

# **Policy on Misconduct in Research**

Christopher Newport University

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Effective 1 July 2012

## **Purpose of this Policy**

Christopher Newport University is committed to actions and policies that support the responsible conduct of research, that provide for prompt and fair investigations of alleged misconduct, and that appropriately protect the work and reputations of any faculty, staff, or students involved in such allegations or investigations.

This policy is adopted in compliance with various federal laws, regulations and policies dealing with misconduct in research including the Health Research Extension Act of 1985 (42 U.S.C. 289b) and Public Health Service (PHS) regulations to be promulgated pursuant to that Act. Also applicable is the National Science Foundation (NSF) regulation 45 CFR Part 689 and the National Endowment for the Humanities Federal Register citation 65 Fed. Reg.76.260. These laws, regulations, and policies require universities receiving federal funds to establish administrative procedures for reviewing allegations of misconduct in connection with research. This policy pertains to all research and creative activity conducted at Christopher Newport University. The Deans acting as the University's Research Integrity Officers are responsible for implementing this policy and for acting as liaisons with external agencies and/or individuals making allegations.

### **I. Applicability**

This policy shall apply to Christopher Newport University (CNU) staff; instructional, administrative, and research faculty; and other members of the University's community including, without limit, graduate student research assistants, graduate student teaching assistants, graduate student staff, undergraduate students employed in research or other scholarly activity, postdoctoral research associates, visiting faculty or staff, faculty or staff on sabbatical leave, adjunct faculty when performing University work, and faculty or staff on leave without pay. This policy applies to students only when acting in the course of their employment with the University.

### **II. Definitions**

**"Allegation"** means any written or oral statement or other indication of possible research misconduct made to an institutional official.

**"Complainant"** is an individual filing a written complaint of misconduct.

**"Conflict of Interest"** means the real or apparent interference of one person's interests with the interests of another person, where potential bias may occur due to prior or existing personal or professional relationships.

**"Day"** or **"Days"** shall refer to working days.

**"Evidence"** refers to documents and statements of any type which support or refute allegations and testimony.

**"Good faith allegation"** means an allegation made with the honest belief that research misconduct may have occurred. An allegation is not in good faith if it is

made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

**“Initial Inquiry”** is an information-gathering and initial fact finding process to determine whether an allegation or apparent instance of misconduct warrants a formal Investigation. An Inquiry should be conducted with minimum publicity and maximum confidentiality.

**“Investigation”** is a formal examination and evaluation of all relevant facts to determine if an instance of misconduct has taken place, to evaluate its seriousness, and if possible, to determine responsibility and the extent of any adverse effects resulting from the misconduct.

**“Investigation Official”** is the Research Integrity Officer or his/her designee, appointed to manage the allegation investigations.

**“Misconduct”** or **“research misconduct”** is the fabrication or falsification of data, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic or research community for proposing, conducting or reporting research or scholarly activity. It does not include honest error or honest differences in interpretation or judgments of data. Additionally, this definition includes violations of University policy pertaining to research, including the failure to obtain proper review and approval by the University committees responsible for research involving human subjects, animal care and use, radioactive materials, biohazards, as well as the failure to comply with rules and guidelines set forth by the committees responsible for these areas.

**“NEH”** refers to the National Endowment for the Humanities

**“NIH”** refers to the National Institutes of Health

**“NSF”** refers to the National Science Foundation.

**“Plagiarism”** is the act of appropriating the literary composition of another, or parts or passages of his/her writings, or the ideas or language of the same, and passing them off as the product of one’s own mind. It involves the deliberate use of any outside source without proper acknowledgment. Plagiarism is research misconduct whether it occurs in published work, or applications for funding.

