

**AUSTIN PEAY STATE UNIVERSITY
POLICIES AND PROCEDURES MANUAL**

Policy Number: 99:013	Supersedes Policy Number: n/a
Date: January 19, 1999	Dated: n/a
Subject: Misconduct in Research and Other Creative Activities	Mandatory Review Date: n/a
Initiating Authority: Provost	TBR Policy/Guideline Reference:
Approved:	President: signature on file

Applicability

This policy applies to all faculty, staff, students and research associates of the University in the performance of scholarly and creative activity and research, research training, applications for support of research or research training, or related research activities conducted at or under the auspices of Austin Peay State University. It meets the certification and other requirement guidelines of Section 493 of the Public Health Service (PHS) Act as well as of other Federal and other agencies.

It is understood that the requirement for integrity in the quest for knowledge and in the creation of scholarly, research and artistic works is inherent in the academic purpose. Austin Peay State University maintains high ethical standards in research and other scholarly work. Although this policy should not in any way be construed to restrict academic freedom, Austin Peay State University will provide vigorous leadership and will take immediate action on any allegation or evidence of possible misconduct.

This policy shall not waive the University's nor the respondent's right to seek other legal recourse.

Definition of Misconduct

Misconduct in research or other creative or scholarly activities is defined to include but is not limited to the following acts committed by faculty, staff, students, and research associates of the University:

- A. The fabrication or falsification of data or results, the theft of methods or data from others, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic and research community for proposing, conducting or reporting research or other scholarly or creative activities. It does not include error or honest differences in interpretations or judgments of data.

- B. Failure to comply with Federal and University requirements pertaining to the conduct of research. This includes but is not limited to: falsification of certifications and representations pertaining to government compliance requirements, failure to obtain proper review and approval by the authorized University committee for research that involves human subjects, animals, radioactive materials or other biohazards, and/or failure to follow directives made by authorized University committees concerning research subjects, materials or procedures.
- C. Failure to meet legal requirements governing the proposing, conducting, or reporting of research.
- D. Condoning violations of University research policies. This includes but is not limited to failure to notify appropriate University authorities whenever it becomes obvious or apparent that misconduct probably has occurred, or failure to cooperate in an investigation under the procedures specified by this policy.
- E. Retaliation of any kind against a person who in good faith reported or provided information about suspected or alleged misconduct.

Procedures

Austin Peay State University has an obligation to investigate fully an allegation of misconduct and to resolve questions regarding the integrity of research or other scholarly or creative activity. All allegations of misconduct will be immediately evaluated first by an inquiry, and then, if the inquiry so indicates, by an investigation. An inquiry requires information gathering and initial fact finding to determine whether an allegation or apparent instance of misconduct warrants an investigation. An investigation is the formal examination and evaluation of all relevant facts to determine if misconduct has occurred.

The name of the complainant as well as the person accused (respondent) will be held in strictest confidence to the extent permitted by law. The respondent has the right to know the name of the complainant.

- A. Initiation of an Inquiry to initiate an inquiry, an allegation of misconduct must be made in writing, signed by the complainant, and delivered to the Provost.

Any person making an allegation must also agree, in writing, to support it before University officials and such committees as may be appointed under these procedures.

If the Provost has a real or apparent conflict of interest with the case, the inquiry will be directed by another administrator appointed by the President.

B. Notification to the Respondent

- 1. Upon initiation of an inquiry, the Provost will notify the respondent in writing of the existence and nature of the complaint and the process that will follow. A copy of the

allegation, a copy of this policy, and a list of the membership of the Inquiry Committee on Research and Scholarly Misconduct shall be attached to the notification. The respondent has the right to identify, in advance, any real or potential conflict of interest among the Committee members, and to request that the Provost or his/her designee replace members so identified. If the Provost or his/her designee determines that replacement is necessary, the appointment of replacement members shall be made using the same procedure and criteria as those used for appointment of the original members.

