

ATTACHMENT 6

Policy on Research Misconduct

1. Introduction and Applicability

The integrity of the University of New England and its academic endeavors require that teachers, researchers, advisors and other members of its community be dedicated to maintaining the highest ethical standards in their professional activities. In recognition of this need, UNE has developed the following policy to respond to allegations of research misconduct⁵ and to inform members of the community of the appropriate channels for bringing such matters to the attention of the University. This policy applies to any person who, at the time of the alleged research misconduct, was employed by, was agent of, or was affiliated by agreement with UNE.

2. Definitions

- a. *Complainant*. The individual, department or entity bringing forth an allegation of research misconduct.
- b. *Research misconduct*⁶ is defined as knowing, intentional or reckless fabrication, falsification, or plagiarism in the conduct of scholarly activity. Research misconduct also includes the failure to follow standards of professional conduct with regard to human or animal subjects. Research misconduct does not include honest error or differences of opinion.
 - i. *Fabrication* is making-up data or results and recording or reporting them.
 - ii. *Falsification* is manipulating research results, equipment, or processes, or changing or omitting data or results such that information is not accurately represented in the research record. The research record is the record of data or results of scholarly activity and includes, but is not limited to, research proposals, laboratory records (both physical and electronic), progress reports,

⁵ This policy is based upon the federal regulations governing research misconduct in connection with Public Health Service (“PHS”)-supported activities and will be interpreted and applied so as to be in compliance with those regulations. UNE has also determined that this policy will be applied as the minimum standard to all allegations of research misconduct, regardless of the funding source(s) or whether the scholarly activity is funded.

Institutional response to research misconduct allegations in areas not PHS-supported, will follow the same general principles except for the actual involvement of PHS. In the event another research sponsor has additional requirements to those covered by this policy, all research funded by that source will be subject to those additional requirements.

⁶ Definitions relating to research misconduct are based on the Federal Policy on Research Misconduct, 42 C.F.R. Part 93.

abstracts, theses, oral presentations, internal reports, and materials submitted for publication or published in any form.

- iii. *Plagiarism* is the appropriation of another person's ideas, processes, results, data or words without giving appropriate credit.
- iv. *Scholarly activity* includes, but is not limited to, writing research proposals, undertaking research activities, and reporting or presenting research results. Scholarly activity includes all basic, applied, and demonstration research in all fields of study. Scholarly activity also includes reviewing the research of others for publishers, funding agencies or any other purpose.

3. Preliminary Reporting and Inquiry

- a. Allegations of research misconduct shall be made to the Vice President for Research and Scholarship, preferably in writing. However, any form of communication will be considered acceptable under this policy. Allegations of research misconduct by the Vice President for Research and Scholarship should be submitted to the Provost.⁷
- b. Within five business days of receiving an allegation of research misconduct, the Vice President for Research and Scholarship will determine whether the behavior alleged meets the definition of research misconduct above and is sufficiently credible and specific so that potential evidence of such misconduct may be identified, in which case an inquiry will be conducted.⁸ At that time, the Vice President for Research and Scholarship shall forward a copy of the allegation to the person named in the allegation (“Respondent”) along with a copy of this policy. The Vice President for Research and Scholarship shall, at the same time, inform respondent’s department head or other immediate supervisor of the nature of the claims alleged and immediately arrange to take all appropriate actions to obtain and secure all research records and evidence needed to conduct the research misconduct inquiry. Respondent shall have an opportunity to respond in writing to the Vice President for Research and Scholarship to any allegations raised. Responses must be received by the Vice President for Research and Scholarship within ten business days, but upon reasonable request, the Vice President for Research and Scholarship may choose to grant additional time.
- c. After Respondent has been notified and has had an opportunity to respond, the Vice President for Research and Scholarship, in consultation with the department head or program director and, if the Vice President for Research and Scholarship deems appropriate, the Director of Research Administration, the Institutional Compliance

⁷ When allegations are raised against the Vice President for Research and Scholarship, the Provost shall perform the role of the Vice President for Research and Scholarship as defined in this policy.

⁸ When the Vice President for Research and Scholarship is the subject of an allegation, the Provost shall consult with the Chair of the University Faculty Assembly and, if the Provost decides that further inquiry is warranted, it shall be conducted by the Chair of the University Faculty Assembly.

