

SENATE ACTION FORM

No. 1225

Subject: RSCW Misconduct Policy, revision to SA #1203

Reference to Senate Minutes dated: November 22, 2021

Senate Action:

MOTION: Faculty Welfare – It is moved to approve the revisions to the RSCW Misconduct policy as presented.

VOTE: Approved by voice vote.

Response requested:

Approval for placement in University Catalog

Approval for placement in University Regulations

Recommendation to Board for placement in Board Policy Manual

None (sent as information item)

Other action requested/comments: **Administrative review and Presidential approval requested.**



Faculty Senate Chair

12/03/2021

Date

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Administrative review of Senate action (unnecessary for information items):

Reviewed by **VPAA/Provost**. Check if comments attached

Reviewed by **General Counsel**. Check if comments attached

Presidential action:

Approve Reject Return to Senate for discussion/modification (comments attached)

President/Designated Administrative Officer

Date

Date of Board approval (if applicable): not applicable

PLEASE RETURN SIGNED ORIGINAL AND ATTACHMENT TO THE FACULTY SENATE OFFICE, CARTER HALL 2004, BOX 75.
Faculty.Senate@unco.edu

Attachment to Senate Action #1225

Approved by the Faculty Senate

November 22, 2021

Revisions to 3-8-102

Clean copy version below.

3-8-102 Research, Scholarship, and Creative Works (RSCW) Misconduct Policy.

3-8-102(1) Definitions. For purposes of this policy, the following terms are defined as stated below.

- (a) Academic Researcher. Any person (paid or non-paid) affiliated with the University conducting or collaborating in University Sponsored Research.
- (b) Complainant. Any individual or entity who makes an allegation of misconduct under this policy.
- (c) Conflict of Interest. Any pecuniary interest or organizational affiliation held by an Academic Researcher and/or Research Integrity Officer that prohibits or precludes, or is reasonably likely to prohibit or preclude, the Academic Researcher and/or Research Integrity Officer from exercising independent judgement in the conduct of University Sponsored Research.
- (d) Deciding Official (DO). The DO is the University official who makes final determination regarding allegations of RSCW Misconduct and any University administrative actions in response to such allegations. The DO shall not be the same individual as the RIO and should have no direct prior involvement in the University's inquiry, investigation, or allegation assessment. The DO is the CAO, or a University official otherwise appointed in writing by the President of the University. Should the CAO need to recuse themselves due to a real or perceived Conflict of Interest, the President shall designate a substitute DO for that case.
- (e) Research Integrity Officer (RIO). The RIO is the University official appointed in writing by the Chief Academic Officer (CAO). Should the RIO need to recuse themselves due to a real or perceived Conflict of Interest, the CAO shall designate a substitute RIO for the case. The RIO is the University official responsible for:
 - (i) assessing allegations of RSCW Misconduct to determine if they describe conduct as so defined, and warrant an inquiry on the basis that the allegation is sufficiently credible and specific so that potential evidence of RSCW Misconduct may be identified; and
 - (ii) overseeing the inquiry and investigative processes and ensuring compliance of all parties with this policy in the conduct of inquiries and investigations of RSCW Misconduct.
- (f) Respondent. Any individual accused of misconduct under this policy.
- (g) RSCW Misconduct. Any action of an Academic Researcher in the conduct of University Sponsored Research that constitutes the following:
 - (i) falsification, fabrication, or plagiarism (and for purposes of defining RSCW Misconduct):
 - (A) "fabrication" is making up data or results and recording or reporting them as true and accurate;

(B) “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; and

(C) “plagiarism” is the appropriation of others’ ideas, processes, results, or words without giving appropriate credit;

(ii) misrepresentation of credentials, sponsorships, approvals, or certifications;

(iii) a material violation of applicable laws, regulations, or procedures;

(iv) a material violation of applicable ethical or professional standards of the Academic Researcher’s discipline or profession or of the teaching profession or, in the case of students, the discipline or profession relevant to the University Sponsored Research and/or in which the student is pursuing educational credentials;

(v) misappropriation or misapplication of research funds (excepting minor deviations in research fund accounting which results in no personal gain or benefit to the Academic Researcher); or

(vi) an undisclosed Conflict of Interest.

(h) University Sponsored Research. RSCW, or consulting that is conducted by an Academic Researcher, in the name of or under the auspices of the University, or that is supported by University resources or facilities.