**“PHS”** refers to the Public Health Service. NIH is a division of PHS

**“President”** is the President of Christopher Newport University.

**“Provost”** refers to the Provost of Christopher Newport University.

**“Respondent”** is an individual who is the subject of an Inquiry or Investigation.

**“RIO”** refers to the Research Integrity Officer.

**“University”** is Christopher Newport University.

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## **Procedure**

### **Reporting of Possible Misconduct**

All employees or individuals associated with Christopher Newport University shall report observed, suspected, or apparent misconduct to the Research Integrity Officer (the Dean of the appropriate College). If an individual is unsure as to whether a suspected incident falls within the definition of research misconduct, he/she may call the Research Integrity Officer to discuss the suspected misconduct informally. Such consultation shall be kept confidential to the extent permissible by law.

Annually, Deans will email all existing employees in their Colleges, and request a response to the question “Are you aware of any misconduct in research?” If any of the Deans receive any affirmative response(s), they follow the procedure above. Annually, the Office of Sponsored Programs (OSP) will ask for a response from all Deans to the question “Are you aware of or have you been informed of any misconduct in research?” OSP will keep documentation of all responses.

Ultimately, all allegations of misconduct shall be made in writing, signed by the Complainant, and made in confidence directly to the Research Integrity Officer. Upon receipt of a written complaint, the Research Integrity Officer shall inform the Provost, the University Counsel, and the Respondent of the allegation. Every effort should be made to resolve the situation at this level. In the event that the person making the allegation considers the Research Integrity Officer and/or the Provost to have a conflict of interest, the allegation may be reported directly to the President.

Following unsuccessful attempts to resolve the situation, the Research Integrity Officer shall review the written complaint and consult with the University Counsel to determine whether probable cause exists to conduct an Initial Inquiry, whether PHS, NSF or NEH support is involved, and whether the allegation falls under the PHS, NSF, or NEH definition of misconduct. There is not always sufficient evidence or information to permit further inquiry into an allegation. If the issue involved is found not to warrant further inquiry, satisfactory resolution through means other than this policy should be sought and to the extent possible, the identity of the Complainant(s) shall remain confidential.

### **Initial Inquiry**

Following the preliminary assessment and determination that the allegation provides sufficient information, the Research Integrity Officer, in consultation with the Provost and the University Counsel, shall notify in writing with return receipt the Respondent’s College Dean and the Respondent, and immediately begin the Initial Inquiry. At this point, if outside funding is involved, the funding agency is notified that an investigation has been initiated. The purpose of the Initial Inquiry is to make a preliminary evaluation of the available evidence and testimony of the Complainant, the Respondent, and key witnesses to determine whether there is sufficient evidence of possible research misconduct to warrant an investigation. The purpose of the Inquiry is NOT to reach a final conclusion about whether misconduct definitely occurred or who was

responsible. If it is determined that an Initial Inquiry is necessary, every reasonable effort shall be made to protect the identity of the individual(s) involved. (If the process reaches the investigative phase, however, the right of the Respondent to confront the Complainant requires that the identity of the Complainant be revealed).

The Research Integrity Officer is responsible for forming an Inquiry Committee, the membership of which shall be determined by the Research Integrity Officer and the Provost.

### **Inquiry Committee**

If it is determined that the formation of an Inquiry Committee is necessary, the Committee and Committee chair will be appointed within 10 days of the initiation of the Inquiry. The Inquiry Committee shall consist of a minimum of three persons who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary and appropriate expertise to carry out a thorough and authoritative evaluation of the relevant evidence, interview the principals and key witnesses, and to conduct the Inquiry. These individuals may be faculty, subject matter experts, administrators, lawyers, or other qualified persons, and they may be from inside or outside the University.

Members of the Committee and experts will agree in writing to observe the confidentiality of the proceeding and any information or documents reviewed as part of the Inquiry. Outside of the official proceedings of the Committee, they may not discuss the proceedings with the Respondent, Complainant, witnesses, or anyone not authorized by the Research Integrity Officer to have knowledge of the Inquiry.

