CALIFORNIA STATE POLYTECHNIC UNIVERSITY, POMONA
POLICY NO: 1207

MISCONDUCT IN RESEARCH

1. PURPOSE

It is the policy of California State Polytechnic University, Pomona (Cal Poly Pomona or CPP) to adhere to and promote the highest ethical standards of conduct in research, scholarship, and creative activities. Despite being extremely rare occurrences, misconduct in research can have a significant impact on the reputation and credibility of CPP and its faculty and students, and therefore it cannot be tolerated. The purpose of this policy is to provide CPP with a set of procedures for investigating and reporting instances of alleged or apparent misconduct in research, scholarship and creative activity.

This policy is also intended to conform to the requirements of the United States Department of Health and Human Services ("HHS"), the U.S. Public Health Service ("PHS"), the National Science Foundation ("NSF") and Federal regulations including, but not limited to, the "Public Health Service Policies on Research Misconduct" [42 Code of Federal Regulations (CFR) 93] and the "National Science Foundation Regulations on Misconduct in Science and Engineering Research" [45 CFR, Part 689.]

This policy shall apply to all research, scholarship, or creative activity, whether funded extramurally, internally, or unfunded, conducted by administrators, faculty, staff, and students under the auspices of CPP or its auxiliary foundation (Cal Poly Pomona Foundation, Inc.).

Every effort has been made to ensure compliance with current Collective Bargaining Agreements for CPP employees. No part of this policy should be considered as a substitute for any part of the Agreements.

This policy does not apply to authorship or collaboration disputes and applies only to allegations of research misconduct that occurred within six years of the date the institution or HHS received the allegation, subject to the subsequent use, health or safety of the public, and grandfather exceptions in 42 CFR § 93.105(b).

2. DEFINITION

Research misconduct is defined as fabrication, falsification, plagiarism, in proposing, or reviewing research, or in reporting research results. Fabrication is making up data or results or recording or reporting them. Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or research results such that research is not accurately represented in the research record. Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit. Misconduct does not include honest error or honest differences in opinion.

3. GENERAL PROVISIONS

3.1. Cal Poly Pomona shall make a good faith effort to protect the privacy of all individuals involved in research misconduct proceedings. Disclosure of identity of those involved in the proceedings shall be limited, to the extent possible, to those who need to know, consistent with a thorough, competent, objective, and fair research misconduct proceeding, and as allowed by law. Misconduct of externally funded research must be reported to the relevant funding agency. The University must disclose the identity of individuals against whom allegations of research misconduct are made and complainants of research misconduct related to PHS supported activities to the United States Office of Research Integrity ("ORI"). To the extent permitted by the applicable laws, confidentiality shall also be maintained for any record or evidence from which research subjects might be identified and disclosure of the record or evidence shall be limited to those who have a need to know to carry out the research misconduct proceeding.

3.2. Finding of research misconduct under this policy requires that:

a. There be a significant departure from accepted practices of the relevant research community; and
b. The misconduct be committed intentionally, knowingly, or recklessly; and
c. The allegation be proven by a preponderance of the evidence.

3.3. Cal Poly Pomona has the burden of proof for making a finding of research misconduct. The destruction, absence of, or failure to provide research records adequately documenting the questioned research is evidence of misconduct only if CPP establishes by a preponderance of evidence that:

a. The individual against whom allegations are made intentionally, knowingly, or recklessly had such records and destroyed them; or
b. Had the opportunity to maintain the records but did not do so; or maintained the records and failed to produce them in a timely manner;
c. And that the individual's conduct constitutes a significant departure from accepted practices of the relevant research community.

3.4. The person against whom allegations of research misconduct are made has the burden of proving by a preponderance of evidence, any and all defenses raised. The determination of whether the burden of proof is met shall give due consideration to admissible, credible evidence of honest error or difference of opinion.

3.5. The person against whom allegations of research misconduct are made has the burden of going forward with and proving by a preponderance of evidence any mitigating factors that are relevant to a decision to impose administrative actions following a research misconduct proceeding.

3.6. Cal Poly Pomona shall undertake all reasonable and practical efforts, if requested, and appropriate, to restore the reputation of individuals alleged to have engaged in

research misconduct but against whom no finding of research misconduct is made.

3.7. Cal Poly Pomona shall undertake all reasonable and practical efforts to protect, restore the position and reputation, and to counter potential or actual retaliation against those individuals who, in good faith, make allegations of research misconduct and other participants in part of a research misconduct proceeding.in part of a research misconduct proceeding.

