

Research Misconduct Policy
Notre Dame de Namur University
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Research Misconduct: General Statement

Notre Dame de Namur University expects professional and ethical behavior from all participants in institutionally sponsored activities. As such NDNU develops and promulgates effective policies for the professional and ethical conduct of its members. This Research Misconduct Policy and the procedures contained therein comply with Federal regulations and are intended to foster an environment that encourages the highest level of ethical conduct of research. Given our respect for persons, the policy specifies how investigations into allegations of research misconduct will be conducted so as to protect the due process rights and appropriate levels of confidentiality of those involved.

Applicability and Conformance to Federal Regulations

This policy applies to all individuals engaged in research under the auspices of NDNU, including, but not limited to faculty, staff, students, and those working under contract with the University, regardless of the funding source (or lack thereof).

The policies and procedures herein conform to the Public Health Service {Department of Health and Human Services} Final Rule 42 Code of Federal Regulations (CFR) Part 93. Specifically, 42 CFR Part 93 applies to all individuals who may be involved with a project supported by, or who have submitted a grant application to, the Public Health Service (PHS).

INVESTIGATION OF ALLEGED RESEARCH MISCONDUCT

I.A DEFINITION OF RESEARCH MISCONDUCT

Terms used have the same meaning as given them in the Public Health Service Policies on Research Misconduct, 42 CFR Part 93.

- a. **Fabrication** is making up data or results and recording or reporting them.
- b. **Falsification** is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
- c. **Plagiarism** is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- d. **Research misconduct** means fabrication, falsification, or plagiarism, in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion. (§ 93.103, 42 CFR Part 93).

Research misconduct under NDNU policy also includes failure to comply with requirements for the protection of human or animal research subjects.

I.A.1 EVIDENTIARY STANDARDS FOR FINDINGS OF RESEARCH MISCONDUCT

A finding of research misconduct requires that

- There be a significant departure from accepted practices of the relevant research community; and
- The misconduct be committed intentionally, knowingly, or recklessly; and
- The allegation be proven by a preponderance of the evidence, with the burden of proof falling on the institution.

I.B DELEGATION OF AUTHORITY AND RESPONSIBILITY

The President delegates to the Provost the following responsibilities. While maintaining overall responsibility, the Provost may further delegate any or all of these responsibilities to appropriate individuals within Academic Affairs:

- Coordinating all procedures related to allegations of research misconduct by anyone performing research under the campus' aegis.
- Fostering a research environment that encourages ethical conduct of research.
- Disseminating policy and maintaining records related to misconduct in research.
- Appointing an individual or a committee to conduct inquiries and investigations into allegations of research misconduct. If extramural funds are involved the Provost determines whether law, regulation, or the terms or conditions of the award: (1) require notification of the sponsor; (2) specify time limits; or (3) require other actions to assure compliance. The Provost coordinates with the appointees, the President's Office, the Advancement Office, and other concerned parties to assure compliance.
- Assuring appropriate confidentiality or anonymity, fairness, and objectivity of proceedings.
- Assuring a full and complete inquiry, investigation, and resolution process. Assuring that no real or apparent conflicts of interest arise in those appointed to pursue this process, that they have the appropriate disciplinary expertise, and that due regard is given to the prevailing standards of the field.
- Maintaining confidentiality of records, in accord with established university policy, relating to the investigation and resolution of incidents of misconduct in research.
- If appropriate or required, notifying concerned parties such as sponsors, co-authors, collaborators, editors, licensing boards, professional societies, and criminal authorities of the outcome of investigations, taking care to clear the name of anyone falsely charged.
- Protecting, to the maximum extent possible, the positions and reputations of those persons who, in good faith, make allegations of research misconduct and those against whom allegations of misconduct are not confirmed.
- Making efforts to restore the reputation of persons alleged to have engaged in misconduct when allegations are not confirmed.

The Provost may designate a Research Integrity Officer (RIO) for assessing allegations of research misconduct and determining when such allegations warrant inquiries and for overseeing inquiries and investigations. Alternatively, the Provost can, at his or her discretion, serve as the campus RIO.

