

**BLUEFIELD STATE COLLEGE  
BOARD OF GOVERNORS  
POLICY NO. 43**

**TITLE: RESEARCH AND SCHOLARSHIP MISCONDUCT**

**SECTION 1. GENERAL**

- 1.1. Scope: Policy regarding research and scholarship misconduct
- 1.2. Filing Date: February 16, 2012
- 1.3. Effective Date: April 19, 2012

**SECTION 2. SCOPE**

- 2.1. This policy applies to all full-time and part-time employees of the College, to post baccalaureate graduate and professional students who are engaged in Federally-funded or non-coursework-related research, to undergraduate students who are involved in Federally-funded research, and to any other person engaged in teaching, research, or scholarship at, and under the control of, or affiliated with, the College.

**SECTION 3. DEFINITIONS**

- 3.1. "Allegation" means a disclosure of possible research misconduct through any means of written or oral communication. The disclosure may be presented to any other member of the College's administrative or professional faculty. If the allegation involves Federal funding and research misconduct is determined as defined by the funding agency, the disclosure may be submitted to an official of that agency.
- 3.2. "Complainant" means a person who in good faith makes an allegation of research misconduct.
- 3.3. "Days" means calendar days.
- 3.4. "Evidence" means any document, tangible item, or testimony offered or obtained during a research misconduct proceeding that tends to prove or disprove the existence of an alleged fact.
- 3.5. "Good faith" as applied to a complainant or witness, means having a belief in the truth of one's allegation or testimony that a reasonable person in the complainant's or witness's position could have based on the information known to the complainant or witness at the time. An allegation or cooperation with a research misconduct proceeding is not in good faith if made with knowing or reckless disregard for information that would negate the allegation or testimony.

Good faith as applied to a committee member means cooperating with the research misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping an institution meet its responsibilities under this policy. A committee member does not act in good faith if his or her acts or omissions on the committee are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the research misconduct proceeding.

- 3.6. "Inquiry" means preliminary information-gathering and preliminary fact-finding.
- 3.7. "Investigation" means the formal development of a factual record and the examination of that record leading to either a finding of research misconduct or a finding that no research misconduct occurred. The investigation report may include recommendations for administrative actions relating to the conduct found.
- 3.8. "Notice" means a written communication served in person or sent by mail or its equivalent to the last known street address, facsimile number, or e-mail address of the addressee.
- 3.9. "Person" means any individual, corporation, partnership, institution, association, unit of government, or legal entity, however organized.
- 3.10. "Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- 3.11. "Research" means a systematic experiment, study, evaluation, demonstration, or survey designed to develop or contribute to general or specific knowledge by establishing, discovering, developing, elucidating, or confirming information. In addition, "research" includes work for the advancement of a discipline or field of study, or the integration of the discipline with other fields, through original research, artistic work, exhibitions, or performance, or by the application of discipline- or field-based knowledge to the practice of the profession.
- 3.12. "Research misconduct" means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.
  - 3.12.1. Fabrication is making up data or results and recording or reporting them.
  - 3.12.2. Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
  - 3.12.3. Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

- 3.13. "Research misconduct proceeding" means any actions related to alleged research misconduct taken under this policy, including but not limited to allegation assessments, inquiries, investigations, Federal oversight reviews, hearings, and administrative appeals.
- 3.14. "Research record" means the record of data or results that embody the facts resulting from scholarly inquiry, including but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and any documents and materials provided to a College official or a Federal agency by a respondent in the course of the research misconduct proceeding.
- 3.15. "Respondent" means the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.
- 3.16. "Retaliation" means an adverse action taken against a complainant, witness, or committee member by a member of the College community in response to –
- 3.16.1. A good faith allegation of research misconduct; or
- 3.16.2. Good faith cooperation with a research misconduct proceeding.

#### **SECTION 4. POLICY STATEMENT**

- 4.1. Members of the Bluefield State College community will pursue their research and scholarly activities in a manner that is consistent with the highest standards of ethical, scientific, and scholarly practice. The College will take all reasonable and practical steps to foster an environment that promotes the responsible conduct of research, research training, and related activities; discourages research misconduct; and deals promptly with allegations or evidence of possible research misconduct, including the specific steps in this policy.