3-8-102(2) General Statement. Any individual who engages in an act or acts of RSCW Misconduct while engaged in University Sponsored Research shall be subject to discipline in accordance with the processes described in subsections (4) through (7) of this policy or through Voluntary Resolution, if permitted, as described in subsection (8) of this policy.

3-8-102(3) Confidentiality. The proceedings conducted under this policy shall be closed and confidential except to those involved in the proceedings.

(a) Except as otherwise required by law, all documents produced in the course of these proceedings shall be available only to:

(i) those involved in these proceedings or any further disciplinary proceedings resulting therefrom;

(ii) officials of the University with a need to know or who are authorized by the DO; and/or

(iii) governmental officials as required by law, regulations, or contract.

(b) Information about an RSCW Misconduct allegation, inquiry, investigation and/or its details shall be limited to relevant University officials (such as each Respondent’s department chair/school director/program area coordinator and dean) with a need to know, as determined by the RIO.

(c) In order to provide due protections to the reputations of persons who make or are the subject of allegations of RSCW Misconduct, the RIO shall inform all parties at each stage about the expectation of confidentiality regarding all aspects of the proceedings.

3-8-102(4) Allegations. Allegations of RSCW Misconduct shall be received and reviewed as follows:

- (a) Allegations of RSCW Misconduct shall be reported to the RIO by any individual with knowledge of observed, suspected, or apparent violations of this policy. These allegations shall be filed with the Office of the RIO in writing and shall be signed by the Complainant(s) who has/have made the allegations. Signatures shall not be required if a Complainant requests anonymity and the RIO determines that anonymity shall affect materially the University's compliance with its responsibilities under this policy and/or as required by law.
- (b) If the RIO suspects RSCW Misconduct they shall file allegations of RSCW Misconduct.
- (c) Upon receiving an allegation of RSCW Misconduct, the RIO shall assess the allegation to determine whether it is sufficiently credible and specific so that potential evidence of RSCW Misconduct may be identified, and if these criteria are met, an inquiry must be conducted.
- (d) The RIO shall inform the Complainant(s), the Respondent(s), and the DO whether an inquiry shall be initiated.

3-8-102(5) Inquiry. An inquiry regarding an allegation of RSCW Misconduct shall be initiated as follows:

- (a) Upon the determination by the RIO that the allegations are sufficiently credible and specific, an inquiry shall be conducted by the RIO or the RIO's designee.
- (b) The purpose of the inquiry shall be to determine whether there is sufficient evidence that supports the reasonable conclusion that a violation(s) of this policy has/have occurred.
- (c) At the time an inquiry is initiated, the RIO must notify in writing the Complainant(s), Respondent(s), if known, who is/are alleged to have violated this policy and each Respondent's department chair/school director/program area coordinator and dean, and the DO that an inquiry has been initiated. If the inquiry subsequently identifies an additional Respondent(s), written notifications must be made as described in the preceding sentence.
- (d) The RIO or their designee must make reasonable efforts to obtain information in the care, custody or control of the University not privileged as a matter of law that is needed to conduct the inquiry. The RIO or their designee shall interview the Complainant(s), the Respondent(s), and person(s) believed to have information relevant to the inquiry, and review relevant documents and materials, prior to concluding the inquiry.
- (e) The inquiry shall be completed no later than sixty (60) calendar days after the allegations of RSCW Misconduct are filed unless the RIO determines that, despite diligent efforts, the inquiry cannot properly be completed during that time, in which case, the time limit shall be extended for no more than thirty (30) additional calendar days.
- (f) Upon completion of the inquiry, a written inquiry report shall be prepared and signed by the RIO that shall summarize the allegations, specify the findings made and conclusions reached, and state whether there is sufficient evidence that supports the reasonable conclusion that a violation(s) of this policy by the Respondent(s) has/have occurred.

