with the Office of the Vice Chancellor for Research or with other University entity (e.g. Office of Grants and Contracts, Office of Research Affairs, Ombuds' Office, etc.) and departments will not, in themselves, be construed as an allegation of misconduct in scholarly activities which invokes the full procedure outlined below.

A. Preliminary Review

When a report or formal complaint alleging possible misconduct in scholarly activities is received by the Vice Chancellor for Research, he or she will appoint a designee(s) to conduct a PRELIMINARY REVIEW. Normally the designee will be the Dean of the relevant college, but in situations of potential conflict of interest, some other appropriate person(s) of comparable rank shall be appointed.

The designee will conduct a PRELIMINARY REVIEW of the information or circumstances giving rise to a suspicion of misconduct in scholarly activities. The designee is directed to inform the person(s) alleged to have committed the act(s) of misconduct (the respondent) and, if the respondent(s) so desire, receive account(s) of the situation under inquiry from their/his/her point of view. The designee may consult informally, on a confidential basis, with the chairperson of the department involved and with others in the university community in carrying out the PRELIMINARY REVIEW. Immediate action should be taken to protect any data or other materials involved, including obtaining secure possession of such materials.

The purpose of the PRELIMINARY REVIEW is to ascertain whether or not there is sufficient substance to the allegation of misconduct to proceed with additional investigation.

The PRELIMINARY REVIEW should be completed by the designee within one week of the receipt of the allegation or other information.

The designee shall make a written recommendation to the Vice Chancellor for Research with copies to the

respondent, and to any complainant. The recommendation shall specify either that the allegation or other information is without substance and the matter should be closed or that there is sufficient substance to the claims of misconduct to warrant further review.

The Vice Chancellor for Research shall review the recommendation of the PRELIMINARY REVIEW designee and decide whether to proceed to the next level review.

If the decision is consistent with the PRELIMINARY REVIEW recommendation and is to proceed, the Vice Chancellor shall bring the matter before the University Research and Scholarly Misconduct Board. If the decision is consistent with the PRELIMINARY REVIEW recommendation and is not to proceed, the matter will be closed, unless any complainant wishes to appeal the decision to the Provost. Upon appeal, the Provost shall review the record and make the final decision on whether to proceed. If the decision is to proceed, the Vice Chancellor for Research shall bring the matter before the University Research and Scholarly Misconduct Board.

If the Vice Chancellor's decision is contrary to the recommendation of the PRELIMINARY REVIEW designee, the designee can appeal to the Provost. The Provost shall review the record and make the final decision on whether to proceed. If the decision is to proceed, the Vice Chancellor for Research shall bring the matter before the University Research and Scholarly Misconduct Board.

B. Committee of Inquiry

Except in those cases which are revealed by the PRELIMINARY REVIEW to be clearly without substance, the University Research and Scholarly Misconduct Board will appoint a COMMITTEE OF INQUIRY consisting of the designee of PRELIMINARY REVIEW, serving as Chair, at least three members of the Board, and experts selected from disciplines appropriate to the nature of the particular situation. Ordinarily the COMMITTEE OF INQUIRY shall consist of no more than eight persons.

Persons whose conducts are the subject of the inquiry ("SUBJECTS") will be informed that an inquiry is being conducted.

1. THE COMMITTEE OF INQUIRY will consult with and hear from the respondents and other affected individual(s), gather information, conduct preliminary fact finding, and determine whether there are reasonable and adequate grounds to warrant a formal investigation of misconduct in scholarly activities.
2. The chair will transmit a written statement detailing the findings of the COMMITTEE OF INQUIRY and its recommendation and the reasons therefore to the Vice Chancellor for Research for action and to the SUBJECTS and other individuals who are directly affected, including any complainant. The written statement should be transmitted within four weeks of the appointment of the committee.
3. The Vice Chancellor for Research shall review the recommendation of the COMMITTEE OF INQUIRY and decide whether to proceed to a formal investigation of misconduct in scholarly activities.

If the Vice Chancellor's decision is consistent with the COMMITTEE OF INQUIRY recommendation and is to proceed, the Vice Chancellor shall bring the matter to the University Research and Scholarly Misconduct Board.

If the Vice Chancellor's decision is consistent with the COMMITTEE OF INQUIRY recommendation and is not to proceed, the matter will be closed, unless any complainant wishes to

appeal the decision to the Provost. Upon appeal, the Provost shall review the record and make the final decision on whether to proceed. If the decision is to proceed, the Vice Chancellor for Research shall bring the matter to the University Research and Scholarly Misconduct Board.