#### **SECTION 5. COLLEGE RESPONSIBILITIES DURING RESEARCH MISCONDUCT PROCEEDINGS**

- 5.1. Ensuring a fair research misconduct proceeding: The Vice President of Academic Affairs (hereafter in this policy, "VPAA") is responsible for the overall administration, interpretation, and application of this policy. The VPAA carries out this responsibility with the respondent's Dean and/or Program Director, and the President, as provided in this policy. If a particular proceeding presents the VPAA, the Dean or Director with a real or apparent conflict of interest, the VPAA or that officer's designee appoints a replacement to carry out the responsibilities of the individual with a conflict of interest for that proceeding. If the respondent and the VPAA, the Dean or Director disagrees as to whether a conflict exists, VPAA or that officer's designee resolves the disagreement. The College takes all reasonable steps to ensure an impartial and unbiased research misconduct proceeding to the maximum extent practicable throughout the proceeding. It selects those conducting the inquiry or investigation on the basis of expertise that is

pertinent to the matter and, prior to selection, screens them for any source of potential bias or unresolved personal, professional, or financial conflicts of interest with the respondent, complainant, potential witnesses, or others involved in the matter. Any such conflict that a reasonable person would consider demonstrating potential bias disqualifies the individual from selection.

The College takes all reasonable steps to ensure that complainants, respondents, and other members of the College community maintain confidentiality and cooperate in the conduct of research misconduct proceedings as provided in this policy and cited in the Whistleblower Law, W. Va. Code § 6C-1-1.

- 5.2. Confidentiality: To the extent allowed by law, the College maintains the identity of respondents and complainants securely and confidentially and does not disclose any identifying information, except to those who need to know in order to carry out a thorough, competent, objective, and fair research misconduct proceeding. To the extent allowed by law, any information obtained during the research misconduct proceeding that might identify human study participants in research is maintained securely and confidentially and is not disclosed except to those who need to know in order to carry out the research misconduct proceeding. Persons to whom this policy applies and to whom information described above is disclosed must maintain the confidentiality of that information to the maximum extent possible, except that the respondent may disclose this information as needed to defend against an allegation of research misconduct.
- 5.3. Maintenance and custody of research records and evidence: The College takes the following specific steps to obtain, secure, and maintain the research records and evidence pertinent to the research misconduct proceeding:
  - 5.3.1. If the respondent's Dean or Program Director determines that an allegation warrants the conduct of an inquiry, the College, not later than when it notifies the respondent of the allegation, takes all reasonable, practical, and lawful steps to obtain custody of all research records and evidence needed to conduct the research misconduct proceeding, inventory those materials, and sequester them in a secure manner, except that in those cases where the research records or evidence encompass equipment or instruments shared by a number of users, custody may be limited to copies of the data or evidence on that equipment or those instruments, so long as those copies are substantially equivalent to the evidentiary value of the equipment or instruments.
  - 5.3.2. Where appropriate, the College gives the respondent copies of, or reasonable, supervised access to, the research records. To the extent consistent with its commitment to maintain confidentiality, the College provides other researchers who participated in the work similar access to sequestered records.
  - 5.3.3. The College undertakes all reasonable and practical efforts to take 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, subject to the exception for equipment or instruments in 5.3.1 above.

5.3.4. The College maintains all records of the research misconduct proceeding for seven years after completion of the proceeding or any related proceeding of the funding agency, whichever is later, unless the proceeding involved Federal support and research misconduct as defined by the funding agency and the College has transferred custody of the records and evidence to the appropriate Federal agency or that agency has advised the College that it no longer needs to retain the records.

5.4. Notice to respondent: During a research misconduct proceeding, the College provides notice to all identified respondents as specified in this policy.

5.5. Notifying Federal agencies as required: For proceedings that involve Federal support and research misconduct as defined by the funding agency, the College meets the reporting requirements of the funding agency relating to the decision whether an investigation is warranted. The College may be required to provide the research records and evidence reviewed during the inquiry, transcripts or recordings of any interviews, and copies of all relevant documents, among other materials.

The College also meets the reporting requirements of the funding agency pertaining to –

5.5.1. Any plans to close a case at the inquiry, investigation, or appeal stage on the basis that the respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason than a finding that an investigation is not warranted or that no misconduct occurred; and

5.5.2. The outcome of the investigation and any administrative actions against the respondent.

5.6. Reporting to non-Federal funding entities: For proceedings that involve support from non-Federal entities, the College complies with all reporting requirements of, and provides any information requested by, the funding entity relating to the proceeding, subject to any legal limitations on the disclosure of that information.

