

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Academic Misconduct

NUMBER: 4:42

1. The South Dakota Board of Regents proscribes academic misconduct by its employees at all times and in all circumstances. The following regulations will apply to all allegations of employee academic misconduct, unless different procedures or measure are required and specified by outside granting agencies, in which case those requirements will apply.
 - A. Each employee will cooperate with institutional authorities when requested to produce data, documents or materials or to provide statements to complete an investigation under this policy.
 - B. Employees who make allegations of academic misconduct, or become involved in an inquiry or investigation as subjects or witnesses, will preserve all records, data or other materials in their possession relating to the allegations.
 - C. The requirement of cooperation hereunder is continuing and will survive the termination of employment, provided that the institution will remain responsible for direct costs reasonably incurred by the former employee to produce documents or to participate in proceedings hereunder.
2. Definitions:
 - A. "Academic misconduct" includes:
 1. fabrication, falsification, or plagiarism in proposing, performing, reviewing research or in reporting research results, in authoring, creating or presenting original scholarly or creative artistic works;
 2. other practices that fraudulently or recklessly deviate from those that are commonly accepted within the academic community for proposing, conducting, or reporting research or for authoring, creating or presenting original scholarly or creative artistic works; or
 3. other fraudulent activity involving the content or foundation of purportedly original research, scholarship or creative artistic activities

Academic misconduct involves the content and foundation of research, scholarly or creative artistic claims or purportedly original presentations, as opposed to misconduct involving the management or financing of research, scholarly or creative artistic endeavors.

Academic misconduct does not include honest error or honest differences in interpretations or judgments of data, texts, objects or other scientific, scholarly or creative artistic subject matter that are inherent in the scientific, scholarly or creative artistic processes, but are normally corrected by further research or scholarly debate or criticism. It does not include violations of related policies or requirements, such as, those governing the review or conduct of human subjects research, disclosure or avoidance of financial conflicts of interest, grant administration requirements or other matters generally applicable to institutional personnel.

- B. “Conflicts of interest,” for purposes relating to the qualifications of investigators or members of hearing panels, include the following:
 - 1. co-authoring a book, paper, or grant proposal with any of the individuals directly involved with the misconduct case (such as, the persons who report misconduct, material witnesses or the subjects of the investigation)
 - 2. professional or personal relationship (such as those with current or former students or mentors, direct supervisory or subordinate relationships, direct collaborators within the past seven years) with any of these individuals;
 - 3. professional differences of opinion with any of the involved individuals that might reasonably be expected to affect objectivity in considering the case;
 - 4. financial ties to the involved individuals; or
 - 5. other reasons that might affect the ability of the individuals to make fair and impartial judgments.
- C. “Fabrication” is making up data or results or materials and recording or reporting them.
- D. “Falsification” is manipulating research or scholarly materials, equipment, or processes, or changing or omitting data or results or materials for fraudulent purposes such that the research or scholarly report, finding or product is not accurately represented in the research or scholarly record.
- E. “Fraudulent,” and its cognates, includes actual and constructive fraud and deceit. Fraud may occur when a researcher, scholar or artist intends to mislead others as by suggesting as a fact something which the person believes not to be true or for which the person lacks evidence, by suppressing material facts or information or

by other intentionally misleading conduct. Fraud may also occur when a researcher, scholar or creative artist breaches a duty to disclose facts or information when the breach directly or indirectly benefits the person who breaches the duty; in such cases intent to mislead need not be shown.