3.8. Cal Poly Pomona shall take all necessary precautions to ensure that individuals responsible for carrying out any part of the research misconduct proceedings are selected based on scientific expertise that is pertinent to the matter and do not have unresolved personal, professional, or financial conflicts of interest with the individual against whom allegations are made, the individual(s) making the allegation, or witnesses participating in the proceedings. Any conflict which a reasonable person would consider to demonstrate potential bias shall disqualify the individual from selection.

3.9. Whenever necessary and appropriate to ensure a thorough, competent, objective and fair evaluation of all the evidence during an inquiry or investigation, individuals with special expertise will be consulted.

3.10. Cal Poly Pomona will notify the PHS and the NSF, where applicable, of any decision to terminate an inquiry or investigation before completion of the process outlined here or required by law. The notice will include the reasons for such early termination. The procedural requirements of funding agencies do vary, and the investigating body is cautioned to review the current legal requirements at the time of any inquiry or investigation under this policy.

4. RESPONSIBILITY

4.1. Cal Poly Pomona shall be responsible for all of the following actions:

a. Taking all necessary actions to foster a research environment that promotes research integrity and discourages research misconduct;
b. Taking all reasonable and practicable steps to ensure the cooperation of those against whom the allegations are directed and other members of CPP with research misconduct proceedings, including, but not limited to, their providing information, research records, and evidence;
c. Cooperating with funding agencies during any research misconduct proceeding or compliance review and provide administration and enforcement of actions imposed by the agency on CPP;
d. Filing the required assurances of compliance and aggregated information on research misconduct proceedings as required by the funding agency;
e. Establishing and maintaining appropriate policies and procedures for monitoring compliance with the provisions of this policy and upon request, and as appropriate, provide compliance information to funding agencies and members of public, informing CPP faculty and administrative staff of this policy;
f. Informing the research project team members on externally funded

projects of the policies and procedures of the funding agency for responding to allegations of research misconduct, and CPP's commitment to comply with the funding agency's policies and procedures;

g. Taking immediate action in accordance with the provisions of this policy as soon as misconduct on the part of employees or individuals within CPP's control is suspected or alleged;

h. Directing the maintenance and custody of and access to documents, evidence, reports, research records, and any other materials generated in the course of research misconduct proceedings;

i. Notifying the ORI or the NSF if it is ascertained at any stage of an inquiry or investigation of a project funded by the Department of Human and Health Services (HHS) or National Science Foundation (NSF) that any of the following conditions exist:
   1. Health or safety of the public is at risk, including an immediate need to protect human or animal subjects,
   2. HHS resources or interest are threatened,
   3. Research activities should be suspended,
   4. There is a reasonable indication of violations of civil or criminal law,
   5. Federal action is required to protect the interest of those involved in the research misconduct proceedings,
   6. There is a belief that the research misconduct proceedings may be made public prematurely, so that appropriate steps may be taken to safeguard evidence and protect the rights of those involved,
   7. There is a belief that the research community or public should be informed.

j. Taking appropriate interim actions at any time during a research misconduct proceeding, to protect public health, federal funds and equipment, and the integrity of the PHS supported research process. The necessary actions will vary according to the circumstances of each case, but examples of actions that may be necessary include delaying the publication of research results, providing for closer supervision of one or more researchers, requiring approvals for actions relating to the research that did not previously require approval, auditing pertinent records, or taking steps to contact other institutions that may be affected by an allegation of research misconduct.

k. Reporting to appropriate federal agencies any proposed settlements, admissions of research misconduct, or institutional findings of misconduct that arise at any stage of a misconduct proceeding involving federally-funded research, including the allegation and inquiry stages.

5. ALLEGATIONS OF MISCONDUCT IN RESEARCH

5.1. Any individual who alleges that an act of misconduct in research has occurred or is occurring by an employee of CPP or Cal Poly Pomona Foundation shall disclose such allegations through any means of communication to the Associate Vice President for Research and Innovation (AVPRI). Upon receipt of any allegation of misconduct in research, scholarship, or creative activity, the AVPRI shall promptly assess the allegation to determine if an inquiry is warranted. An inquiry is warranted if the allegation: (1) meets the definition of research misconduct in section 2.0 of this policy; and (2) is sufficiently credible and specific so that

potential evidence of research misconduct may be identified and (3) for externally funded research it satisfies the external agencies' research misconduct applicability requirements.

5.2. If the AVPRI determines that an inquiry is warranted, they shall immediately prepare a written description of the allegations and notify the individual(s) against whom the allegations are asserted. The notification shall include a copy of the description of the allegations together with a copy, or reference, to this policy statement. In addition, the individual(s) against whom the allegations are asserted shall be advised in writing that they have the right to union representation and legal counsel.