Officer, and/or such other persons as the Vice President for Research and Scholarship decides would be helpful to the inquiry process (the “Inquiry Committee”), shall determine whether a formal investigation is warranted. In making such determination, the Vice President for Research and Scholarship and/or other members of the Inquiry Committee will undertake an initial review of the evidence and may interview Respondent, Complainant and other relevant witnesses, all on an individual basis. The Vice President for Research and Scholarship his/her designee from the Inquiry Committee shall prepare a written inquiry report. Respondent shall be provided a copy of the draft report and provided an opportunity to respond or comment within ten business days. Any written response or comment will be included in the final inquiry report.⁹

- d. The Vice President for Research and Scholarship, in consultation with the Inquiry Committee, shall determine from this initial inquiry whether a formal investigation is warranted. A formal inquiry is warranted when the information developed during the initial inquiry supports a reasonable belief that there is substance to the allegations of research misconduct. During the inquiry period, the identities of all parties involved will be held in confidence to the maximum extent that an effective inquiry allows.
- e. The entire inquiry process must be completed within sixty calendar days unless the Vice President for Research and Scholarship determines, for good cause shown and documented on the record, that circumstances warrant a longer period.
- f. The Vice President for Research and Scholarship shall, at any appropriate time and when required by law, notify federal authorities of allegations of research misconduct in federally supported research.¹⁰
- g. At any time prior to beginning a formal investigation, the Vice President for Research and Scholarship may meet with the parties involved and seek to informally resolve the issues raised by the allegation. If the parties cannot agree on a settlement of the issues, the Vice President for Research and Scholarship shall proceed with a formal investigation.¹¹

⁹ Inquiry reports involving PHS-supported research must comply with Federal Regulations. See 42 C.F.R. § 93.309.

¹⁰ Regulations require institutions receiving grants under the Public Health Service to notify the Office of Research Integrity (“ORI”), a component of the Office of the Director of the National Institutes for Health (“NIH”), when an institution determines that a formal investigation is warranted (42 C.F.R. § 93.309) and certain specific conditions exist (see 42 C.F.R. § 93.318). If it is determined that an investigation is not warranted, the institution must maintain, for a period of at least seven (7) years, sufficiently detailed documentation of the inquiry to permit a later assessment of reasons supporting that determination (42 C.F.R. § 93.309(c)).

¹¹ If PHS-supported research is at issue, the Vice President for Research and Scholarship must notify the ORI, if UNE intends to close a case at the inquiry, investigation or appeal stage on the basis that respondent has admitted guilt or a settlement with Respondent has been reached (42 C.F.R. § 93.316).

- h. The University shall take no action against Respondent as a result of research misconduct allegations prior to the conclusion of the appropriate investigation, unless it is determined that the presence of that person on campus or in class poses an immediate threat of physical or psychological harm to others. A suspension on this basis shall not result in a reduction of salary while an investigation is pending. During the course of the misconduct investigation, the Respondent remains subject to all other University policies and procedures.

4. Procedures for Formal Investigations

- a. If the Vice President for Research and Scholarship determines that a formal investigation is warranted, it shall begin within twenty-one (21) days of the conclusion of the initial inquiry. Before the investigation begins, the Vice President for Research and Scholarship shall notify respondent in writing that a formal investigation is in order and shall forward to respondent a copy of the final inquiry report. When the allegation involves externally funded research, the Director of Research Administration will also receive notification, after which he or she will inform the sponsor of the formal investigation.
- b. All parties involved in a formal investigation and any subsequent proceedings shall, to the extent possible, endeavor to maintain confidentiality regarding the allegations, evidence and proceedings, and use care in balancing the need for disclosure and any privacy interests of persons involved.
- c. The Vice President for Research and Scholarship will request that the Chair of the University Faculty Assembly¹² recommend a fact-finding committee of five (5) tenured faculty members¹³ who are unbiased¹⁴ in the investigation (“the Committee”). Upon approval of the membership of the committee by the Vice President for Research and Scholarship, the Committee shall elect its own chair who shall be responsible for determining the manner in which witness interviews are handled by the Committee. The Committee shall have sixty (60) days from the date it is assembled in which to complete its investigation.
- d. The Committee will be provided with all necessary information about the allegation and empowered to review relevant documents and interview witnesses. The Committee shall review all relevant research records and documentation and interview respondent and complainant and any other available persons who have been identified as having relevant and material information regarding the investigation. Respondent shall receive written notice, in advance, of all the planned fact-finding activities of the Committee. The

¹² If the respondent is the Chair of the University Faculty Assembly, the Vice-Chair of the University Faculty Assembly will perform the functions of the Chair of the University Faculty Assembly as outlined in this section.