5.7. Interim protective actions: The College takes appropriate interim actions at any time during a research misconduct proceeding to protect the integrity of the research process, public health, and any Federal funds and equipment involved in the proceeding. The necessary actions vary according to the circumstances of each case. 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, and taking steps to contact other institutions that may be affected by an allegation of research misconduct.

At any time during a proceeding that involves Federal support and research misconduct as defined by the funding agency, the College notifies the funding agency immediately if it has reason to believe that any of the circumstances specified in the agency's regulations exist.

5.8. Protecting and restoring reputations:

5.8.1. Respondents. If a respondent is found not to have engaged in research misconduct, the College undertakes all reasonable, practical, and appropriate efforts to protect and restore the respondent's reputation if the respondent or his or her legal counsel or other authorized representative requests that it do so. For example, the College might notify individuals who were aware of or involved in the investigation of the final outcome, publicize the final outcome in forums in which the allegation of misconduct was previously publicized, and/or expunge references to the allegation from the respondent's personnel file. The College obtains the permission of the respondent or his or her legal counsel or other authorized representative before taking any such action.

5.8.2. Complainants, witnesses, and committee members. The College undertakes all reasonable and practical efforts to protect and restore the position and reputation of any good faith complainant, witness, or committee member and to counter potential or actual retaliation against those persons.

5.9. Cooperation with Federal agencies: For proceedings that involve Federal support and research misconduct as defined by the funding agency, the College cooperates fully and on a continuing basis with Federal agencies during any oversight reviews of the College and its research misconduct proceedings and during the process under which the respondent may contest the agency's findings of research misconduct and proposed administrative actions. The College cooperates with and assists the appropriate Federal agency, as needed, to carry out any administrative actions it may impose as a result of a final finding of research misconduct by that agency.

## **SECTION 6. RESEARCH MISCONDUCT PROCEEDINGS**

- 6.1. Making an allegation: An allegation of research misconduct may be made by disclosing the alleged misconduct to any other member of the College's administrative or professional faculty or, if the allegation involves Federal support and research misconduct as defined by the funding agency, to an official of that agency, through any means of communication. Allegations received by a person other than the respondent's Dean or Program Director should be promptly referred to the Dean or Director. The complainant has a duty to make the allegation in good faith. Bad faith allegations will be treated seriously. If at any point in a research misconduct proceeding the VPAA or the respondent's Dean or Program Director believes that the allegation was not made in good faith, that official refers the matter for appropriate handling under existing College procedures. In addition, if the respondent is a member of the faculty, he or she may bring a grievance under the grievance provisions of the Faculty Handbook.
- 6.2. Eligibility to conduct a research misconduct proceeding: Only College employees may serve on an inquiry or investigative committee in a research misconduct proceeding. However, the College may obtain the advice of non-employees with relevant expertise at any stage of the proceeding, including the preliminary assessment of the allegation. .

- 6.3. Preliminary assessment of allegation: Within 14 days of receiving an allegation of research misconduct (or as soon as possible if this time limit cannot be met), the respondent's Dean or Program Director assesses the allegation to determine if an inquiry is warranted and notifies the VPAA of his or her determination.

Except in extraordinary circumstances, an allegation that is not made in writing or subsequently reduced to writing and supported by specific evidence does not warrant an inquiry. An inquiry is warranted if the alleged conduct meets the definition of research misconduct in this policy and is sufficiently credible and specific so that potential evidence of research misconduct may be identified. If the alleged conduct fails to meet these criteria, no inquiry is conducted. If the alleged conduct meets these criteria, the Dean or Director determines if it involves Federally-supported research, as described in the regulations of the funding agency, or other support under an agreement between the College and another party.

A research misconduct proceeding is not discontinued as a result of the termination of a respondent's employment or the respondent's refusal to cooperate in the conduct of the proceeding.

- 6.4. Initiation of inquiry: The purpose of an inquiry is to conduct an initial review of the evidence to determine whether to recommend that an investigation be conducted. Within 14 days of receiving a determination that an inquiry is warranted (or as soon as possible if this time limit cannot be met), the VPAA appoints an inquiry committee and a chair of that committee from among 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 allegation. The Dean or Program Director then makes a good faith effort to provide notice to the presumed respondent, if any. This notice includes a statement of the allegation, a description of the inquiry process, the identities of the members of the inquiry committee, and all applicable College policies. The respondent may challenge a member of the inquiry committee on the basis of conflict of interest or bias by submitting the challenge in writing to the VPAA within five (5) days of receiving the notification. The VPAA determines whether and with whom a challenged member is replaced. The respondent may challenge the replacement in the same manner. If the inquiry subsequently identifies additional respondents, the Dean or Director promptly provides notice to them in the same manner.

