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Responsible Executive:	Vice President for Research
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Misconduct in Research

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I. REASON FOR THIS POLICY

The mission of The University of South Dakota includes advancement of knowledge and promotion of education through faculty research. The university policy is informed by Title 42, Part 50. Subpart A (42 CFR 50, Subpart A) of the Code of Federal Regulations and BOR Policies 4:14 and 4:37.

II. STATEMENT OF POLICY

It is the faculty researcher’s responsibility to ensure that all research done under his/her direction is carried out in an ethical and legal manner. It is the policy of the university to investigate thoroughly and take decisive action against research conduct that is unethical or illegal.

A faculty researcher who has been found guilty of misconduct in research is subject to disciplinary action. The university will undertake diligent efforts, as appropriate, to restore the reputations of those alleged to have engaged in misconduct when allegations are not confirmed and also will undertake diligent efforts to protect the positions and reputations of those who, in good faith, make allegations.

III. DEFINITIONS

A. **MISCONDUCT**:

- a) The knowing fabrication, falsification, or manipulation by a researcher of data or information;
- b) The knowing theft by a researcher of data, materials, or information, including but not limited to plagiarism;
- c) The knowing and material failure by a researcher to comply with legal requirements governing research, including but not limited to regulations for the protection of researchers, human subjects, laboratory animals, or the public; and the knowing failure to comply with other federal and local laws during the conduct of research-related activities;
- d) The willful disregard by a researcher of known prohibited conduct by associates for whose work the researcher is responsible and over whom the researcher has authority.

Implicit in this definition of misconduct is that a preponderance of the evidence proves that fabrication, falsification, or plagiarism; theft; non-compliance with legal requirements; or disregard of associate conduct was committed intentionally, knowingly, or recklessly, and not merely carelessly.

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 examination and evaluation of all relevant facts to determine if misconduct has occurred.

IV. PROCEDURES

A. **REPORTING MISCONDUCT**

Any person employed by the University who is aware of misconduct by a faculty member in the pursuit of his or her research (researcher) shall promptly report the misconduct to the Vice President for Research (VPR). The report shall be put into writing and signed, and shall include such documentation as the charging party may have to substantiate the claim of misconduct. The report shall be kept in confidence and the privacy of the charging party protected. The charging party shall be informed within 60 calendar days as to whether the inquiry will result in an investigation.

If the VPR is suspected of misconduct, the report shall be made to the President. Similarly, if the VPR does not believe that he/she can remain impartial in investigating the claim, he/she shall refer the matter to the President or his/her designee. In such

instances, the President or designee shall act in the capacity of the VPR for all investigations relating to the claim.

B. INITIAL INQUIRY

Upon receipt of a report of suspected misconduct, the VPR shall conduct an inquiry to determine whether there appears to be a factual basis for the claim of misconduct. If there is/are reasonable indications of criminal violation and the research is supported by an external sponsor, the external sponsor will be notified within 24 hours. The initial inquiry shall be completed within 60 calendar days from the date of the initial written report of misconduct.

The VPR may solicit such assistance or advice, as he/she deems appropriate, including, for example, the designation of a faculty member with knowledge of the researcher's field to assist with technical inquiries. However, no one who is related to the researcher and no one who works closely with the researcher may be asked to assist the VPR in the inquiry. Therefore in rare instances the VPR may have to obtain discreet assistance from persons outside the university who are knowledgeable in the researcher's field. It is imperative that the fact finder(s) at all times appear and actually be impartial. During the initial inquiry, the name(s) of the person(s) who report the misconduct shall be kept confidential.

C. REPORT ON INITIAL INQUIRY

Upon completion of the initial inquiry (and not more than 60 calendar days from the receipt of the written claim of misconduct), the VPR shall report his/her findings and recommendations to the President, with copies to the Vice President for Academic Affairs (VPAA), dean, and department chair, as applicable. If the VPR finds that there is sufficient cause to believe that misconduct has occurred, he or she shall recommend that an investigation be conducted. If the VPR finds that there is insufficient cause to believe that misconduct has occurred, he or she shall recommend that the matter be closed.

D. INSUFFICIENT CAUSE FOR INVESTIGATION

If the VPR has found that there is insufficient cause to believe misconduct did occur, he or she shall, within 10 working days of submitting the report, notify the researcher and the charging party (or parties) that the matter has been closed. If the President does not concur with the finding that there is insufficient cause to believe misconduct occurred, the President may reject the recommendation and, within 10 working days from receipt of the VPR's report, refer the matter for a formal investigation.

E. INITIATING THE FORMAL INVESTIGATION

- a. **Notice.** Prior to initiating an investigation, the VPR shall notify the researcher(s), the charging party (or parties), and the sponsor of any sponsored research that an investigation will occur. The sponsor shall be given the name(s) of the person(s) against whom the allegations are made, the general nature of the allegations, and the application or grant numbers involved. Such notice shall be in writing and shall generally describe the scope of the investigation and the

issues to be decided. The researcher shall be notified by certified mail. The investigation will be initiated within 30 days of the completion of the inquiry.