2. The respondent will be given copies of all documentation that supports or negates the allegations.
3. The respondent will be invited to present a written response to the allegations; this response will become a part of the case file maintained by the Provost or his/her designee.

C. Timeliness

The inquiry phase of a case of alleged misconduct must be completed and a written report of the findings filed with the Provost or his/her designee by the Inquiry Committee within 60 calendar days of initiation. If the Committee anticipates that the established deadline cannot be met due to circumstances which clearly warrant a longer period, a report citing the reasons for the delay and progress to date will be filed with the Provost or his/her designee, and the respondent and the complainant will be informed of the need for additional time. This report shall be made part of the record of the inquiry.

If there are plans to terminate the inquiry for any reason prior to completion, and if the alleged misconduct relates to a project funded by an agency of the Federal government, or other organization requiring the University to certify compliance with Federal policies and regulations concerning misconduct in science, a report of such planned termination, including a description of the reasons for such termination, shall be made to the appropriate office of the funding agency (e.g. the Office of Scientific Integrity at National Institutes of Health), which will in turn decide whether further investigation should be undertaken.

D. The Inquiry

The inquiry process will be handled by a standing Inquiry Committee on Research and Scholarly Misconduct appointed by the President on recommendation of the Faculty Senate. Members shall serve for three-year rotating appointments. The membership shall consist of tenured faculty with the following distribution: two from the College of Science and Mathematics and College of Arts and Letters and one member from each other college of the University. The Committee shall elect its own chair, who will serve for a term of one year.

1. The Committee shall gather information and make an initial fact finding to determine if there is a reasonable and sufficient basis to warrant a full investigation. The Inquiry Committee is not required to take further action (other than submission of its report) on an allegation, which in its majority opinion is considered frivolous, unreasonably vague,

or known to be otherwise improper. If it appears that the allegation indicates misconduct as defined by this policy, the Committee shall proceed with its inquiry.

2. The Committee may call upon additional expertise as necessary, either from the campus or from other sources, to reach its determination.
3. The proceedings and interviews of the inquiry shall be closed to all except the members of the Committee and those being interviewed.
4. Information, records, and other pertinent data shall be supplied to the Committee upon its written request.
5. To ensure the safety and security of any written documents associated with the allegation, such documents shall remain in the control of the Provost at all times, except as otherwise provided in this policy.
 - a. No reproduction of any kind shall be permitted of these materials except as otherwise provided by these procedures.
 - b. The Provost's office shall maintain a log of individuals reviewing the materials, including dates and times of arrival and departure for such reviews.
6. The Committee members may keep notes of the inquiry, as they individually believe are reasonable, to document the activities and findings with the understanding that these may be subject to the Open Records Act and/or subpoena by counsel.
7. The Committee shall maintain a complete record of its proceedings, including copies of all documents considered as evidence, transcripts of interviews conducted, minutes of the debates of the Committee, and a record of all votes cast. The records of the inquiry shall be maintained in a secure manner for at least three years after the termination of the inquiry. If the alleged misconduct relates to a project funded by an agency of the Federal government (such as the National Institutes of Health or National Science Foundation), or other organization requiring the University to certify compliance with Federal policies and regulations concerning misconduct in science, copies of the records of the inquiry shall, upon request, be provided to appropriate, authorized officials of the funding agency.
8. Dissenting voters shall be required to present a minority report. Abstentions in voting shall be permitted only for good cause, which must be presented in writing and become a part of the permanent record along with the majority and minority reports.
9. The Committee shall prepare a written report informing the Provost of its conclusions. The report shall include a detailed listing of what evidence was reviewed, summarized relevant interviews and other information considered and include the conclusions of the inquiry. The report shall also contain a recommendation of the majority of the committee. The recommendation shall be one or more of the following:
 - a. Reasonable belief that misconduct has occurred with recommendation for the

initiation of a full investigation,

- b. Reasonable belief that a possible criminal violation has occurred with recommendation for a full investigation,
- c. No reasonable belief that misconduct has occurred with recommendation for no further action,
- d. Unjustified, good faith allegation, with recommendation for no further action,
- e. Unjustified allegation, not made in good faith.

