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## MISCONDUCT IN RESEARCH

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**PURPOSE:** It is the purpose of this policy to set forth guidelines for efficient disclosure and resolution of accusations of scientific and scholarly misconduct in a manner that (1) protects the public from the results of misconduct, (2) protects innocent scientists and scholars from harassment or interference with their academic freedom, and (3) protects the individual who unmaliciously presents evidence of misconduct from retribution.

### I. Introduction

It is the policy of Boise State University (BSU) to maintain high ethical standards in scientific and other research and to investigate and resolve promptly and fairly all instances of alleged or apparent misconduct. This misconduct policy described hereunder acknowledges and complies with Public Health Service administrative requirements outlined in 42CFR Part 50, promulgated pursuant to the Public Health Service Act, as amended. This policy covers all misconduct and allegations of misconduct in scientific and other research, whether or not funded by external sources. It applies to all employees of the University including, but not limited to tenured and tenure track faculty, professional staff, adjunct faculty and research faculty.

### II. Definitions

#### A. Misconduct or Misconduct in Science

Fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest errors or honest differences in interpretations or judgments of data.

#### B. Inquiry

Information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

#### C. Investigation

The formal gathering and evaluation of all relevant facts to determine if misconduct has occurred.

#### D. Hearing

A formal presentation and evaluation of all relevant facts related to the alleged misconduct, held in order to determine whether misconduct has occurred, the severity of the alleged misconduct and its impact, and to recommend to the President of BSU specific action to be taken, when indicated.

#### E. Research

In a broad sense, the term "research" is a disciplinary driven concept, which has different meaning in various fields of study, involving the pursuit of knowledge through critical and detailed investigation and at times experimentation, as well as the

analysis, synthesis, and application of existing knowledge. For the purposes of this policy, "research" is used as an umbrella term for the following types of activities, which are by no means exhaustive, but only illustrative: scholarship, construction of theories, observing and chronicling, experimentation, testing theories, design, development, criticizing and elucidating, and artistic creation.

F. Sponsor

Any funding source that has provided or is providing financial support for the research activity in question.

III. Policy

The issue of misconduct in scientific and other research is a matter of serious concern to universities and other research institutions, individual faculty, sponsors of research, and the general public. Serious deviations in conduct include fabrication, falsification, or plagiarism; professionally unacceptable practices in performing research and/or reporting the results of research; and willful failure to comply with federal and other requirements.

The University requires that intellectual honesty and the highest ethical standards in research be maintained and relies primarily on the acceptance of responsibility by each member of the university community to adhere to professional standards of conduct in all research activity. In cases where allegations of misconduct in research are raised, expeditious fact-finding and objective peer review which afford procedural due process are essential and should be characterized, at the minimum, by prompt notification of the affected person, protection of the rights and confidentiality of both the affected person and the person raising allegation, and if appropriate, application of timely corrective actions, sanctions and penalties.

To ensure the aforementioned principles, a standing faculty committee (Faculty Research Advisory Committee) has been charged to receive and evaluate charges of misconduct in research and, if appropriate, initiate a formal hearing. (See Appendix A, Hearing Procedures).

This committee will also provide advice to the institution to prevent or minimize research misconduct.

IV. Procedure

- A. Allegations or other evidence of misconduct may be brought forth by either internal sources, e.g. (faculty, staff, students) or responsible external sources. Upon receipt of allegations or other evidence of misconduct, the Faculty Research Advisory Committee shall send a confidential notification containing information on the charges to the affected person and his/her immediate supervisor.
- B. The Faculty Research Advisory Committee will have 60 calendar days (unless circumstances clearly warrant a longer period) to conduct a confidential inquiry, including interviews and examination of relevant documents, and to decide whether a formal investigation is warranted and whether other University personnel are involved. A written report shall be prepared that states what evidence was reviewed, summarizes relevant interviews, and includes the conclusions of the inquiry. The committee will distribute its written report and recommendations through the Director, Office of Research Administration (ORA) and Provost and Vice President for Academic Affairs to the Dean and Department Head of the College/School of the