If the Vice Chancellor's decision is contrary to the recommendation of the COMMITTEE OF INQUIRY the Chair of the Committee of Inquiry can appeal to the Provost. The Provost shall review the record and make the final decision on whether to proceed. If the decision is to proceed, the Vice Chancellor for Research shall bring the matter before the University Research and Scholarly Misconduct Board.

Once the final decision to proceed with a formal investigation is made, the Vice Chancellor for Research shall notify granting or contracting agencies or entities of the complaint, as required under existing federal and state regulations and as may be required by the grant or contract condition. In addition, the Vice Chancellor for Research shall continue to ensure that relevant documents are held securely.

C. HEARING PANELS of the University Research and Scholarly Misconduct Board

Within ten days of receiving the formal recommendation from a COMMITTEE OF INQUIRY and if there is a decision to proceed, the Vice Chancellor for Research will appoint a HEARING PANEL, consisting of five members of the University Research and Scholarly Misconduct Board, and additional members up to a maximum of ten. At least two members of the HEARING PANEL shall be from the respondent's school or college. The Vice Chancellor for Research will designate one member to serve as Presiding Officer. The members of the Panel will act at all times to preserve the confidentiality of the procedures.

1. Preparation of Formal Complaints and Responses

A charge of misconduct to be considered by a HEARING PANEL is to be in the form of a signed statement setting forth clearly and concisely the allegations concerning misconduct. A complaint ordinarily will be signed by the complainant(s) who initially brought the alleged misconduct to the attention of the Vice Chancellor for Research, especially in circumstances in which the complainant(s) allegedly has been directly affected by the misconduct. However, in cases where the alleged misconduct involves rules and regulations concerning the conduct of research, or in which the alleged misconduct has no specific alleged victim, the Designee of the Committee of Inquiry or the Vice Chancellor for Research prepares and signs the complaint. In all cases, the signatory(s) to the complaint become the complainant(s) in the proceedings of the HEARING PANEL.

2. The HEARING PANEL

Before a HEARING PANEL is convened, each party to the proceeding will have the right to object to the appointment of any panel member on the grounds that the member is biased. The Vice Chancellor for Research will determine whether any objections have merit and will judge whether a panel member will be seated.

Before any case is heard by the HEARING PANEL, the complainant and the respondent, along with their advocates, will meet with the Presiding Officer of the HEARING PANEL to attempt to clarify the issues and to define the areas of agreement. To encourage a fair and focused hearing the Presiding Officer will notify the HEARING PANEL at the start of the proceedings about the points of agreement and disagreement.

The HEARING PANEL will hear testimony and consider evidence related to the complaint. The panel will determine whether the University policy has been violated. The HEARING PANEL may consult with University Counsel or have his or her assistance at the hearing.

3. Duties and Powers of the Presiding Officer

The Presiding Officer will:

- a. ensure an orderly presentation of all evidence;
- b. ensure that the proceedings are accurately recorded; and
- c. see that a fair and impartial decision based on the issues and evidence presented at the hearing is issued by the HEARING PANEL no later than ten working days after the conclusion of the hearing or, when written arguments are submitted, ten working days after their submission.

4. Duties and Powers of the HEARING PANEL

The HEARING PANEL will:

- a. conduct a fair and impartial hearing which ensures all the rights of all parties involved;
- b. define issues of contention;
- c. receive and consider all relevant evidence which reasonable people customarily rely upon in the conduct of serious business;
- d. ask relevant questions of the complainant, respondent, and any witness if needed to elicit information which may assist the HEARING PANEL in making a decision;
- e. ensure that the complainant and respondent have full opportunity to present their claims orally or in writing, and to present witnesses and evidence which may establish their claims;
- f. continue the hearing to a subsequent date if necessary to permit either party to produce additional evidence, witnesses, or other relevant materials;
- g. change the date, time or place of the hearing on its own motion or for good reason shown by either party, and with due notice to all parties;
- h. permit both parties to submit written arguments within ten working days from the conclusion of the hearing;
- i. rule by majority vote on all questions of fact, interpretations of rules, regulations and policies, recommendations for penalties and relief, and any requests that are made during the hearing.

5. The Conduct of The Hearing

The main purpose of the Hearing is to determine whether University policy concerning research and scholarly misconduct has been violated. Both parties will be given a full and fair hearing. The proceeding, although formal, is not a court proceeding and the HEARING PANEL will not be bound by the procedures

and rules of evidence of a court of law. In most instances, complainants and respondents will be expected to speak for themselves. The HEARING PANEL will hear and admit evidence which it believes is pertinent to the case.