- b. The Committee. The investigation shall be conducted by a committee of five impartial members of the USD faculty, appointed by the VPR with the concurrence of the Chair of the University Senate. At least two members of the committee shall be persons with knowledge in the discipline with which the research is concerned. The VPR shall appoint as chairperson of the committee one who holds academic rank at least equivalent to that of the researcher. The VPR will appoint additional members to replace appointees who fail or refuse to act. The VPR shall turn over to the committee all of the materials collected in the course of the initial investigation, including the VPR's report and recommendations.
- c. Scheduled Meetings. The chairperson shall set a time and place for each meeting of the committee to hear and weigh evidence. The chairperson shall give notice of the meeting to members of the committee, the charging party (or parties), researcher (by registered mail or hand delivery), VPR, and those asked to give evidence or evaluation as appropriate and necessary. Committee meetings shall not be open to the public, and every effort shall be made to keep the proceedings confidential. Detailed meeting minutes will be maintained in writing.
- d. Mode of Investigation. 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.
- e. Termination of Investigation. If the institution decides to terminate an investigation prior to its completion, a report including reasons for termination shall be made to the agency or agencies sponsoring the research.

F. RESEARCHER'S RIGHTS

The person against whom the charge of misconduct has been made may be present at all meetings of the committee held for the purpose of receiving evidence of the alleged misconduct, may submit questions for the committee to ask of the witnesses, review documentation, and may present evidence of his or her own concerning the matter. The researcher has the right to learn the identity of the charging party once an investigation is initiated. The researcher cannot be required to speak on his/her own behalf but has the option to provide such evidence, explanation or mitigation as he or she deems appropriate. The researcher may have present at the meetings counsel of his/her choice, but counsel may not take part in the proceedings.

G. COMMITTEE DECISIONS

An investigation should ordinarily be completed within 120 days of its initiation. This includes conducting the investigation, preparing the report of findings, making that report available for comment by the subjects of the investigation, and submitting the report to the sponsoring agency. If possible, the person(s) who raised the allegations shall be provided with those portions of the report that address their role and opinions in the investigation.

After receiving the information and evidence presented for its consideration, the committee shall meet in executive session to consider its decision on whether the researcher should be found guilty of misconduct in research. The evidence must affirmatively show misconduct; the researcher does not have to prove he or she acted correctly.

The majority decision shall be reported in writing and shall include 1) the findings of the committee with the respect to the truth and credibility of the evidence it considered; 2) conclusions as to the ultimate issue(s) of misconduct; and 3) recommendations for necessary action. The decision of the committee shall be signed by the chairperson and shall be submitted to the President with a copy to the VPR within 10 working days of the date of the last investigative meeting.

H. RESEARCHER'S RESPONSE

The researcher shall be given a copy of the committee's decision and may submit to the President a written response within 10 days.

I. PRESIDENT'S ACTION

The President shall review the committee decision only for 1) objectivity, 2) thoroughness, 3) adherence to procedural safeguards, and 4) proper application of the definition of misconduct to the facts. If the President finds that the committee has properly followed the above standards, the President shall affirm the committee's decision. If the President finds that an error has been committed, the President shall, 1) ask the committee to take additional evidence and/or deliberate further; 2) appoint a new committee; or 3) reject the decision of the committee. If the investigation is prolonged more than 120 days past the initiation of the investigation, the sponsoring agency will be informed of the reason for the delay, the anticipated completion date, and a progress report. If the President upholds a decision of misconduct, the President shall further decide what disciplinary action may be appropriate, in accordance with the policies of the Board of Regents (4:14) and the university, and the contractual rights of the party charged.

As soon as possible, but in no event more than 30 days after receipt of the committee's decision, the President shall notify in writing the researcher, the charging party, and the committee of the final decision and any action to be taken as a result.

J. REPORTING REQUIREMENTS

- a. Schedule for reporting in writing to sponsoring agencies:
 - i. If there is reasonable indication of possible criminal violations, 24 hours after receiving allegation of misconduct.

- ii. Before or at the time of initiating a formal investigation, when the initial inquiry indicates that an investigation is warranted.
 - iii. During the investigation, if there is
 - 1. An immediate health hazard involved,
 - 2. An immediate need to protect grant funds or equipment,
 - 3. An immediate need to protect the person(s) making the allegation, the person(s) who is the subject of allegations, or their associates,
 - 4. Probability that the incident will be reported publicly,
 - 5. Indication of possible criminal violation (See K.1.a.).
 - iv. Within 120 days of initiating the investigation, notify the sponsor of the final outcome of the investigation.
 - v. If circumstances prevent conclusion of the investigation within 120 days of its initiation.
- b. The final report to the sponsoring agency must describe 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 must 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 sanctions taken by the institution.
 - c. Individuals and organizations with a legitimate right to know of misconduct will be informed following the President's decision upholding a committee finding of misconduct. This will include the BOR Director of Internal Audit.

K. RETENTION OF RECORDS

All records, including relevant research data (notebooks, magnetic media, other records) as well as meeting minutes, interviews, and other evidence collected during the initial inquiry (if a formal investigation is not deemed warranted) or formal investigation, shall be kept secure for 3 years following conclusion of inquiry or investigation, respectively.

V. RELATED DOCUMENTS, FORMS AND TOOLS

Not applicable