- subject of the inquiry. The individual(s) against whom the allegation was made shall be given a copy of the report of inquiry and an opportunity to comment on allegations and findings of the inquiry within ten (10) days of receipt of the report. If they comment on the report, their comments shall be made part of the record and should be taken into consideration prior to the instigation of any further proceedings.
- C. Sufficient detail of the inquiry must be maintained for a period of five (5) years after termination of the inquiry. If the inquiry takes longer than 60 days to complete, the record of the inquiry shall include documentation of the reasons for exceeding the 60-day period. If legally required, such records shall, upon request, be provided to the Sponsor.
  - D. Upon recommendation of the Faculty Research Advisory Committee, and if the Director, ORA determines that findings from the inquiry provide sufficient basis for conducting an investigation, the Faculty Research Advisory Committee will undertake the investigation within 30 days of the completion of the inquiry. An institutional decision to initiate an investigation must be reported in writing to the Sponsor on or before the date the investigation begins. At a minimum, the notification to the Sponsor should include the name of the person(s) against whom the allegations have been made, the general nature of the allegation and the appropriate research application or grant number(s) involved.
  - E. The investigation normally will include examination of all documentation, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Whenever possible, interviews should be conducted of all individuals involved either in making the allegation or against whom the allegation is made, as well as other individuals who might have information regarding key aspects of the allegations. Complete summaries of these interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigatory file.
  - F. During both the inquiry and investigation, the Faculty Research Advisory Committee shall:
    1. Secure necessary and appropriate expertise to carry out a thorough and authoritative evaluation of the relevant evidence in any inquiry or investigation.
    2. Take precautions against real or apparent conflicts of interest on the part of those involved in the inquiry or investigation.
    3. Prepare and maintain the documentation to substantiate the investigation's findings. This documentation is to be made available to the Sponsor, who will decide whether that office will either proceed with its own investigation or will act on the institutions findings.
    4. Recommend interim administrative actions to be taken by the Director, ORA as appropriate, to protect Federal funds and insure that the purposes of the Federal financial assistance are carried out.
    5. Keep the Sponsor, through the Director, ORA apprised of any developments during the course of the investigation which disclose facts that may affect current or potential sponsored funding for the individual(s) under investigation or that the Sponsor needs to know to ensure appropriate use of sponsored funds and otherwise protect the public interest.

6. Undertake diligent efforts, as appropriate, to restore the reputation of persons alleged to have engaged in misconduct when allegations are not confirmed, and also undertake diligent efforts to protect the privacy positions and reputations of those persons who, in good faith, made allegations.
  7. Afford the affected individual(s) confidential treatment to the maximum possible.
  8. Notify the sponsor within 24 hours of obtaining information which establishes probable cause to believe that criminal violations have occurred.
  9. Guard against conflicts of interest on the part of those involved in the fact-finding or decision making.
- G. An investigation and if appropriate, a formal hearing should ordinarily be completed within 100 days of its initiation. This includes conducting the investigation, preparing the report of findings, making that report available for comments by the subjects of the investigation, and submitting the report to the Sponsor, when required. If they can be identified, the person(s) who raised the allegation should be provided with those portions of the report that address their role and opinions in the investigation.
- H. The Faculty Research Advisory Committee is expected to carry investigations through to completion, and to pursue diligently all significant issues. If the committee plans to terminate an inquiry or investigation for any reason without completing all relevant requirements under this policy, a report of such planned termination, including a description of the reasons for such termination, shall be made to the Director, ORA who will then decide whether further investigation should be undertaken. The Director, ORA shall forward the committee's recommendation to the sponsoring agency and Provost and Vice President for Academic Affairs. The Director, ORA shall forward the committee's recommendation to the sponsoring agency and Provost and Vice President for Academic Affairs.
- I. If the committee determines that it will not be able to complete the investigation or hearing in 120 days, it must submit to the Director, ORA a written request for an extension and an explanation for the delay that includes an interim report on the progress to date and an estimate for the date of completion of the report and other necessary steps. If the Director, ORA concurs, he/she shall forward the request for extension to the Sponsor. Any consideration for an extension must balance the need for a thorough and rigorous examination of the facts versus the interests of the subject(s) of the investigation and the Sponsor in timely resolution of the matter. If the request is granted, the institution must file periodic progress reports as requested by the Sponsor. While primary responsibility for the conduct of investigations and inquiries lies with the institution, the Sponsor may perform its own investigation at any time prior to, during, or following an institution's investigation.
- J. A final report will be submitted to the Director, ORA, Provost and Vice President for Academic Affairs, Dean and Department Head of the College/School of the accused describing the policies and procedures under which the investigation was conducted, how and from whom information was obtained relevant to the investigation, the findings, and the basis for the findings, and include the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct, as well as a description of any recommended sanctions to be taken by the institution, where legally required. The Director, ORA shall submit the final report to the

Sponsor along with the disciplinary action to be taken which could include sanctions ranging from an oral reprimand by the immediate supervisor to dismissal from the University. An appeal of the above action(s) may be made by the accused in accordance with the University's policy on grievance procedures.

- K. The committee is responsible for notifying the ORA Director if it ascertains at any stage of the inquiry or investigation, that any of the following conditions exist:
1. There is an immediate health hazard involved;
  2. There is an immediate need to protect Federal funds or equipment;
  3. There is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations, as well as his/her co-investigators and associates, if any;
  4. It is probable that the alleged incident is going to be reported publicly;
  5. There is a reasonable indication of possible criminal violation.