The HEARING PANEL will conduct its hearings by the following procedures:

- a. Unless otherwise agreed by a majority of the Panel, a closed hearing will be held within ten working days after the HEARING PANEL has been appointed.
- b. The complainant and respondent will have the opportunity to hear all testimony, to examine all evidence, to respond to any testimony, to present evidence and query witnesses, on the issues in contention.
- c. Each party will have the right to be accompanied and advised by two people at any stage of the proceedings, neither of whom may be an attorney. However, advisors will not address the HEARING PANEL directly except in special cases, and with permission of the Panel.
- d. If either party is a member of a collective bargaining unit, the advisors mentioned above may, upon the request of the party, be representatives of his or her union. However, neither party will be required to be advised by a union representative. When there is no request for union representation by a member of a union, the union will be notified that a hearing has been scheduled and will be allowed to send an observer.
- e. The hearing will be recorded electronically by the HEARING PANEL and the records will become the property of the University. Subsequently, either party may have supervised access to the records by application to the Vice Chancellor for Research.

6. Order of the Hearing

The proceedings before the HEARING PANEL will be as follows:

- a. The President Officer will read the charge(s) and ask the respondent to either admit or challenge each and all allegation(s).
- b. The complainant may present a brief opening statement, followed by a brief opening statement from the respondent.
- c. The HEARING PANEL will give each party the opportunity to present all relevant evidence.
- d. Each party may make a concluding statement to the HEARING PANEL.
- e. If either party wishes to submit any written argument after the hearing, he or she will notify the Presiding Officer within two working days after the hearing. The written argument will be submitted within ten working days after the hearing's conclusion.
- f. A HEARING PANEL, by a majority vote of its members, may make other rules concerning the procedure of a hearing which it deems appropriate and consistent with this Scholarly and Research Misconduct Policy.

7. Decision of the HEARING PANEL

After all the evidence and testimony is presented, the HEARING PANEL will convene for private

deliberations to determine whether the University's Policy on Scholarly and Research Misconduct has been violated. A violation of this Scholarly and Research Misconduct Policy will be found only when there is preponderance of evidence that a violation has occurred. If the Panel finds that the Policy has not been violated, it will recommend to the Vice Chancellor for Research that the matter be closed. If he concurs, the Vice Chancellor for Research shall ensure that all University records pertaining to the case reflect the finding.

If the Panel finds that the Policy has not been violated and recommends that the matter be closed but the Vice Chancellor for Research does not concur, the Vice Chancellor will formulate his own recommendation on the matter, and forward that, together with the recommendation and findings of the Hearing Panel to the Provost. The Provost shall review the record and make the final decision.

If the Panel finds that the Policy has been violated, it will prepare findings and forward its findings to the Provost and Vice Chancellor for Research together with recommended penalties. The HEARING PANEL will forward a copy of its findings and recommendations to the respondent and complainant. The penalties will reflect the nature and severity of the misconduct, and will include, but are not limited to verbal admonition, written warning to be included in the individual's personnel file, removal from certain duties, demotion, suspension with or without pay and termination. Recommended penalties shall be consistent with Trustee personnel policies and collective bargaining agreements in force at the time of the decision.

8. Decision of the Provost

- a. The Provost, after consultation with the Vice Chancellor for Research, will act upon the recommendations of the HEARING PANEL within ten (10) working days of their receipt. The Provost's determination shall be based upon consideration of both the case in question and any prior record of violations of University policies by said faculty member. The Provost's decision shall be forwarded in writing to both the faculty member and the HEARING PANEL, with specific explanations of any change in the PANEL's recommendations.
- b. Either the penalized faculty member of the HEARING PANEL may request that the decision of the Provost be reviewed by the Chancellor by filing a written petition within ten (10) working days after receiving the Provost's decision. The decision of the Chancellor shall constitute the final University disposition of the matter and no further administrative appeals will be considered. The Vice Chancellor for Research will communicate in writing the decision to the relevant state or federal agencies or other entities as required by rules and regulations or terms of grant or contracts.
- c. Penalties may be subject to additional review or grievance only as specified in collective bargaining agreements in force at the time of the decision.
- d. These disciplinary actions will not affect, or be affected by, additional sanctions imposed upon the faculty member by an external funding agency.