I.C RESPONSIBILITY TO REPORT MISCONDUCT

All institutional members will report observed, suspected, or apparent research misconduct to the RIO. If an individual is unsure whether a suspected incident falls within the definition of research misconduct, he or she may meet with or contact the RIO via the Office of the Provost at (650) 508-3494 to discuss

the suspected research misconduct informally, which may include discussing it anonymously and/or hypothetically. If the circumstances described by the individual do not meet the definition of research misconduct, but appear to require the attention of the University, the RIO will refer the individual or allegation to other offices or officials with responsibility for resolving the issue.

At any time, an institutional member may have confidential discussions and consultations about concerns of possible misconduct with the RIO and will be counseled about appropriate procedures for reporting allegations.

I.D INQUIRIES AND INVESTIGATIONS INTO ALLEGATIONS OF MISCONDUCT IN RESEARCH

Existing campus policies and procedures apply to all Principal Investigators and Project Directors, requiring them to maintain ethical standards and to direct allegations of misconduct to the President, Provost, Deans, Dean of Students, or Vice President for Finance and Administration, as appropriate.

If, possibly after consultation as described in I.C above, an individual associated with NDNU suspects or believes that research misconduct has occurred, the individual should report the allegation of research misconduct in writing to the Research Integrity Officer. An allegation should, in addition to stating the nature of the suspected misconduct, present the evidence that leads the reporting individual to believe that an incident of research misconduct has occurred. To be considered, such allegations should be in writing and should be signed and dated by the reporting individual.

The person reporting possible research misconduct is hereafter referred to as the “Complainant”. The person or persons suspected of research misconduct are hereafter referred to as the “Respondent”.

The Provost or RIO will respond timely, as outlined below, to each written allegation or other evidence of possible misconduct.

(1) PRELIMINARY ASSESSMENT

A. Upon receiving a written allegation of research misconduct, the RIO timely clarifies the allegation with the Complainant and suitably reframes the allegation in terms of the definitions in this policy, as may be necessary to determine whether the alleged incident fits the definition of research misconduct. If the RIO determines that the alleged incident fits the definition of research misconduct, the RIO then timely assesses whether the evidence is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

If both of these conditions are met, the RIO concludes that a bona fide allegation of research misconduct has been made and produces a written finding of possible research misconduct which identifies the research project(s) involved and the specific allegations and which is signed and dated by the RIO. The RIO forwards the written finding to the Provost and the misconduct procedure enters its inquiry phase (see (2) below).

If the RIO determines that one or both of the conditions are not met, but an administrative action may be warranted, the RIO will refer the case to the Provost or President for further assessment and possible investigation.

Preliminary assessment and any referral to the Provost or President shall normally take place within 15 calendar days from receipt by the Office of the Provost of an allegation or evidence of research misconduct.

B. In conducting the preliminary assessment, the RIO need not interview the complainant, respondent, or other witnesses, or gather data beyond any that may have been 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.

(2) INQUIRY:

A. As soon as practical after making a finding of possible research misconduct, the RIO makes a good faith effort to notify the Complainant and Respondent (separately) that such finding has been made and to provide each with the written finding. Such notification will include notice that an inquiry is being undertaken and of the procedure that will be followed. The Respondent may elect to make an initial response to the allegations at this point to inform the inquiry, or may elect to wait until later in the process.

B. As soon as practical after making a finding of possible research misconduct, the RIO, in consultation with other University officials as appropriate, will appoint an Inquiry Committee consisting of one or more persons to conduct an inquiry to determine whether there is sufficient substance to the allegation to warrant a formal investigation. The purpose of the inquiry is not to reach a final conclusion as to whether misconduct occurred or who was responsible. This preliminary phase of information gathering and fact-finding should be completed no more than sixty calendar days from the finding of possible research misconduct unless circumstances clearly warrant a longer period, as determined by the RIO. If the inquiry phase must be extended beyond sixty days, the reasons for doing so should be documented.

Once the Inquiry Committee is appointed, the RIO notifies the Respondent of the membership of the Inquiry Committee; depending on timing, this notification may be part of the notification to the Respondent of the finding of possible research misconduct.

B.1. The Respondent has five calendar days to challenge, in writing, the committee's membership based on bias or conflict of interest. The RIO will determine whether to replace the challenged member with a qualified substitute.

C. At the time of notification to the Respondent of the finding of possible research misconduct, and in the course of the inquiry, or of any subsequent investigation, the Office of the Provost will sequester such information as is necessary to protect the integrity of the investigation.

C.1. Where appropriate, the respondent will be provided copies of, or reasonably supervised access to, the research records.