### **Notification of the Appropriate Parties**

Upon initiation of the Inquiry, the Research Integrity Officer shall notify the Respondent in writing, with return receipt, that a complaint of misconduct has been received and advise the Respondent of the Inquiry. The notification shall identify the research project in question, and the specific allegations; define misconduct; identify PHS, NEH or NSF funding, if involved; list the names of the members of the Inquiry Committee (if appointed) and experts (if any); explain the Respondent's opportunity to challenge the appointment of a member of the Committee or expert for bias or conflict of interest, to be assisted by counsel, to be interviewed, to present evidence to the Committee, and to comment on the Inquiry report; address the Respondent's obligation as an employee of the University to cooperate; describe the University's policy on protecting the Complainant against retaliation; and the need to maintain the Complainant's confidentiality during the Inquiry, and any subsequent proceedings.

1. ***Respondent's Right to Object to Committee Members*** The Research Integrity Officer will notify the Respondent of the proposed Committee membership within five (5) days of its formation, in writing, with return receipt. If within five (5) days of notification, the Respondent submits a written objection to any appointed member of the Inquiry Committee or expert based on bias or conflict of interest, the Research Integrity Officer will immediately determine whether to replace the challenged member or expert with a qualified substitute.
2. ***Sequestration of Records*** Research records produced under federal grants, cooperative agreements, and most contracts are the property of the University, and employees cannot interfere with the University's right of access to them. The

documents and materials to be sequestered shall include all of the original items (or copies, if originals cannot be located) that may be relevant to the allegations. Additionally, records from other individuals, such as co-authors, collaborators, or Complainant(s) may need to be sequestered. The Research Integrity Officer shall obtain the assistance of the Respondent's supervisor and University Counsel in this process, as necessary. If the Respondent is not available, sequestration may begin in the Respondent's absence. The Respondent shall not be notified in advance of the sequestration of research records.

To protect the rights of the Respondent and all other involved individuals, as well as to enable the University and its representatives to meet their institutional, regulatory, and legal responsibilities, documentation of custody must be ensured and maintained, with the originals kept intact and unmodified. Therefore, a dated receipt should be signed by the sequestering official, and the person from whom an item is collected, and a copy of the receipt should be given to the person from whom the record is taken.

If it is not possible to prepare a complete inventory list at the time of collection, one should be prepared as soon as possible, and then a copy should be given to the person from whom the items were collected within ten working days of the request. If the copy cannot be delivered to the individual within ten working days, a written explanation of the relevant circumstances, along with the anticipated delivery date, shall be transmitted in confidence to that individual. This explanation shall become a part of the Inquiry records. When the requested copy is delivered to the person from whom the original item has been taken, a dated receipt shall be signed by that person and Investigation Official with copies given to both individuals. The Research Integrity Officer shall be responsible for maintaining files of all documents and evidence and for the confidentiality and the security of the files.

The Research Integrity Officer and Provost, in consultation with appropriate (including legal) advisor(s) shall determine what additional notification(s) is necessary, including if and when external funding agencies should be notified. Any such notification shall include a complete description of the evidence and shall be provided by the Provost. The Research Integrity Officer, the Provost and/or the Inquiry Committee may meet separately with the Respondent and Complainant and shall review all pertinent and reasonable documentation to determine if a formal Investigation should be recommended. Refusal on the part of the Respondent to cooperate shall be grounds for the recommendation for an Investigation.

#### **Charge to the Committee and the First Meeting**

The Research Integrity Officer, or his or her designee, will prepare a charge for the Inquiry Committee that states the purpose of the Inquiry, describes the allegations and any related issues, outlines the appropriate procedures for conducting the Inquiry, assists the Committee with organizing plans for the Inquiry, and answers any questions raised by the Committee. The Research Integrity Officer, his or her designee, and the University Counsel will be present or available throughout the Inquiry to advise the Committee as needed. The first meeting must take place within 10 days of the committee's appointment.

### **Conducting Interviews**

The purpose of an interview at the Inquiry stage is to allow each Respondent, Complainant, or witness to tell his or her side of the story. Before an interview, the Committee should provide each witness with a summary of the matters or issues intended to be covered at the interview. If the Committee raises additional matters, the witness should be given an opportunity to supplement the record in writing or in another interview. Interviews with the Respondent will be transcribed or tape-recorded. Interviews with anyone else will be summarized, tape-recorded, or transcribed. A transcript or summary of the interview will be provided to each witness for review and correction of errors. Witnesses may add comments or information and return them to the committee within 5 days of receipt. Changes to the transcript or summary will be made only to correct factual errors.

