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Unit: Sponsored Programs, Office of the Provost

## Scientific/Research Misconduct Policy

### Purpose

This policy affirms the commitment of Yeshiva University to require and maintain the highest standards of ethical performance on the part of all members of the University community. It establishes procedures for the prompt, thorough and fair investigation of allegations of scientific misconduct in regard to research for which the University assumed legal and financial accountability for the funds and/or for the performance of the activities. This policy states the mechanisms through which such investigations will be carried out and reported. It provides procedures for enforcing high standards of ethical performance within the University as well as complying with governmental regulations regarding research misconduct.

In the case of research supported by U.S. government funds, the procedures set out in this policy are intended to conform to the requirements for investigating and reporting possible misconduct in science involving such government-funded research as stated in the Code of Federal Regulations 2 CFR § 910.132 - Research Misconduct. In the event of any inconsistency between this policy and such regulations, the regulations shall govern.

### Ethical Research Performance

It shall be the responsibility of all members of the Yeshiva University community to actively foster ethical practices in the conduct of research.

### Definitions

“Scientific Misconduct” includes fabrication, falsification or plagiarism in proposing, performing or reviewing research or reporting research results.

“Fabrication” refers to making up data or results and recording or reporting them.

“Falsification” means manipulating research materials, equipment, or processes, or changing or omitting data or results so as to inaccurately represent the research in the research record.

“Plagiarism” is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

A “Finding of Scientific Misconduct” requires that: (a) There was a significant departure from accepted practices of the relevant research community; (b) The misconduct was committed

intentionally, or knowingly, or recklessly; and (c) The allegation was proven by a preponderance of evidence. Scientific Misconduct does not include honest error or differences of opinion.

## **Procedures for Dealing with Allegations of Scientific Misconduct**

### Reporting of Allegations

It is the responsibility of all members of the University community to report any perceived scientific misconduct to the Dean of the school of the accused and the University Provost. (The Dean shall ensure that the Provost receives all reports the Dean may receive.) Allegations can be made anonymously but must be sufficiently specific to provide a factual basis for investigation.

Retaliation against any person who reports in good faith an allegation of scientific misconduct is prohibited.

All members of the University community must cooperate with efforts to review allegations of scientific misconduct.

### Ethical Screening Committee

The Provost shall promptly forward all allegations of scientific misconduct to the University's Ethical Screening Committee (members of such committee to be appointed from time to time by the Provost), which shall review each allegation and determine if it falls within the purview of this policy and is not of a frivolous or trivial nature. This preliminary examination of an allegation shall be conducted promptly and ordinarily completed within 5 calendar days.

Should a member of the Ethical Screening Committee have any conflict of interest regarding a specific allegation, that member shall not participate in any aspect of the inquiry into that allegation.

A determination that an allegation of scientific misconduct does not fall within the purview of this policy or is frivolous or trivial and does not warrant inquiry requires a unanimous decision by the Ethical Screening Committee.

If the Ethical Screening Committee decides that the allegation of scientific misconduct falls within the purview of this policy and is not frivolous or trivial, the Ethical Screening Committee shall promptly notify the accused in writing of the substance of the allegations. In addition, the Committee shall advise the accused of his/her rights and obligations under the investigative procedures set forth in this policy, including the right to have a personal advisor/support person (who may be an attorney) and that his/her exercise of this right shall not affect his/her faculty or employment status or impair his/her right to a full hearing under this policy's investigative procedures. The allegation is then referred by the Provost to the University's Committee on Ethical Research Performance (CERP) (members of such committee to be appointed from time to time by the Provost).

At all phases the University shall take any necessary steps to preserve the evidence needed to inquire into an allegation.

### Committee on Ethical Research Performance

The Committee on Ethical Research Performance (CERP) is charged with the non-formal inquiry into all allegations of scientific misconduct after review by the Ethical Screening Committee and

determination that the allegation of scientific misconduct falls within the purview of this policy and is not frivolous or trivial. The CERP is responsible for determining whether an allegation of scientific misconduct requires a formal investigation. This determination shall be made no later than 60 calendar days from the time the allegation was first received by the Provost, unless the Provost, in consultation with the CERP, decides that the circumstances of the allegation and the necessary inquiry require a longer period. The CERP should document the reasons for exceeding this 60-day period.

Should a member of the CERP have any conflict of interest regarding a specific allegation, that member shall not participate in any aspect of the inquiry into that allegation.

Additional ad hoc members to serve on the CERP in regard to a specific allegation of scientific misconduct may be appointed by the Provost. The selection of ad hoc members will be made with due consideration for the required expertise and to avoid possible conflicts of interest. Ad hoc members will serve for the duration of a specific inquiry or investigation.

The CERP's determination is to be presented in a written report to the Provost which shall set forth what evidence was reviewed, summarize relevant interviews, and include the conclusions of the CERP's review. The accused also shall be given a copy of this report and may provide comments to it within 5 calendar days of receipt, such comments to be appended to the report.