C.2. All records of the research misconduct inquiry and any subsequent investigation will be retained securely for seven years after such proceeding's conclusion, or for seven years after any Office of Research Integrity proceeding – whichever is later.

D . If the research at issue receives or has received Federal funding, and, at any point during an inquiry or subsequent investigation, it is ascertained that any of following five conditions pertain, NDNU will notify the sponsoring Federal agency (for example, the Office of Research Integrity [ORI] of the Department of Health and Human Service [DHHS]).

- a. Health or safety of the public is at risk, including an immediate need to protect human or animal subjects.
- b. HHS resources or interests are threatened.
- c. Research activities should be suspended.
- d. There is reasonable indication of possible violations of civil or criminal law.
- e. Federal action is required to protect the interests of those involved in the research misconduct proceeding.
- f. The research institution believes the research misconduct proceeding may be made public prematurely so that HHS may take appropriate steps to safeguard evidence and protect the rights of those involved.
- g. The research community or public should be informed.

D. 1. In the case of federally funded research, the campus will take appropriate interim administrative actions to protect Federal funds and insure that the purpose of the Federal financial assistance is carried out.

E. Matters pertaining to the inquiry will be treated confidentially to the maximum extent possible consistent with fact finding and required reporting to funding agencies.

F. A written inquiry report shall be prepared that describes the evidence that was reviewed, summarizes any interviews that were conducted, and includes the conclusion of the inquiry.

G. The Respondent shall be given a copy of the inquiry report and shall be invited to comment in writing. Comments received from the Respondent within 10 calendar days of the Respondent's receipt of the inquiry report will be included in the record.

H. Upon receipt of the inquiry report, the RIO, in consultation with the Provost, will make, in writing, the determination of whether an investigation is warranted. Per paragraph C.2 above, records of the inquiry, including all documentary evidence, interview notes, the inquiry report, and the Provost's or RIO's written determination shall be maintained in a secure manner for at least seven years.

H.1. If an inquiry is terminated before its completion, a report of the planned termination, including the reasons for such an action, should be made to those Federal funding agencies that require it (the Office of Research Integrity of DHHS, for example).

H.2. The inquiry report and supporting documentation will be provided to relevant authorized federal agencies upon request.

I. If it is determined that there is sufficient evidence to warrant a formal investigation, the Provost or RIO shall (within 30 calendar days of receipt of the inquiry report and supporting documentation) initiate the process as follows:

(3) INVESTIGATION:

A. The Provost appoints an Investigative Committee to determine whether research misconduct has occurred, and, if so, to make recommendations with respect to the imposition of disciplinary sanctions. Among the membership of the Committee, the Provost will specify a Chair. The investigation phase should be completed within 120 calendar days from the appointment of the Investigative Committee, unless circumstances warrant a longer period, as determined by the RIO. If the investigation stage is extended beyond 120 days the reasons for doing so should be documented.

A.1. **In the case of a faculty member**, the Investigative Committee is appointed by the Provost. It will be constituted from NDNU's full-time faculty members, and contain from one to three members. A larger committee may be appointed if in the opinion of the Provost it would facilitate the investigation.

A.2. **In the case of academic researchers** (visiting scholars, post-doctoral fellows, professional researchers, non-faculty academics, etc.), the Provost appoints an Investigative Committee that, typically, will include a member of the researcher's relevant peer group plus one or two full-time NDNU faculty members.

A.3. **In the case of a student**, the Provost appoints an Investigative Committee of from one to three NDNU full-time faculty members.

B. When Federal funding is involved, the pertinent agency shall be informed that an investigation will be initiated within 30 days of the Provost's determination that there exists sufficient evidence to warrant an investigation of research misconduct.

B.1. When it is required by Federal funding agencies, such as ORI of DHHS, an extension of the investigation beyond 120 days must be requested from the relevant agency. The extension request should include an explanation for the delay, an interim report on the progress to date, an outline of what remains to be done, and an estimated date of completion.

C. The RIO will notify the Respondent(s) in writing that an investigation is being undertaken, will inform him/her of the allegations that are under investigation, as well as of the composition of the investigative committee and the procedures that will be followed in the course of the investigation. In the event that new allegations arise in the course of the investigation, the respondent will be so notified in writing.

C.1. The Respondent has five calendar days to challenge, in writing, the committee's membership based on bias or conflict of interest. The Provost will determine whether to replace the challenged member with a qualified substitute.