Respondent and witnesses may be accompanied and advised by legal counsel or by a non-legal advisor who is not a principal or witness in the case. However, the counsel or advisor may only advise the respondent or witness and may not participate directly in the interview. Respondent and witnesses will respond directly to the interview questions.

### **Admission of Misconduct**

If the Respondent admits to the misconduct, the Respondent should be asked immediately to sign a statement attesting to the occurrence and extent of the misconduct. Normally, an admission is a sufficient basis to proceed directly to an Investigation. However, the admission may not be a sufficient basis for closing a case. Further investigation may be needed to determine the extent of the misconduct or to explore additional issues. If an admission is made, the Research Integrity Officer, in consultation with University Counsel and other appropriate persons, will determine whether there is a sufficient basis to close a case, after the admission is fully documented and all appropriate procedural steps are taken.

### **Committee Deliberations**

The Inquiry Committee will evaluate the evidence and testimony obtained during the Inquiry. After consultation with the Research Integrity Officer, Provost, and University Counsel, the Committee members will decide whether there is sufficient evidence of possible misconduct to recommend further investigation. The scope of the Inquiry does NOT include deciding whether misconduct occurred or conducting exhaustive interviews and analyses.

### **The Inquiry Report**

The Inquiry shall be completed and a written report of the findings shall be prepared and submitted to the Provost within 45 days following its first meeting, unless the Research Integrity Officer approves an extension for good cause. If the Inquiry cannot be completed within 60 days, a report shall be made to the Provost citing progress to date, the reasons for the delay, and the estimated completion date. The Respondent and any other individual(s) involved shall be informed of the delay.

The final report shall contain the name and title of the committee members and experts, if any; the allegations; whether a PHS, NEH or NSF funded project; a summary of the Inquiry process used; a list of the records reviewed; summaries of any interviews; a description of the evidence in sufficient detail to demonstrate whether an Investigation is warranted or not; and the Committee's determination as to whether an Investigation is recommended and whether

any other actions should be taken if an Investigation is not recommended. University Counsel will review the Report for legal sufficiency. The Respondent shall be provided a copy of the Inquiry Report, with return receipt. The Complainant will be provided with those portions of the draft report that address the Complainant's role and opinions in the Investigation. The Research Integrity Officer may establish reasonable conditions for review to protect the confidentiality of the draft report. Within 15 days of the receipt of the draft report, the Respondent and Complainant will provide their comments, if any, to the Inquiry Committee. Any comments that the Respondent or Complainant submits on the draft report will become part of the final report and record. Based on the comments, the Inquiry Committee may revise the report as appropriate.

### **Inquiry Termination**

If the University plans to terminate an Inquiry of an allegation of misconduct on a PHS, NEH, or NSF funded project, for any reason, without completing all relevant requirements under the applicable subparts or sections (e.g., 50.103 (d) for PHS and 689.3 for NSF), a report of such planned termination, including a description of the reasons for such termination, shall be made to the agency's cognizant office, which will then decide whether further Inquiry should be undertaken.

If the Inquiry does not produce substantial evidence of misconduct, the Provost shall so inform the person who made the allegation, the Respondent, the University Counsel and the President, and any other individual(s) involved in the Inquiry to whom the identity of the Respondent was disclosed, and the matter shall be closed. The University shall make diligent efforts to restore the reputation of the Respondent by providing all relevant parties with a factual report of the outcome and the conclusions of the Inquiry. The University shall maintain sufficiently detailed documentation of the Inquiry to enable it to respond to potential requests to review the reasons for determining that an Investigation was not warranted. Such records will be maintained in the Office of the Provost in a secure manner in accordance with Library of Virginia Records Retention Policies.

### **Inquiry Findings**

If the Inquiry reveals substantial evidence of misconduct, the Research Integrity Officer will transmit the final report and any comments to the Provost who will make the determination whether findings from the Inquiry provide sufficient evidence of possible research misconduct to justify conducting an Investigation. The Inquiry is completed when the Provost makes this determination.