E. Notification of Findings From the Inquiry.

- 1. The respondent shall be informed of the outcome of the inquiry by the Provost, and be given a copy of the report of inquiry. If the respondent wishes to comment on that report, those comments will be made part of the record. If they are or can be identified, the person(s) who raised the allegation shall be provided with those portions of the report that address their role and opinions in the investigation.
 - a. Finding of no misconduct: After notification, the Provost shall, in consultation with the respondent, and, as appropriate, diligently work to clear the record and restore the reputation of the respondent, and also undertake diligent efforts to protect the positions and reputations of those persons who, in good faith, made the allegation.
 - b. Finding of Possible Misconduct: The Inquiry Committee shall, within 30 calendar days of determination that the need for investigation exists, appoint an Investigating Panel as described below. The Inquiry Committee will also be responsible for making space and facilities arrangements for hearings resulting from the inquiry, and for instructing and advising the Investigating Panel regarding its functions, obligations, and possible findings.
 - c. Finding of possible misconduct and recommendation for an investigation for a project funded by an agency of the Federal government (such as the National Institutes of Health or National Science Foundation), or other organization requiring the University to certify compliance with Federal policies and regulations concerning misconduct in science: Within 24 hours of a decision by the Inquiry Committee, the Provost will inform the Office of Grants and Sponsored Programs of the results of the inquiry, including whether any reasonable indication of possible criminal violation exists. The Office of Grants and Sponsored Programs shall report same to the appropriate granting agencies as required by the terms and conditions of the award agreement and grantor agency regulations.
 - d. In the case of an inquiry into alleged misconduct involving a project funded by an agency of the Federal government (such as the National Institutes of Health or National Science Foundation), or other organization requiring the University to certify

compliance with Federal policies and regulations concerning misconduct in science, the Office of Grants and Sponsored Programs shall also be notified immediately, and the Office of Grants and Sponsored Programs in turn shall immediately notify appropriate officials at the granting agency, and report on any action taken, if appropriate, if at any stage in the proceedings any of the following conditions exist:

- 1) There is an immediate health hazard involved;
- 2) There is an immediate need to protect Federal or other grantors 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. In that instance, the Institution must notify the grantor agency within 24 hours of obtaining that information.

F. Investigation

The purpose of the Investigative Panel is to undertake a thorough analysis of the allegation and to evaluate all relevant facts to determine if misconduct has occurred. The investigation should be completed within 120 days of its initiation.

1. Investigative Panel

The population from which the Investigative Panel shall be drawn shall consist of all full-time academic employees except: 1) the President, 2) those reporting directly to the President or Provost, 3) chairs of the departments of the complainant and respondent, and 4) members of the Inquiry Committee. An Investigative Panel shall consist of three voting members plus an alternate. Members of a panel shall be different for each investigation.

a. Selection of Panel Members

Selection of Panel members shall be by a random method from the population of eligible faculty. Initially, three names shall be selected. If these three persons are unchallenged, the panel shall be declared official. If panelists are successfully challenged, additional names for the panel membership shall be drawn singly until the three-member panel is complete. A fourth name shall be drawn to serve as an alternate panel member.

b. Conflict of Interest of Panel Members

Those appointed to the Investigative Panel should be free of any conflict of interest and have sufficient expertise to be able to assess the charges before them. Challenges to Panel membership due to conflict of interest shall be adjudicated by the Inquiry Committee. The decision of the Inquiry Committee concerning challenges shall be final.

c. Chair of the Panel

The three voting members of the Panel shall choose their own chairperson.

d. Mandatory nature of Panel membership Service as a member of an Investigative Panel, if selected, is a normal obligation of each full-time academic employee of the University.

e. The Panel may hold hearings and has the authority and obligation to collect and consider all of the evidence relevant to the allegation. All materials to be considered by the Panel shall be provided to the Panel no less than two calendar weeks prior to the hearing.

f. The investigation will normally include examination of all documentation, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Summaries of interviews should be prepared, provided to the interviewed persons for comment or revision, and included as part of the investigation file.