If the CERP determines that an allegation of scientific misconduct requires a formal investigation, an investigation will be conducted by the University's Investigative Committee.

When an allegation forwarded to the CERP is found to be without substance, the CERP must still endeavor to determine whether the allegation was made in good faith. If the CERP decides that the allegation was made in good faith but does not involve scientific misconduct, the CERP shall make recommendations to the Provost as to how to restore the reputations of all concerned. If the CERP decides that the allegation was not made in good faith or was made with malicious intent, the CERP shall recommend to the Provost a course of action, which may include referral of the actions of the accuser for disciplinary consideration.

In such instances where continuance of the accused in his/her duties, during pendency of the investigation, threatens immediate harm to himself/herself or to others, or may cause irreparable damage to the University, the accused may be suspended from his/her duties pending final action on such charges. Any such decision shall be made by the Provost in consultation with Human Resources.

#### Notification to Office of Research Integrity and Funding Agency

If the CERP determines that a formal investigation is required and the alleged scientific misconduct involves research supported by U.S. government funds, the University President (or her/his designated representative) shall notify the U.S. Department of Health and Human Services' Director of the Office of Research Integrity (ORI), indicating the name of the person(s) against whom the allegation has been made, the general nature of the allegation, the PHS application or grant number(s) involved, and such other information as may be pertinent. The applicable funding agency should be notified as well.

In addition, the ORI and the applicable funding agency must be notified by the University President (or designated representative) if it is ascertained at any stage of the inquiry or investigation that any of the following conditions exist:

- There is a public health or safety hazard involved;
- There is an immediate need to protect Federal funds or equipment;
- There is an immediate need to protect the interests of the person(s) making the allegation or of the individual(s) who is the subject of the allegation as well as his/her co-investigators and associates, if any;
- It is probable that the alleged incident will be reported publicly;
- There is a reasonable indication of possible criminal or civil law violation (in such instances, the President (or designated representative) must inform ORI within 24 hours of obtaining that information);
- If research activities should be suspended; or
- If the research community or public should be informed.

### Investigative Committee

The Investigative Committee will conduct a formal investigation of the allegation of scientific misconduct if so determined by the CERP. Members of the Investigative Committee shall be selected by the CERP at a duly called meeting for that purpose. The Investigative Committee shall be comprised of between 2 and 8 faculty members, deans, research directors and other University employees and staff as the CERP determines is reasonable and appropriate in regard to a specific investigation (including from the accused's peer group). Should a member of the Investigative Committee have any conflict of interest regarding a specific allegation, that member shall not participate in any aspect of the inquiry into that allegation.

#### *Investigation*

Within 30 calendar days of any determination by the CERP that an allegation of scientific misconduct requires formal investigation, the Investigative Committee shall undertake a formal investigation into the substance of the allegation and any additional issues of possible scientific misconduct raised by the CERP's inquiry. This inquiry must be conducted thoroughly but expeditiously, adhering to the requirements of the PHS and the ORI in cases of allegations of scientific misconduct involving research supported by U.S. government funds.

The Investigative Committee shall act to obtain whatever testimony and documentary evidence it requires to evaluate the substance of the alleged misconduct and any circumstances that materially bear on the allegation. The Investigative Committee is not

bound by strict rules of evidence. The accuser, if known, will be asked to testify and present evidence. Testimony and evidence may also be presented by witnesses called by the Investigative Committee. The accused must be given the opportunity to testify. The accused will be entitled to present witnesses on his/her own behalf and to know of and have an opportunity to respond to the substance of all allegations against him/her. The accused will have the opportunity to confront and cross examine any individual who has specifically charged him/her with scientific misconduct (if the identity of the accuser is known) and any other witnesses. All testimony to the Investigative Committee is to be recorded verbatim with a copy made available to the accused. The accuser and the accused may have a personal advisor/support person of their choice and at their expense (who may be an attorney) present with them during any University meeting/proceeding. The party shall promptly notify the Investigative Committee if he/she intends to use an advisor/support person, and identify such advisor/support person. Such advisor/support person is limited to an advisory role, and may only privately consult and advise his/her advisee. The advisor/support person may not speak for the advisee at the meeting/proceeding, may not question witnesses, may not make any statements during the meeting/proceeding or otherwise actively participate in the meeting/proceeding. The advisor/support person may be asked to leave the meeting/proceeding if he/she deviates from his/her role. The advisor/support person will be subject to the same confidentiality expectations applicable to others in attendance at the meeting/proceeding.

### *Report*

Upon conclusion of the investigation, the Investigative Committee shall prepare a written report of the investigation that describes fully and clearly: the original allegation, the potential scientific misconduct found by the CERP to require investigation, the evidence including a complete summary of the substance of the relevant interviews, and the findings and recommended actions. This report shall be completed no later than 65 calendar days of the initiation of the investigation by the Investigative Committee unless the Investigative Committee requests - and the Provost agrees - that the report cannot be completed by then due to unavoidable delays, which delays should be documented by the Committee.