- 6.5. Inquiry process: At the inquiry committee's first meeting, the Dean or Program Director reviews the charge with the committee and discusses the allegations, any related issues, the appropriate procedures for conducting the inquiry, and the timeframe for completing it. The committee reviews the evidence and may interview the complainant, the respondent, and others with knowledge of relevant circumstances. After completing its initial review of the evidence, the committee prepares a draft inquiry report and gives the respondent a reasonable opportunity to provide written comments on it. The inquiry committee completes the inquiry, including the preparation of a final inquiry report that includes any comments received from the respondent, within 60 days of the committee's first meeting unless the Dean or Director determines, and documents in the inquiry record, that the circumstances warrant a longer period.

- 6.6. Results of inquiry: The inquiry committee prepares an inquiry report to the Dean or Program Director in which it recommends whether an investigation should be conducted. An investigation is warranted if there is a reasonable basis for concluding that the alleged conduct falls within the definition of research misconduct under this policy and preliminary information-gathering and preliminary fact-finding from the inquiry indicates that the allegation may have substance. The committee's inquiry report contains the following:
  - 6.6.1. The name and position of the respondent;
  - 6.6.2. A description of the allegations of research misconduct;
  - 6.6.3. Any Federal or other external support involved, including, for example, grant numbers, grant applications, contracts, and publications listing that support;
  - 6.6.4. The basis for recommending that the alleged actions warrant an investigation;
  - 6.6.5. Any comments on the report by the respondent;
  - 6.6.6. A recommendation as to whether the complainant should be notified of the results of the inquiry and, if so, which parts of the report, if any, should be included in the notification and whether the notification should require that the information be maintained confidentially; and
  - 6.6.7. Any recommendations the committee may have to refer any of its findings to other College officials for appropriate action, if the committee does not recommend that an investigation be conducted.
- 6.7. College determination based on inquiry: Within 14 days of receiving the inquiry report (or as soon as possible if this time limit cannot be met), the Dean or Institute Director determines whether to conduct an investigation, provides notice to the respondent of this determination, provides the respondent a copy of the inquiry report and this policy, acts on the other recommendations of the inquiry committee, and notifies the VPAA of the determination and provides the VPAA with a copy of the documentation. The College counsel reviews the determination for legal sufficiency.
- 6.8. Initiation of Investigation: The purpose of an investigation is to determine whether research misconduct, as defined in Section 3, occurred and, if so, by whom and to what extent. A finding of research misconduct requires that –
  - 6.8.1. The misconduct be committed intentionally, knowingly, or recklessly; and
  - 6.8.2. The allegation be proven by a preponderance of the evidence; and
  - 6.8.3. There be a significant departure from accepted practices of the relevant research community.

The College has the burden of proof in making a finding of research misconduct. The respondent has the burden of going forward with, and proving by a preponderance of the evidence, any affirmative defenses and any mitigating factors relevant to a decision to impose administrative actions.

Within 30 days after determining that an investigation is warranted, the VPAA begins the investigation by convening the first meeting of an investigation committee. The VPAA appoints the investigation committee and a chair of that committee from among 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 allegation. Members of the inquiry committee may not serve on the investigation committee unless their expertise is essential.

The VPAA provides notice of the commencement of the investigation to the respondent within seven days after determining that an investigation is warranted. This notice includes a statement of the allegation, a description of the investigation process, and the identities of the members of the investigation committee. The respondent may challenge a member of the investigation committee on the basis of conflict of interest or bias by submitting the challenge in writing to the VPAA within five days of receiving the notification. The VPAA determines whether and with whom a challenged member is replaced. The respondent may challenge the replacement in the same manner.

- 6.9. Investigation process: At the investigation committee's first meeting, the VPAA reviews the following: the allegations, the findings of the inquiry, the procedures and standards for conducting the investigation, confidentiality obligations, the need for an investigation plan, the possible penalties for a finding of misconduct, and the timeframe for completing the investigation. The College counsel accompanies the VPAA at the first meeting of the investigation committee and remains available to advise the committee during its investigation.