2. Written notification of hearing dates and copies of all relevant documents, as judged appropriate by the Panel, will be made available to the respondent in advance of scheduled meetings.
3. The Investigative Panel may call upon additional expertise as necessary, either from the campus or from other sources, to reach its determination.
4. Information, records, and other pertinent data shall be supplied to the Investigative Panel upon its written request.
5. To ensure the safety and security of any written documents associated with the investigation, such documents shall remain in the control of the Provost at all times, except as otherwise provided in this policy.
 - a. No reproduction of any kind shall be permitted of these materials except as otherwise provided by these procedures.
 - b. The Provost's office shall maintain a log of individuals reviewing the materials, including dates and times of arrival and departure for such reviews.

6. The Panel shall maintain a complete record of its proceedings, including copies of all documents considered as evidence, transcripts of interviews conducted, minutes of the debates of the Panel, and a record of all votes cast. The records of the investigation shall be maintained in a secure manner for at least three years after the termination of the investigation. If the alleged misconduct relates to a project funded by an agency of the Federal government (such as the National Institutes of Health or National Science Foundation), or other organization requiring the University to certify compliance with Federal policies and regulations concerning misconduct in science, copies of the records of the investigation shall, upon request, be provided to appropriate, authorized officials of the funding agency.
7. Dissenting voters shall be required to present a minority report. Abstentions in voting shall be permitted only for good cause, which must be presented in writing and become a part of the permanent record along with the majority and minority reports.
8. The Panel may consult with or request an opinion from TBR Counsel in the course of their proceedings.
9. If, during the investigation, additional information emerges that may justify broadening the scope of the investigation beyond the initial allegations, the respondent shall be informed in writing. Materials neither available nor obtainable at the outset of the action that are subsequently obtained must be provided to the Panel immediately.
10. If, during the investigation, the Panel believes it necessary to act to protect the health and safety of research subjects, patients, and/or students, such administrative action shall be taken by the Provost based upon the recommendations of the Panel. If the investigation involves a project funded by an agency of the Federal government (such as the National Institutes of Health or National Science Foundation), or other organization requiring the University to certify compliance with Federal policies and regulations concerning misconduct in science, the Office of Grants and Sponsored Programs shall also be notified immediately, and the Office of Grants and Sponsored Programs in turn shall immediately notify appropriate officials at the granting agency, and report on any action taken, if appropriate, if at any stage in the proceedings any of the following conditions exist.
 - 1) There is an immediate health hazard involved;
 - 2) There is an immediate need to protect Federal or other grantors 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. In that instance, the Institution must notify the grantor agency within 24 hours of obtaining that information.
11. The respondent shall have an opportunity to address, in writing, the charges and evidence. The respondent shall be provided with all necessary information in a timely manner to facilitate the preparation of a response and ensure an opportunity to address the charges and the supporting information in detail.
 12. The respondent will also be expected to appear and speak for him/herself in person before the Investigative Panel. He or she may, at his/her own expense, be accompanied by and confer with legal counsel in an advisory capacity at hearings, but is expected to speak for him/herself.
 13. The hearings of the Panel shall be closed to all but the Panel members, the respondent (and respondents legal counsel if any), and individuals being interviewed as part of the Panels proceedings.
 14. An investigation must be completed within 120 days of its initiation. This includes conducting the investigation, preparing the report of the findings, making that report available for comments by the respondent, and submitting the report to the appropriate government funding agencies when required.
 15. If there are plans to terminate the investigation for any reason prior to completion, and if the alleged misconduct relates to a project funded by an agency of the Federal government, or other organization requiring the University to certify compliance with Federal policies and regulations concerning misconduct in science, a report of such planned termination, including a description of the reasons for such termination, shall be made to the appropriate office of the funding agency (e.g. the Office of Scientific Integrity at National Institutes of Health), which will in turn decide whether further investigation should be undertaken.
 16. When the hearings have been completed, the Investigative Panel shall prepare a written report of its findings and recommendations for sanctions and submit it to the Provost. The recommendations for sanctions of the Panel is advisory.