¹³ The Committee shall include individuals with appropriate expertise to evaluate the particular issues and evidence involved in the alleged misconduct.

¹⁴ “Unbiased” in this context means person(s) “who do not have unresolved personal, professional or financial conflicts of interest with” respondent (42 C.F.R. § 93.310(b)).

Committee may seek assistance from UNE counsel in conducting its investigation and from ORI, if needed.

- e. The Committee will be expected to pursue all significant issues and leads developed during the investigation, including evidence of additional instances of possible research misconduct. The Committee will give Respondent written notice of any new instances or allegations of research misconduct not addressed during the inquiry or in the initial notice of investigation within a reasonable amount of time of deciding to pursue such allegations.
- f. The Committee shall keep records of all its fact-finding proceedings; shall arrange for a transcript of each interview and provide a copy of the transcript to each person interviewed for the purpose of correction; and shall include the transcript and any corrections in the record of the investigation, which will be notarized.
- g. Respondent may exercise the following rights during the investigation of the Committee:
 - i. Respondent may choose to be represented by legal counsel. Respondents may consult with legal counsel or a non-lawyer personal adviser (who is not a principal or witness in the case) to seek advice, but may not bring the counsel or personal adviser to interviews or meetings on the case, except where required by statute or regulation. Respondent will be responsible for all costs associated with such advice or representation.
 - ii. Respondent may challenge the composition of the Committee, if he or she believes that one or more of its members is not “unbiased” or should otherwise recuse him or herself (see footnote 10). The Committee, in consultation with the Vice President for Research and Scholarship, shall determine whether bias exists and otherwise act to ensure its own credibility. The Committee shall request that the Chair replace a committee member when appropriate.
 - iii. Respondent has the right to appear at a preliminary conference with the Committee to set an interview schedule. The Committee shall endeavor to provide Respondent with a reasonable amount of time to prepare for the investigation consistent with the overall time constraints on the investigation process.
 - iv. At the request of Respondent, the Committee shall use its authority to obtain documents and evidence and to interview witnesses who have information relevant to the defense of Respondent.
 - v. Respondent is entitled to a presumption of innocence and need not prove his or her innocence¹⁵ to the Committee.

¹⁵ The respondent does bear the burden of proving any affirmative defenses raised (e.g., honest error or difference of opinion) or mitigating factors. (See 42 C.F.R. § 93.106.)

- vi. Respondent shall have the opportunity to present a defense to the Committee, to present witnesses for interview by the Committee, and to respond to all allegations of research misconduct. The Rules of Evidence will not formally apply to this proceeding.
- vii. Respondent shall receive a copy of the draft report of the Committee and shall have an opportunity to provide a written response to such report. Respondent shall receive a copy of the final report at the time it is provided to the Vice President for Research and Scholarship.
- h. Once the investigation is completed, the Committee will prepare a draft investigation report¹⁶ stating whether or not Respondent has committed research misconduct and summarizing the facts and analysis that support that conclusion and, if appropriate, addressing the merits of any reasonable explanation or defense provided by Respondent. Findings of research misconduct shall only be made if a majority of the members of the Committee agree that such findings are supported by a preponderance of evidence¹⁷. If the Committee determines respondent has engaged in research misconduct, it may also recommend disciplinary actions (up to and including termination). This draft report should normally be prepared within fifteen (15) days of conclusion of the evidentiary phase of the investigation.
- b. The Committee will provide Respondent with a copy of the draft investigation report for comment as well as a copy of, or supervised access to, the evidence on which the report is based. Respondent shall have thirty (30) days to respond to the draft report. Respondent's comments will be considered and included in the final report for transmission to the Vice President for Research and Scholarship.
- c. The final investigation report must be in writing and submitted to the Vice President for Research and Scholarship in a timely fashion such that the Vice President for Research and Scholarship may review the report, determine whether to accept it as written or to return it to the Committee for further deliberation or fact-finding and allow for submission of the report to ORI¹⁸ or the appropriate sponsor no later than 120 days from the date the investigation began if there is a finding of research misconduct. If this time period cannot be met and PHS-supported research is at issue, the Vice President for Research and Scholarship must file a written request and explanation for an extension with the ORI. If the Vice President for Research and Scholarship's determination differs from the Committee, he/she must provide a written explanation of the reasons therefore.