If the investigation discloses any allegation against the respondent not addressed during the inquiry or in the initial notice of the investigation or any allegation against an additional respondent, the committee reports the allegation to the VPAA, who refers it to the respondent's Dean or Program Director for a preliminary assessment of the allegation and other appropriate steps as provided in this policy. If that officer finds that the allegation meets the definition of research misconduct in this policy and is sufficiently credible and specific, he or she provides the respondent against whom the allegation is made notice of the decision to pursue the allegation within a reasonable time.

In conducting the investigation, the committee –

6.9.1. Uses 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 allegations;

6.9.2. Interviews each respondent, complainant, and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the respondent; and

6.9.3. Pursues 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 continues the investigation to completion.

The committee ensures that any interview conducted during the investigation is recorded, that a transcript of the recording is prepared, that the interviewee is provided a copy of the transcript for correction and the opportunity to comment on its contents, and that the transcript and any comments of the interviewee are included in the record of the investigation. The respondent may attend interviews of the complainant and witnesses and direct questions to them. The committee notifies the respondent at least 14 days in advance of the scheduling of his or her interview and any interview he or she is entitled to attend so that the respondent may prepare for the interview and arrange for the attendance of legal counsel or another authorized representative to advise the respondent at the interview, if the respondent wishes.

6.10. Results of investigation: After gathering and examining the relevant evidence, the investigation committee –

6.10.1. Prepares a draft investigation report;

6.10.2. Gives the respondent a copy of the draft report, and, concurrently, a copy of, or supervised access to, the evidence on which the report is based; and

6.10.3. Provides notice to the respondent of his or her opportunity to provide written comments on the draft report within 30 days of the date on which he or she received it. The committee ensures that any comments submitted by the respondent are considered and included in the final investigation report. The committee also gives the College counsel a copy of the draft investigation report to review for legal sufficiency. The committee then prepares a final investigation report to the VPAA. In the report, the committee –

6.10.4. Describes the nature of the allegations of research misconduct;

6.10.5. Describes and documents any Federal or other external support, including, for example any grant numbers, grant applications, contracts, and publications listing that support;

6.10.6. Describes the specific allegations of research misconduct considered in the investigation;

6.10.7. Includes the College policies and procedures under which the investigation was conducted;

6.10.8. Identifies and summarizes the research records and evidence reviewed, identifies any evidence taken into custody but not reviewed, and summarizes the reasons why any evidence was not taken into custody;

6.10.9. Provides 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) identifies it as falsification, fabrication, or plagiarism and whether it was intentional, knowing, or in reckless disregard; (ii) summarizes the facts and the analysis supporting the conclusion and considers the merits of any reasonable explanation by the respondent and any evidence that rebuts the respondent's explanations; (iii) identifies the specific Federal or other external support, if any; (iv) identifies any publications that need correction or retraction; (v) identifies the person or persons responsible for the misconduct; and (vi) lists any current support or known applications or proposals for support that the respondent or respondents have pending with any Federal agency;

6.10.10. Includes and evaluates any comments made by the respondent on the draft investigation report;

6.10.11. Includes a recommendation as to whether the complainant should be notified of the results of the investigation and, if so, which parts of the report, if any, should be included in the notification;

6.10.12. Includes any recommendations it may have for administrative actions relating to the conduct found; and

6.10.13. Includes any recommendations it may have to assist the complainant or any other person who was harmed by the conduct found.

The committee uses its best efforts to complete the investigation within 120 days of the date on which it began. For proceedings that involve Federal support and research misconduct as defined by the funding agency, if the committee is unable to complete the investigation within the time prescribed by the funding agency, the VPAA communicates with the agency regarding any requirements relating to an extension. For other proceedings, the VPAA grants an extension for good cause.

- 6.11. College determination based on investigation: Upon receiving the final investigation report, the VPAA reviews the report and makes a determination on behalf of the College as to whether research misconduct occurred and, if so, by whom, and whether the College accepts the findings of the investigation. The VPAA recommends to the President what administrative actions, if any, the College should take against the respondent, taking account of the recommendations in the final investigation report. The College counsel reviews the determination and the recommendation of the VPAA for legal sufficiency. The President determines what administrative actions, if any, the College takes against the respondent, except that the provisions of the Faculty Handbook regarding a dismissal for cause apply to that action. The VPAA provides a copy of the final investigation report and the College's decision to the respondent.