G. Notification of Findings of the Investigation

1. The Investigative Panel will submit a written final report to the Provost which must describe 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 any recommendations for any sanctions to be taken by the Institution.

2. The Provost will send the report to the respondent by certified mail with return receipt requested. The respondent may comment in writing upon the report within 30 calendar days of the date of the report. The person(s) who raised the allegation shall be provided with those portions of the report that address their role and opinions in the investigation.
3. The Office of Grants and Sponsored Programs will be notified of the final outcome of the investigation when appropriate.

Institutional Actions

A. Externally - Funded Projects

If the alleged misconduct relates to a project funded by an agency of the Federal government, or other organization requiring the University to certify compliance with Federal policies and regulations concerning misconduct in science, the Office of Grants and Sponsored Programs shall immediately notify the appropriate officials of the grantor agency of the outcome of the investigation. This will include the final report of the Investigative Panel, as well as a description of any sanctions taken by the Institution.

B. Presence of Fraud or Misconduct

1. If, upon consideration of the report of the Investigative Panel, it is believed that an act of misconduct is supported by a preponderance of the credible evidence, then the Provost shall initiate disciplinary and/or administrative action consistent with the respondent's relationship with the University and with University rules and regulations.
2. All research sponsors and others initially informed of the investigation shall be informed in writing that allegations of misconduct were supported by the investigation. Such actions as necessary to comply with policies and regulations of research sponsors shall be taken.
3. A statement of the findings of the Investigative Panel shall be placed in the respondent's permanent personnel file.

C. Absence of Fraud or Misconduct

1. All research sponsors and others initially informed of the investigation shall be informed in writing that allegations were not supported.
2. In publicizing the finding of no fraud or misconduct, the University will determine, in consultation with the respondent, whether public announcements will be harmful or beneficial in restoring any reputations that may have been lost.

3. A statement exonerating the respondent of misconduct or fraud shall be placed in the respondent's permanent personnel file.

D. Unjustified Allegations

1. If the Panel determines the allegations to be unjustified and maliciously motivated, it shall recommend that appropriate disciplinary actions be taken against the complainant.
 2. If the allegations are found to be unjustified but were submitted in good faith, no further formal action will be taken.
- E.** After an inquiry and/or an investigation, the Institution shall undertake diligent efforts, as appropriate, to restore the reputations of persons alleged to have engaged in misconduct when allegations are not confirmed, and also undertake diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations.
- F.** The Institution shall take interim administrative actions, as appropriate, to protect Federal funds and ensure that the purpose of Federal financial assistance is carried out.

The Right to Appeal

The respondent may appeal the findings of the Investigative Panel and/or the resulting action.

- A.** A written statement of the grounds for the appeal must be submitted to the President of the University within 30 days of written notification of the results of the investigation. Grounds for appeal may include, but are not limited to:
1. Newly discovered evidence;
 2. Disciplinary actions not in keeping with the findings, University policies and procedures, or the respondent's relationship with the University;
 3. Newly discovered conflict of interest among those involved in the investigation.
- B.** Upon receipt of a written appeal, the President shall review the evidence and make a determination to sustain the findings or reopen the investigation. The President's decision will be final and binding on all University parties and will be conveyed to all involved parties, including TBR counsel, in a timely fashion.