- (g) The RIO shall transmit the written inquiry report to the Complainant(s) and Respondent(s) and indicate that the report shall be transmitted to the DO fifteen (15) calendar days after such transmittal. If the Complainant(s) or Respondent(s) wish(es) to respond to the RIO's report, they must submit their response to the RIO within fifteen (15) calendar days from the transmission of the written inquiry report. The RIO shall transmit the inquiry report to the DO together with any response(s) from the Respondent(s) received by the RIO within the period stated above.
- (h) The DO shall review the written inquiry report and any response(s) by the Respondent(s) and determine whether an investigation is warranted. Any finding that an investigation is warranted must be made in writing by the DO to the RIO and the Complainant(s) and Respondent(s).
- (i) The outcome of the inquiry, the DO's written decision, and a copy of the written inquiry report shall be sent "Confidential" to the last known email address(es) and home address(es) of the Complainant(s) and Respondent(s) by Registered Mail, Return Receipt Requested. The RIO shall inform each Respondent's department chair/school director/program area coordinator and dean whether an investigation shall be initiated under this policy.
- (j) If the DO determines that an investigation is warranted, the RIO shall send a copy of the DO's decision and the written inquiry report to any funding sources that supported the Respondent(s)' University Sponsored Research and/or other agencies as required by law, regulations or contract. Funding sources, and/or other agencies, shall also be notified if the Respondent(s) have admitted that RSCW Misconduct has occurred, or for any reason other than a determination by the DO that an investigation is not warranted. Other notification requirements may apply at this or other stages within this policy. All pertinent regulations and/or contracts should be consulted. It is the responsibility of the RIO to meet compliance regarding such notification.

3-8-102(6) Investigation. If, as a result of the inquiry, it is determined that an investigation is warranted, the investigation shall be conducted as follows:

- (a) The RIO shall, in consultation with the chair of the Faculty Senate and other University officials as appropriate under the circumstances presented by the allegations, appoint an Investigatory Committee (IC) to conduct the investigation of the allegations. The IC shall consist of individuals who do not have unresolved personal, professional, or financial Conflicts of Interest with those involved with the investigation. The IC shall be comprised of a minimum of three (3) individuals who have expertise relevant to the allegations under investigation and who are tenured University faculty members. The RIO shall select the chairperson of the committee.
- (b) Upon the appointment of the IC, the RIO shall notify in writing the Complainant(s) and Respondent(s) of the allegations to be investigated.
- (c) No later than thirty (30) calendar days after the DO's determination that an investigation is warranted, the RIO shall convene the first meeting of the IC to review the written inquiry report, the DO's determination, the information gathered pursuant to Section 3-8-102(5)(d), and the procedures for the conduct of the investigation, including the confidentiality requirements, and the development of a plan by which the investigation shall be conducted. Once these matters are completed, the appointed Chair of the IC shall assume the responsibility for conducting the investigation. The RIO is responsible for overseeing the investigative process and ensuring compliance of all parties with this policy in the conduct of the investigation, but shall not participate as a member of the IC. The IC Chair shall keep the RIO informed of the progress of the IC. The RIO shall provide administrative support to the IC throughout the investigation.

- (d) The IC shall have the authority to review all records and evidence needed to conduct the misconduct proceedings not privileged as a matter of law, and may interview or require the attendance of any University employee or agent to provide testimony at any hearing conducted by the IC, unless on matters that are privileged as a matter of law.
- (e) The IC may engage in any reasonable fact-finding processes that it deems appropriate in order to gather evidence relevant to the matter(s) under investigation. The processes may include, but are not limited to, a fact-finding hearing, at which witnesses may appear in person or through written statements as the IC may deem appropriate. At any fact-finding hearing, members of the IC shall be allowed to question witnesses who appear in person and the Respondent(s) shall be allowed to ask questions of such witnesses within reasonable limitations established by the IC.
- (f) Prior to any appearance by the Respondent(s), the IC shall disclose to the Complainant(s) and the Respondent(s), no less than ten (10) calendar days in advance, the issues or charges under investigation, the evidence gathered by the IC relevant to the issues or charges, and any further investigation to be conducted through the fact-finding hearing.
- (g) In addition to review of the information gathered pursuant to Section 3-8-102(5)(d), interviews should be conducted of the Complainant(s) and Respondent(s), as well as other individuals who may have information relevant to the investigation. Summaries of all interviews should be included, with all other documents gathered, in files maintained by the IC.
- (h) At its discretion, the IC may obtain the assistance of experts in the field of research under investigation or in other areas as deemed relevant to the investigation.
- (i) The IC shall complete its investigation and issue a written report no later than one hundred and twenty (120) calendar days after the meeting held pursuant to Section 3-8-102(6)(c). If the investigation cannot be properly concluded in that time, the time limit shall be extended for such period as is reasonably necessary to conclude the investigation, but no longer than an additional sixty (60) calendar days.
- (j) The IC's investigation report shall be in writing and include:
 - (i) a description of the allegations of RSCW Misconduct that have been investigated;
 - (ii) the identification and summary of the records and evidence reviewed, and the identification of any evidence gathered that was not reviewed;
 - (iii) a summary of the relevant evidence, and a conclusion that contains an analysis as to whether RSCW Misconduct occurred (considering any reasonable explanation by the Respondent(s), and any admission of RSCW Misconduct by the Respondent(s)) for each distinct allegation of RSCW Misconduct; and
 - (A) identify the Respondent(s) responsible for the RSCW Misconduct;
 - (B) identify whether the RSCW Misconduct was falsification, fabrication, or plagiarism;
 - (C) describe and document the external support, including, e.g., any grant numbers, grant applications, contracts, and publication listing external support; and/or