The Provost, in consultation with the Research Integrity Officer, the University Counsel, and other appropriate parties, shall reach his/her determination on a case by case basis, considering all relevant factors, including, but not limited to: (1) the accuracy and reliability of the source of the allegation of misconduct; (2) the seriousness of the alleged misconduct; (3) the scope of the alleged incident, and the context in which it became known; and (4) other information obtained during the Inquiry. If an Investigation is initiated, any outside sponsoring agency that may be involved or have an interest in the alleged misconduct shall be

notified. The Provost, in consultation with the Research Integrity Officer and University Counsel, shall determine what such notification will include and to whom it will be directed. The Complainant and the Respondent shall be notified in writing, with return receipt, when an Investigation will follow.

### **Retaliation**

If the allegation had been made in good faith, the University shall make diligent efforts to protect against retaliation the positions and reputations of the Complainant(s) and other individuals who have cooperated with the University's Inquiry. Any alleged or apparent retaliation will be reported immediately to the Research Integrity Officer or Provost. If either the Research Integrity Officer or Provost is considered to have a conflict of interest, the alleged or apparent retaliation will be reported directly to the President.

### **Interim Administrative Actions**

Upon recommendation of the Research Integrity Officer, the Provost and the University Counsel may meet with the Respondent for the purpose of imposing temporary interim administrative actions prior to the completion of an Inquiry or Investigation if necessary to safeguard the integrity of the research or scholarly activity, prevent inappropriate use of sponsored funding, or otherwise protect the interests of a sponsor, the University or the public. If temporary suspension of duties is imposed, such suspension shall be without loss of pay, pending the conclusion of the process described herein. The Respondent shall be informed of the reasons for such action taken and afforded the opportunity to oppose such action.

## **Formal Investigation**

The purpose of the formal Investigation is to explore in detail the allegations, to examine the evidence in depth, and to determine specifically whether misconduct has been committed, by whom, and to what extent. The Investigation will also determine whether there are additional instances of possible misconduct that would justify broadening the scope beyond the initial allegations. This is particularly important where alleged misconduct involves clinical trials or potential harm to human subjects or the general public or if it affects research that forms the basis for public policy, clinical practice, or public health practice.

### **Investigation Committee**

The Research Integrity Officer is responsible for conducting or designating others to conduct the Investigation. In cases where the allegations and apparent evidence are straightforward, such as an allegation of plagiarism or simple falsification or an admission of misconduct by the Respondent, the Research Integrity Officer may choose to conduct the Investigation directly or designate another qualified individual to do so. In such cases, the Investigation Official will obtain the necessary expert and technical advice to consider properly all scientific issues.

In complex cases, the Research Integrity Officer shall appoint an Investigation Committee (herein the "Investigative Committee") within 10 days of the notification to the Respondent

that an investigation is planned. The Research Integrity Officer will be a member of the Committee and will serve as Chairperson. The Investigative Committee should consist of at least three individuals who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to evaluate the evidence and issues related to the allegations, interview the principals and key witnesses, and to conduct the investigation. These individuals may be scientists, administrators, subject matter experts, lawyers, or other qualified persons, and they may be from inside or outside the University. Individuals appointed to the Investigative Committee may also have served on the Inquiry Committee.

Members of the Committee and experts will agree in writing to observe the confidentiality of the proceedings and any information or documents reviewed as part of the Inquiry. Outside of the official proceedings of the Committee, they may not discuss the proceedings with the Respondent, Complainant, witnesses, or anyone not authorized by the Research Integrity Officer to have knowledge of the Inquiry.

The Research Integrity Officer will notify the Respondent of the proposed Committee membership within five (5) days of its formation, in writing with return receipt. If within five (5) days of notification, the Respondent submits a written objection to any appointed member of the Investigative Committee or expert based on bias or conflict of interest, the Research Integrity Officer will immediately determine whether to replace the challenged member or expert with a qualified substitute.