D. The investigation will normally include examination of pertinent documents, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda. Typically, the investigative committee will conduct interviews as part of its fact-finding process, including interviews with those making allegations of research misconduct and with the individual(s) against whom the allegations are made. Whenever it is feasible, investigators shall create and maintain audio recordings of their interviews.

D.1. All individuals affected by the investigation will be accorded confidential treatment to the maximum extent possible in an investigation.

D.2. If an investigation is terminated before its completion, a report of the planned termination, including the reasons for such an action, should be made to those Federal funding agencies that require it (the Office of Research Integrity of DHHS, for example).

D.3. NDNU will notify relevant Federal funding agencies if, during the course of the investigation, facts are disclosed that may affect current or potential Federal funding for individual(s) under investigation or that the Federal agency needs to know to ensure appropriate use of Federal funds and otherwise protect the public interest.

E. When the investigation is completed, the Chair of the Investigative Committee shall prepare, and submit to the RIO, a written report of the results, reviewing the facts and stating the committee's findings. The RIO shall make the report available to the Respondent(s) for comment. In a separate communication to the RIO, the Investigative Committee shall offer its recommendations with respect to disciplinary sanctions, if any.

E.1. Comments received from the Respondent(s) within 21 calendar days of the Respondent's receipt of the Investigative Committee's report will be included and considered in the final report.

F. When the investigative committee's report and the respondent's comments have been received:

F.1. If appropriate and/or required, the RIO will communicate the committee's report and findings to relevant agencies external to the University.

F.2 Based upon a reading of the Investigative Report and any comments thereon, the RIO will make a determination of whether or not research misconduct has been committed. The RIO will issue a Final Report to the ORI or any external funding agency that requires it. The final report to ORI, for example, must describe the policies and procedures under which the investigation was conducted, how and from whom information was obtained, the findings, and the basis for the findings, and include an accurate summary of the views of any individual(s) found to have engaged in misconduct, as well as a description of any sanctions taken by the campus. Documentation to substantiate an investigation's findings will also be made available to the Director of ORI.

F.3. In the case of a faculty member or academic researcher, the Provost decides whether or not to recommend the imposition of disciplinary sanctions to the President. In the case of a student, the RIO decides whether or not to recommend imposition of disciplinary sanctions.

(4) DISCIPLINARY PROCEDURE:

A. If, **in the case of a faculty member**, the Provost intends impose disciplinary sanctions, the processing of those charges will proceed in accordance with the provisions of the Faculty Rights and Responsibilities and the Faculty Grievance and Appeal sections of the Faculty Handbook.

B. If, **in the case of an academic researcher** (Visiting Scholars, Post-Doctoral Fellows, Professional Researchers, Non-Faculty Academics, etc.), the Provost intends to impose disciplinary sanctions, the researcher is notified in writing of such intention and is invited to respond in writing to the Provost regarding the allegations and proposed discipline. Upon receipt of such written response by the Provost, the Provost will invite the researcher to a conference to discuss the allegations and discipline.

B.1. The researcher and the Provost or RIO, shall each be entitled to bring a representative of their choice to such a conference. Since this is not a legal proceeding, neither representative shall be legal counsel. If the Provost and the researcher arrive at a mutually agreeable settlement, the matter is disposed of in accordance therewith.

B.2. If discipline is to be imposed upon the researcher pursuant to the settlement, or if there is no settlement, but the researcher has informed the Provost that he/she does not intend to contest the proposed discipline, the Provost may thereupon impose such discipline.

B.3. If discipline is imposed without the agreement of the researcher, the Grievance and Appeal process described in the Employee Handbook for Administrators and Staff may be invoked.

C. If, **in the case of students**, the Investigative Committee makes a finding of research misconduct, the processing of these charges will proceed in accordance with the provisions of the Student Handbook regarding research misconduct by students. The RIO will make available to appropriate University officials, as necessary to comply with the provisions of the Student Handbook, the Investigative Committee’s finding of research misconduct, its report, the student's response, and the recommendation of the RIO as to appropriate disciplinary sanctions, if any.

D. The RIO shall report any disciplinary actions taken by the campus to ORI and to any other external funding agency that requires it.

I.E TIMELINE

Numbers of days indicate are calendar days and in some cases may be extended by the RIO for documented reasons per the policy above.