6. THE INQUIRY

6.1. Upon determination that an inquiry is warranted the AVPRI shall immediately begin an inquiry into the allegations. The purpose of the inquiry is an initial review of the evidence to determine if the criteria for conducting an investigation are met.

6.2. The AVPRI, on or before the notification date of the individual(s) against whom allegations are made or the initiation of the inquiry, whichever occurs earlier, shall promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceedings, inventory the records and evidence, and sequester them in a secure manner, except that where the research record or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments. The same steps shall be taken regarding the custody of additional research records and evidence discovered during the course of the research misconduct proceeding, including at the inquiry and investigation stages, or if new allegations arise,

6.3. Within 15 working days of notification of the individual(s) against whom allegations of research misconduct is made, the AVPRI and the chair of the Academic Senate shall jointly appoint a panel of three members, under provisions of sections 3.8 and 3.9 of this policy, to conduct the inquiry. A minimum of two members of the panel shall be full-time tenured faculty members of CPP.

6.4. Changing the membership of the inquiry panel shall be made only through joint decision of the AVPRI and the Academic Senate Chair.

6.5. The inquiry, including submission of the inquiry report and giving the individuals(s) against whom allegations were asserted a reasonable opportunity (minimum of 10 working days) to comment on it, shall be completed within 60 calendar days of its initiation unless circumstances clearly warrant a longer period. If the inquiry takes longer than 60 calendar days to complete, documentation of the reasons for delay shall be included in the inquiry record.

6.6. A written inquiry report shall be prepared that states: (1) The name and position of those against whom allegations of misconduct was asserted; (2) A full description of the allegations of research misconduct (3) The basis for recommending that the alleged actions does or does not warrant an investigation; (4) Any comments on the report by the person(s) making the allegation and those against whom the allegations were asserted; (5) Any additional agency requirement for externally funded projects.

6.7. An investigation is warranted if there is: (1) a reasonable basis for concluding that the allegation falls within the definition of research misconduct and (2) preliminary information-gathering and preliminary fact-finding from the inquiry indicates that the allegation may have substance.

6.8. The final inquiry report shall be provided to the AVPRI for review, who will make a written determination of whether an investigation is warranted. If a determination is made that an investigation is warranted the AVPRI shall within 30 calendar days: (1) report the findings to the Associate Vice President for Faculty Affairs, and to the Provost; (2) provide written notification to the individuals against whom allegations of research misconduct are raised of the specific allegations to be investigated. The notification shall include a copy of the inquiry report and include a copy or reference to this policy statement; (3) on a need-to-know basis, contact the Dean/Director or Unit Head regarding the inquiry results. For PHS supported activities, within 30 days of finding that an investigation is warranted, the AVPRI shall provide ORI with a written finding and a copy of the inquiry report.

6.9. The AVPRI may notify those who made the allegations whether the inquiry found that an investigation is warranted and may provide a copy of the relevant portions of the inquiry report to them.

6.10. For externally funded projects the AVPRI shall: follow the reporting, notification, and disclosure requirements of the agency and comply with agency requirements for maintenance and transfer of records to the funding agency.

6.11. If the AVPRI decides that an investigation is not warranted, sufficiently detailed documentation of the inquiry shall be secured and maintained for 7 years after the termination of the inquiry to permit a later assessment by ORI of the reasons why an investigation was not conducted. These documents must be provided to ORI or other authorized HHS personnel upon request.

7. INVESTIGATION

7.1. An investigation is the formal development of a factual record and the examination of that record leading to a decision not to make a finding of research misconduct or to a recommendation for a finding of research misconduct which may include a recommendation for other appropriate actions including administrative actions.

7.2. Within 15 working days after the determination that an investigation is warranted the AVPRI and the Chair of the Academic Senate shall jointly appoint a panel of

five members, subject to provisions of 3.8 and 3.9 of this policy, to conduct the investigation. None of the members of the inquiry panel are eligible to serve on the investigation panel. A minimum of three members of the panel shall be full-time tenured faculty members of CPP.

7.3. Changing the membership of the investigation panel shall be made only through joint decision of the AVPRI and the Academic Senate Chair.

7.4. An investigation following the inquiry must be undertaken within 30 calendar days of the completion of the inquiry. All aspects of an investigation must be completed within 120 calendar days of beginning it, including conducting the investigation, preparing the report of findings, providing draft report for comments, and incorporation of all comments received. If it becomes apparent that the investigation cannot be completed within 120 calendar days, the reasons for delay shall be documented and included in the final report of the investigation. For externally funded projects, the external agency requirements for requesting extension to investigation period shall be followed.