- F. “Good faith” encompasses all actions taken whether done negligently or not. Good faith is to be determined by examining the intent of the actor. All that is required is the actual belief or satisfaction of the criterion of the ‘pure heart and empty head.’
 - G. “Plagiarism” is the appropriation of another person's ideas, processes, results, or words or other expression without giving appropriate credit.
 - H. “Preponderance of the evidence” is determined by considering all evidence relating to a disputed question of fact, together with the reasonable inferences drawn from it, to decide which evidence has greater weight, that is, is more convincing and yields conclusions that are more probably true.
 - H. “Original” refers to academic activities that individual researchers, scholars or artists present as their own work, even if the project involves the replication or support for another’s work.
 - I. “Reckless,” and its cognates, refers to a conscious disregard of the probability including statements in the research record will not accurately represent the research or scholarly record or will not accurately attribute the original authorship, creation or presentation of scholarly or creative artistic works. Recklessness may be shown by evidence that the subject knew or had reason to know of facts which would lead a reasonable person to realize that such statements would misrepresent the research or scholarly record or mislead others concerning the origin of the scholarly or creative artistic work.
 - J. “The research or scholarly record” is the record of data or results that embody the facts resulting from scientific inquiry or other scholarly pursuits, and includes, but is not limited to, research or grant proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles, or other scholarly works, whatever their media of expression.
3. Due to the difficulties of investigating old claims and the unfairness to the respondent, allegations of academic misconduct that occurred seven or more years prior to the submission of the allegation will not be investigated unless the circumstances indicate that the alleged conduct was not reasonably discoverable earlier.
 4. Once an allegation of academic misconduct has been made, the allegation will be subject to review that may involve three stages:

- A. an inquiry to determine whether the allegation or related issues warrant further investigation;
- B. when warranted, an investigation to collect and thoroughly examine evidence; and
- C. a finding and appropriate corrective measures which may include personnel actions.

The institutional president will be responsible for notifying federal granting agencies of the allegations where such notice is required under federal regulation.

- 5. Within ten calendar days from receipt of the allegations, the president will designate a person or persons to conduct the inquiry stage.
 - A. The person or persons designated to conduct the initial investigation should be familiar with the academic discipline or practices involved in the allegations, or should have access to persons with subject-matter expertise.
 - B. The person or persons designated to conduct the initial inquiry should be impartial and free from any conflicts of interest.
 - C. Where the academic activity was supported by federal funds, the institution will notify the funding agency if required under the governing federal regulations.
 - D. To the extent possible, the inquiry will be conducted in confidence; provided that, some disclosures may be required under federal regulations or needed to conduct the investigation and to consult with experts.
 - 1. In some instances, it may be necessary to alert other persons or agencies in order to address health or safety concerns or where a matter requires involvement of law enforcement authorities.
 - 2. The institutional president will be responsible for notifying federal granting agencies of the allegations and of the status of the proceedings.
 - 3. All persons involved in the process, whether as investigators, panel members, complainants, witnesses, subjects or the subject's representatives will be responsible for preserving the confidentiality of these proceedings.
 - E. The subjects of the inquiry will be provided timely written notification regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct (if any).

1. The subjects of the inquiry may represent themselves or be represented by someone of their choice.
- F. The person or persons who conduct the initial inquiry will report their conclusions to the institutional president.
1. If the report concludes that the allegations have no substance, the institutional president will initiate such corrective action as he or she determines to be necessary to clear the reputation of the subjects of the inquiry and to assure that no one who participated in the inquiry is subject to retaliation or discipline as a result of their good faith allegations or testimony.
 2. If the report concludes that the allegations have substance, the institutional president will establish a panel to conduct a formal investigation.
6. Within fifteen calendar days after receipt of an inquiry report that requires a formal investigation, the institutional president will appoint a special panel of three persons, two individuals with academic expertise in the academic discipline or practices involved in the allegations and one attorney, to conduct a formal hearing and to make a determination whether the subjects engaged in academic misconduct.
- A. All three members of the hearing panel should be impartial and have no conflicts of interest.
 - B. The institutional president will notify the subject of the panel membership. The subject will have five days in which to challenge any member of the panel on the basis of a serious conflict of interest.
 1. If a subject wishes to challenge the impartiality of a panel member, the subject must identify specific facts or circumstances that establish a conflict of interest as defined herein.
 2. In the event of a challenge, the institutional president will review the evidence produced by the subject, together with such other information as may be material, and will determine whether the allegations suggest a conflict of interest whose seriousness might compromise the impartiality of the panel deliberations.
 3. The institutional president's resolution of the challenge will not be subject to appeal.
 - C. The attorney will serve as hearing officer, supervise the admission of evidence and resolve all legal questions presented to the panel.