The Respondent may consult with legal counsel or a non-lawyer personal advisor (who is not a principal or witness in the case) to seek advice and may be accompanied by legal counsel or a non-lawyer personal advisor to any meeting on this matter. The Respondent's legal counsel's role, as well as the personal advisor's role, is limited to advising the Respondent. Neither the legal counsel nor the personal advisor may participate in any administrative proceedings. Once formed, the Investigative Committee shall, in consultation with the University Counsel, establish the procedures to be followed in conducting the Investigation. The Complainant and Respondent shall be fully informed of the procedures. The Investigative Committee shall initiate the Investigation within 30 days of the completion of the Inquiry, and shall take no more than 60 days to complete the Investigation, prepare a report of its findings, including recommended action(s), and submit the report to Provost and President. In undertaking this investigation, the Investigation Committee shall act promptly, ensure fairness to all, secure the necessary and appropriate expertise to carry out a thorough and authoritative evaluation of the relevant evidence, and take precautions against real or apparent conflicts of interest.

#### [Notification of Respondent and Respondent's Right to Object to Committee Members](#)

The Research Integrity Officer will notify the Respondent, in writing, with return receipt, as soon as reasonably possible after the determination is made to open an Investigation. The notification should include a copy of the Inquiry Report; the specific allegations; the sources of funding, if any; the definition of research misconduct; the procedures to be followed in the Investigation, including the appointment of the Investigation Committee and experts; and, the opportunity of the Respondent to be interviewed, to provide information, to be assisted by counsel, to challenge the membership of the committee and experts based on bias or conflict of interest, and to comment on the draft report.

### Sequestration of Records

The Research Integrity Officer will immediately sequester any additional pertinent research records that were not previously sequestered during the Inquiry. This sequestration will occur before or at the time the Respondent is notified that an Investigation has begun. The procedures to be followed for sequestration during the Investigation are the same procedures that apply during the Inquiry.

### Charge to the Committee and the First Meeting

The Research Integrity Officer, with the assistance of the University Counsel, will convene the first meeting of the Investigation Committee. The Research Integrity Officer will define the subject matter of the Investigation in a written charge to the Committee that describes the allegations and related issues identified during the Inquiry, define research misconduct, and identify the name of the Respondent.

### The Investigation

The Investigation may consist of a combination of activities including but not limited to: (1) examination of all documentation including, but not necessarily limited to, relevant research records, computer files, proposals, manuscripts, publications, correspondence, memoranda, and notes of telephone calls; (2) review of the report from the Inquiry; (3) interviews of parties and witnesses who may have been involved in or have knowledge about the case. Interviews of the Respondent should be tape recorded or transcribed. All other interviews should be transcribed, tape recorded, or summarized. Summaries or transcripts of all interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigatory file. The Investigative Committee shall provide the Respondent an opportunity to comment on the allegations and shall include his or her comments in its report. The Respondent must submit comments to the Committee within 5 days of receipt. Members of the University community who are involved in, or learn of, an Investigation of the alleged research misconduct will protect, to the maximum extent possible, the confidentiality of information regarding the Complainant, the Respondent, and other affected individuals.

### Admission of Misconduct

If the Respondent admits to the misconduct, he or she should be asked immediately to sign a statement attesting to the occurrence and extent of the misconduct, acknowledging that the statement was voluntary, and stating that the Respondent was advised of his or her right to seek the advice of counsel. The Committee should consult with the University Counsel on the specific form and procedure for obtaining this statement. The admission may not be used as a basis for closing the Investigation, unless the Committee has adequately determined the extent and significance of the misconduct and all procedural steps for completion of the Investigation have been met. The Investigation should not be closed unless the Respondent has been appropriately notified and given an opportunity to comment on the Investigative Report. Completion of the Investigation shall include conducting the Investigation, preparing the Report of the findings, making the draft report available to the Respondent for comment, and submitting the final report to the Provost. If the case is considered complete, it should be forwarded to the Provost with recommendations for appropriate University actions and to any outside funding agencies, as appropriate.