Subrecipients of sponsored funds awarded to the University must have an established administrative process which meets the requirements of the primary Sponsor and which are acceptable to BSU.

Further information regarding Agency-specific Misconduct in Research policies and procedures may be obtained by contacting the University Office of Research Administration.

## **APPENDIX A HEARING PROCEDURES**

### **I. Introduction:**

When an investigation is initiated, a formal hearing may be requested by the affected person(s) or by a majority vote of the Faculty Research Advisory Committee, if facts gathered during the investigation warrant such proceedings.

#### **A. Hearing Committee**

1. The Hearing Committee shall be composed of three faculty members with at least one, if possible, with expertise in the area of research at issue. The chairperson of the Faculty Research Advisory Committee in consultation with the Provost and Vice President for Academic Affairs will appoint the chairperson, a non-voting tenured faculty member, to chair the hearing. The chairperson for the Hearing Committee will select committee members and alternates from a list of names submitted by the chairperson of the Faculty Research Advisory Committee and the faculty member in question. Members who believe they may be biased or have a conflict of interest with respect to the subject of the hearings may be excused and their alternate(s) appointed. Each party to the hearing shall have one preemptory challenge, which allows each to dismiss, without cause, one member of the committee from taking part in the hearing. Any preemptorily challenged member will be replaced by an alternate, or if necessary, a substitute appointed by the appropriate appointing authority.

The committee, in consultation with the Provost and Vice President for Academic Affairs and the affected person(s), will exercise its judgment as to whether the hearing should be public. However, the affected person's request that the hearing be public shall be binding on the committee. Except for such announcements as may be required, noting the time and place of the hearing, statements about the case by either the affected person or the institution's administration will be limited so far as possible until the proceedings have been completed through final administrative review.

2. The chairperson of the Hearing Committee will call a prehearing conference within 20 days after receipt of a request for a hearing and at least 48 hours prior to the hearing to:
  - (1) Identify and define the issue(s) to be considered at the hearing.
  - (2) Identify and list witnesses for the hearing.
  - (3) Identify and list documents (including any depositions) to be submitted at the hearing.
  - (4) Provide for the exchange of documentary or other information, among all parties involved.
3. The hearing process shall be completed within 100 calendar days. During the hearing, the affected person may bring an academic advisor and/or legal counsel at his/her own expense to the proceedings. This person may make only appropriate statements to or respond to questions from the committee on

behalf of the affected person and may engage in relevant cross-examination. An electronic recording of the hearing will be made, and upon request, a copy will be made available to the affected person at his/her cost. The affected person will be afforded an opportunity to obtain and present necessary witnesses and documentary or other evidence. The affected person and the committee will have the right to confront and cross-examine all adverse witnesses. When a witness cannot or will not appear, but the committee determines that the interests of justice require admission of his/her affidavit, the committee will accept and give such statement appropriate probative weight in view of either party's inability to cross-examine. Whenever appropriate, at the discretion of the Hearing Committee Chairperson, adjournments may be granted to enable either party to investigate evidence as to which a valid claim of surprise is made. The committee will not be bound by the Idaho Rules of Civil Procedure or Idaho Rules of Evidence, and may admit any evidence which is of probative value in resolving the issues.

B. Hearing Process:

1. The chairperson of the Hearing Committee shall conduct the hearing.
2. Each party shall have the opportunity to make opening statements.
3. The parties shall be given a full opportunity to present their cases, including testimony of witnesses and documentary evidence. The Faculty Research Advisory Committee shall present its case first.
4. The parties shall have the right to cross-examine witnesses.
5. Every reasonable effort will be made to elicit and to consider the most reliable evidence. The Idaho Rules of Civil Procedure or Idaho Rules of Evidence need not be applied and the decision of the Chairperson on questions of admissibility of evidence shall be final. Affidavits may be admitted under those circumstances where it is determined, in the discretion of the Chairperson, that they are necessary to a resolution of the matter.
6. The parties may make closing arguments.
7. An audio recording shall be made of the proceedings and all written or other physical evidence shall be retained for the record by the ORA Director at a location of his/her choice, and shall not be duplicated.
8. A party may request that a stenographic record be made of the hearing, providing the requesting party pays the cost thereof.
9. Both parties may have the assistance of an attorney advisor at the hearing.
10. The chairperson of the committee may grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.
11. The findings of fact and recommendation of the committee, including a statement of reasons, shall be in writing and based solely on the evidence presented at the hearing. The findings shall be forwarded to the Provost and Vice President for Academic Affairs within ten (10) days of the close of the hearing. The recording of the proceedings and all written or other physical evidence presented at the hearing will be retained by the Director, ORA for a period of no less than three (3) years.