7.5. The individual(s) against whom allegations of misconduct were directed shall be given written notice of any new allegations raised during the investigations within a reasonable time (5 working days) after determining to pursue allegations not addressed in the inquiry or the initial notice of the investigation.

7.6. In conducting the investigation, the investigation panel shall: (1) make diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research records and evidence relevant to reaching a decision on the merits of the allegation; (2) interview both the individual(s) making the allegation and those against whom the allegations were made and any other available person who has been reasonably identified as having information regarding any relevant aspect of the investigation, providing the recording or transcript to the interviewee for correction, and include the recording or transcript in the record of investigation; (3) pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of additional instances of possible research misconduct, and continue the investigation to completion; and (4) for externally funded research, comply with all requirements of the supporting agency for conducting research misconduct investigation.

7.7. The panel shall notify the individual(s) being investigated sufficiently (minimum of 10 working days) in advance of the scheduled interview date so that the individual(s) may adequately prepare for the interview and arrange for the attendance of legal counsel if desired.

7.8. Within 90 calendar days of initiation of the investigation, the draft investigation report should be submitted to the AVPRI.

7.9. The individual(s) who raised the allegation may be given a copy of the draft investigation report or relevant portions of the report. If a written comment is

submitted within 30 calendar days, the comment shall be made part of the final investigation report.

7.10. A copy of the draft investigation report shall be provided to the individual(s) being investigated and concurrently a copy of, or supervised access to, the evidence on which the report is based. Any comments by the individual(s) being investigated that are submitted within 30 calendar days following the receipt of the draft investigation report shall be made a part of the final investigation report.

7.11. The final investigation report shall:

a. describe the nature of the allegations of research misconduct;
b. describe the specific allegations of research misconduct considered in the investigation;
c. identify and summarize the research records and evidence reviewed, and identify evidence taken into custody but not reviewed. The report shall also describe any relevant records and evidence not taken into custody and explain why;
d. provide a finding as to whether research misconduct did or did not occur for each separate allegation of research misconduct identified during the investigation, and if misconduct was found, (i) identify it as falsification, fabrication, or plagiarism and whether it was intentional, knowing, or in reckless disregard, (ii) summarize the facts and the analysis supporting the conclusion and consider the merits of any reasonable explanation, evidence and rebuttal evidence provided by those against whom the allegations were asserted, (iii) identify any external or internal support in conducting the research, (iv) identify any publications that need correction or retraction; (v) identify the person(s) responsible for the misconduct, (vi) list any current support or known applications or proposals for support that the person responsible for misconduct has pending with external agencies or internal CPP units;
e. include and consider any comments made by those who made the allegations and the persons against whom allegations were made.

7.12. Copies of the final investigation report shall be provided to the AVP-RIED, Chair of the Academic Senate, and the individual(s) against whom allegations of research misconduct were raised. The AVPRI and the Chair of the Academic Senate shall review the report to ensure that it complies with the provisions of this policy.

7.13. The AVPRI shall make recommendations for corrective measures, if any, and forward the final investigation report to the Associate Vice President for Faculty Affairs, the Provost, and the College Dean/Unit Director.

7.14. For externally funded projects, the external agency requirements for the maintenance and provision of relevant research records and records of CPP's research misconduct proceedings, including results of all interviews and the transcripts or recordings of such interviews shall be followed.

8. COOPERATION WITH ORI

Cal Poly Pomona shall cooperate with ORI during its oversight review under 42 CFR 93.400 et seq. or any subsequent administrative hearings or appeals under 42 CFR 93.500 et seq. with respect to research integrity and misconduct issues related to PHS supported activities. This includes providing all research records and evidence under the University's control, custody, or possession and access to all persons within its authority necessary to develop a complete record of relevant evidence.

8.1. Unless an extension has been granted, the AVPRI must, within the 120-day period for completing the investigation, submit the following to ORI: (1) a copy of the final investigation report with all attachments; (2) a statement of whether the institution accepts the findings of the investigation report; (3) a statement of whether the institution found misconduct and, if so, who committed the misconduct; and (4) a description of any pending or completed administrative actions against the respondent.

8.2. The AVPRI must maintain and provide to ORI upon request "records of research misconduct proceedings" as that term is defined by 42 CFR § 93.317. Unless custody has been transferred to HHS or ORI has advised in writing that the records no longer need to be retained, records of research misconduct proceedings must be maintained in a secure manner for 7 years after completion of the proceeding or the completion of any PHS proceeding involving the research misconduct allegation. The AVPRI is also responsible for providing any information, documentation, research records, evidence or clarification requested by ORI to carry out its review of an allegation of research misconduct or of the institution's handling of such an allegation.