¹⁶ If applicable, the investigation report shall comply with the requirements of 42 C.F.R. § 93.313.

¹⁷ Preponderance of the evidence as applied to the Committee's and Respondent's (defenses) burdens of proof 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 C.F.R. § 93.219.)

¹⁸ If PHS-supported research is involved, the contents of the final report must comply with federal regulations (42 C.F.R. § 93.313).

- d. If the Vice President for Research and Scholarship concludes that Respondent has committed research misconduct, the Vice President for Research and Scholarship, in consultation with the President, the Provost, Human Resources, and the relevant department head or program director, shall also determine the appropriate disciplinary action, up to and including termination. The Vice President for Research and Scholarship shall promptly notify Respondent of this decision, which shall be final, subject to a limited right of appeal to the President, as described below.
- e. Should the procedure followed under this policy find no research misconduct by the Respondent, the party or parties who conducted the initial inquiry or formal investigation shall, as appropriate, undertake a good faith effort to protect or restore the reputation of the Respondent. Reasonable efforts will also be taken to protect the standing of the individual(s) who raised the issue of possible research misconduct, unless the inquiry or investigation reveals that such individual(s) acted in bad faith, in which case appropriate disciplinary actions may be taken.

5. Review of Disciplinary Actions by the President

- a. If the disciplinary action (see ¶ k.) will result in Respondent's termination, Respondent may appeal the disciplinary action, but not the underlying finding of research misconduct, to the University President. Such appeal must be in writing, must state the reasons for appeal, and must be presented to the President within ten (10) days of the date of Respondent's receipt of notice of such disciplinary action. Thereafter, the Vice President for Research and Scholarship shall promptly transmit the final investigation report. The President shall review the reasons for appeal, the final investigation report, any changes there to made by the Vice President for Research and Scholarship (see ¶ 4(j)) and, if necessary, may seek additional submissions or information from Respondent or the Vice President for Research and Scholarship. The President shall notify both Respondent and the Vice President for Research and Scholarship of his or her decision, which shall be the final decision on the part of the institution, but subject to review by the ORI where applicable.

6. Special Measures

If the Committee concludes that research misconduct occurred and the Vice President for Research and Scholarship determines that further action is required, the Vice President for Research and Scholarship shall direct the department head or program director¹⁹ to notify the editors of publications to which abstracts and/or papers relevant to the research misconduct have been submitted, and request that the work be withdrawn prior to publication. If any relevant work has already been published, the department head or program director will request that a correction or retraction be published. The individual who was found to have committed research misconduct will ordinarily be responsible for preparing and presenting appropriate corrections and/or retractions.

¹⁹ For the purposes of this section, the Vice President for Research and Scholarship will fulfill the responsibilities of the department head when the research misconduct was committed by a department head or program director.

7. Reporting and Records

- a. If the research misconduct occurred in the context of externally sponsored research, the Vice President for Research and Scholarship shall instruct the Director of Research Administration to convey the results of the investigation and any decision or further actions taken as a result of that investigation to the sponsor of the research. This communication shall include a description of the procedure that was followed to investigate the allegation(s) and a summary of the views of the person(s) found to have engaged in research misconduct.
- b. The Vice President for Research and Scholarship shall file reports on allegations and investigations of research misconduct as required by the Federal Office of Research Integrity, Office of Scientific Integrity, or other relevant agency.
- c. The Vice President for Research and Scholarship's Office shall maintain, for a period of seven years, all records and documentation regarding allegations of research misconduct, including written allegations and responses to them, transcripts of hearings, reports of fact-finding committees, records of appeals and decisions of administrators and the Board of Trustees.