- D. The panel so constituted will schedule a hearing to take evidence concerning the factual allegations and to receive argument concerning legal matters.
 - E. The subjects of the investigation will be entitled to representation, to present evidence and to examine the evidence presented against them.
 - F. Where required under federal regulations, the panel will make regular reports to the institutional president about the status of its investigation to funding agencies, and the president will notify the granting agency about the status of the investigation.
 - G. If a subject of the investigation is a member of a certified bargaining unit, the institutional president will notify the bargaining agent that an investigation has led to the convening of a hearing panel. The notice will be given to the person designated to receive such notices on behalf of the bargaining agent. The institutional president will give this notice once the panel membership has been settled. Thereafter, the bargaining agent will have the right to have an observer present at all panel proceedings involving the subject.
7. The panel must conclude that allegations of misconduct have substance if the preponderance of the evidence supports such a finding.
8. The panel shall refer its determination to the institutional president.
- A. If the panel concludes that the allegations have no substance, the institutional president will initiate such action as he or she determines to be necessary to clear the reputation of the subjects of the inquiry and to assure that no one who participated in the investigation is subject to retaliation or discipline as a result of their good faith allegations or testimony.
 - B. In the event that the panel finds that the subjects of the investigation have engaged in academic misconduct,
 - 1. the institutional president will decide what corrective actions the institution will take to ensure the integrity of research, scholarship or creative activity, to protect the rights and interests of research subjects and the public, and the institutional observance of legal requirements and responsibilities; and
 - 2. the institutional president will determine and implement an appropriate discipline, and will notify funding agencies if required under federal regulation.
9. The action of the president may be appealed to the Board of Regents, where it will be heard in the same manner as other disciplinary appeals, except that the review of investigatory panel's factual findings on appeal to the Board will be limited.

- A. Challenges to the judgment for the hearing panel on the weight of evidence pertaining to questions of fact will be limited to showing that the panel's findings are clearly erroneous, arbitrary, capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. The Board will not substitute its judgment for that of the hearing panel unless it forms a definite and firm conviction that a mistake has been committed.
10. The decision of the Board will be subject to further appeal as provided under the Administrative Procedures Act, the Public Employees' Unions Act or the Civil Service Act, whichever may apply.
11. Inquiries and Investigations will be initiated and completed according to the time tables allowed under the regulations of the grant agency. If the matter involves conduct that was not undertaken pursuant to a grant, or if the grant agency specifies no other times for completion of inquiries and investigations, the following timetables will apply, subject to such reasonable variation as may be necessary under the circumstances:
 - A. An inquiry will be completed within sixty calendar days from the date that the institutional president appoints a person or persons to conduct the inquiry.
 - B. A formal investigation will be completed within one hundred twenty calendar days from the date that the institutional president appoints the panel to conduct the formal investigation.
12. If funding agencies have been notified previously about the investigation, the institutional president will notify them that an appeal has been brought to the Board, and will advise the funding agencies of the outcome of such appeal.
13. The institutional president shall remain responsible for notifying funding agencies of any appeals from the Board's decision, and the outcomes of such appeals, until the matter has been finally resolved.
14. Persons who report suspected or alleged misconduct, or who provide information about such matters, and who have acted in good faith will not be subject to retaliation of any kind. Allegations not made in good faith may lead to appropriate disciplinary actions according to Board policies or applicable collective bargaining agreements for the respective employee groups. Persons who submit allegations of academic misconduct will be informed from the outset that they will be subject to discipline if a complaint is maliciously motivated and false.

SOURCE: BOR, June 2006.