(D) identify any publications and/or other RSCW dissemination that the IC has concluded need correction or retraction.

(k) The initial report of the IC shall be sent "Confidential" to the last known email address(es) and home address(es) of the Complainant(s) and Respondent(s) by Registered Mail, Return Receipt Requested. If they wish, the Complainant(s) and Respondent(s) may respond to the report, and shall be given fifteen (15) calendar days from the date of receipt to respond to the report. At the end of the fifteen (15) calendar day period, the initial report, with any response by the Complainant(s) and/or Respondent(s), shall be filed with the DO.

(l) The DO, within thirty (30) calendar days of receipt of the initial report and any responses from the Complainant(s) and/or Respondent(s), shall communicate, in writing, to the Respondent(s), Complainant(s), the IC Chair, each Respondent's department chair/school director/program area coordinator and dean, and the RIO, the final decision of the DO as to whether RSCW Misconduct has occurred and the University actions to be taken.

(m) As required by law, regulations, or contract, the RIO shall send the DO's final decision (including the IC's initial report and any response(s) of the Complainant(s) and/or Respondent(s)) to all funding sources supporting the Academic Researcher's University Sponsored Research.

3-8-102(7) Discipline. Any University policy to the contrary notwithstanding, violation of the policy shall be cause for discipline consistent with University policies, regulations, procedures, or applicable law. Such discipline may include:

- (a) sanctions of written and/or oral reprimand;
- (b) prohibition (either temporary or permanent) from involvement in any University Sponsored Research;
- (c) suspension or dismissal from employment; and
- (d) any other sanctions allowed.

3-8-102(8) Voluntary Resolution. The purpose of Voluntary Resolution is to attempt to resolve a complaint of RSCW Misconduct to the satisfaction of the Complainant(s) and Respondent(s).

(a) **When Voluntary Resolution is Not Allowed.** The Voluntary Resolution process may not be used if:

(i) any allegation(s) of RSCW Misconduct, if true, would constitute

(A) a material violation of applicable civil or criminal laws; and/or

(B) misappropriation or misapplication of research funds (excepting minor deviations in research fund accounting that result in no personal gain or benefit to the Academic Researcher);

(ii) any of the Complainant(s) and Respondent(s) do not agree to utilize the Voluntary Resolution process; and/or

(iii) criminal or civil judicial, quasi-judicial and/or governmental agency proceedings have been commenced based on any allegation(s) of RSCW Misconduct.

- (b) **Steps In Pursuance of Resolution.** The RIO shall coordinate discussions with the Complainant(s) and Respondent(s) to attempt to resolve the allegations of RSCW Misconduct in a manner acceptable to all parties. The RIO shall determine a reasonable period for such discussions and shall terminate the Voluntary Resolution process if a Complainant or Respondent requests that the process be terminated. The RIO may also, in the RIO's discretion, terminate the Voluntary Resolution process if reasonable progress is not made towards resolution or the proposed resolution violates University policy or applicable law. During the period in which the Voluntary Resolution process occurs, all deadlines under the RSCW Misconduct Policy shall be held in abeyance.
- (c) **If Resolution is Achieved.** If a mutually acceptable resolution is achieved, the terms and conditions of the resolution shall be described in writing and signed by each Complainant and Respondent. The RIO shall provide the deadline for the completion and execution of the resolution document.

3-8-102(9) Retention of Records. All reports and records gathered regarding any allegations, inquiry, or investigation under this policy shall be maintained by the Office of the RIO for no less than seven (7) years after completion of all proceedings under this policy.

3-8-102(10) Further Reporting. If at any time during these proceedings, it is determined that criminal activity may have occurred or that funds are in jeopardy of loss or misappropriation, immediate notice shall be given to any funding source that has provided the funds and to appropriate law enforcement agencies. In such instances, the RIO shall take prompt action to sequester such funds to prevent their loss or misappropriation.