If the Investigative Committee has concluded on the basis of its investigation that scientific misconduct has occurred, the specific charges, evidence and findings (including those that form the basis for any proposed disciplinary action) must be presented to the accused in writing before such findings are reported to the Provost and before any recommendation for disciplinary action is made to the Provost. The accused must be given a period of 20 calendar days during which he/she may prepare a written response and present additional evidence and witnesses to the Investigative Committee that are relevant to the findings and/or recommendations of the Investigative Committee. The Investigative Committee shall reconvene as appropriate to receive such additional evidence suggested by the accused and any further evidence the Investigative Committee deems appropriate to its consideration of such new evidence.

Following any such additional investigation, the Investigative Committee shall finalize its recommendations concerning the actions it considers appropriate to assure the integrity of the research work in question and the reputation and rights of all concerned.

The Investigative Committee's written report, including any appended response by the accused, results of additional investigation by the Investigative Committee and the Investigative Committee's final recommendations will be forwarded to the Provost within 105 calendar days of the initiation of the investigation by the Investigative Committee unless an extension is requested and granted by the Provost (which extension should be documented by the Committee). Upon receipt of the report etc., the Provost may request further investigation by the Investigative Committee, which shall be carried out as expeditiously as possible. In any event, a Final Report (including the results of additional investigation requested by the Provost) will be provided to the Provost by the Investigative Committee within 115 calendar days of the initiation of the investigation by the Investigative Committee.

The Provost shall send to the University President (or designee) for his/her decision on behalf of the University: the Final Report of the Investigative Committee, copies of any supporting documentation that the Provost deems appropriate or was requested by the President (or designee), and the Provost's comments and recommendations.

#### *Actions*

The President (or designee) shall review the Final Report and other documentation, comments and recommendations provided by the Provost, and approve the course of action to be taken by the University. The Provost shall then take the actions approved by the President (or designee) and deemed necessary to remedy the effects of any scientific misconduct that the investigation has revealed or to prevent its future occurrence. Actions may include, without limitation, formal reprimand, suspension, change in status, and termination of employment. The University may also withdraw its name and sponsorship from pending abstracts and papers, and correct or retract publications.

The University will report the investigative findings and recommendations to all appropriate governmental bodies in accordance with applicable laws or regulations.

This policy also encompasses investigation and reporting of allegations of scientific misconduct involving students and non-faculty employees of the University. The disciplinary actions resulting from such investigations may be dealt with in the disciplinary process applicable to the group involved (e.g., student disciplinary procedures or grievance and arbitration machinery of employee collective bargaining agreements).

If the accused is found not to have committed misconduct, the Investigative Committee shall recommend appropriate steps designed to restore the reputation of the accused including proper notification to the ORI.

#### *Notification to ORI*

If research that was supported by U.S. government funds was involved, a final report will be submitted by the President or designee to the ORI within 120 calendar days of the initiation of the investigation by the Investigative Committee. The final report 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 evidentiary basis for the findings, the actual text or an accurate summary of the views of any individual(s) who

submitted relevant testimony as well as the individual found to have engaged in misconduct, and a description of any sanctions to be taken by the University.

#### *Extension of Investigation*

In cases of alleged scientific misconduct that require a more extensive investigation than can be completed in this 120 day period, the Investigative Committee shall submit a draft report to the Provost prior to the 120 days including a request for an extension and a statement of the reasons that further investigation requiring time beyond this 120 day period is required. This report shall be provided to the Provost to enable an institutional request of the ORI for an extension of time to complete the investigation if applicable. The procedures to be followed during an extended investigation are the same as described .

#### **University Support**

The University shall provide the Ethical Screening Committee, the CERP and the Investigative Committee with such administrative and secretarial support as is required to carry out their functions and shall reimburse members of such committees for any necessary out-of-pocket expenses incurred during the course of carrying out the investigations provided for in this policy. Counsel designated by the University shall serve in an advisory capacity to the Ethical Screening Committee, the CERP and the Investigative Committee to assure that institutional obligations are carried out and appropriate laws and procedures are followed. In consultation with University counsel, the Ethical Screening Committee, the CERP and the Investigative Committee may also retain (at the University's expense) such consultants as they determine necessary to carry out their duties.

The University will defend the members of the Ethical Screening Committee, the CERP and the Investigative Committee against any legal actions brought against them resulting from their good faith actions consistent with applicable laws and regulations and this policy. This pertains as long as their actions were within the scope of their responsibilities and in connection with pursuing inquiries or investigations of allegations as members of the CERP or the Investigative Committee, respectively. The University will hold such individuals harmless and indemnify them for any liability resulting there from.

#### **Record Retention / Confidentiality**

All records relating to allegations of scientific misconduct, including testimony and documentation, are confidential files that will be maintained by the University in accordance with its Record Retention Policy for at least three years after the completion of the investigation. The University shall provide such records or copies thereof to competent governmental authorities as required by applicable law or regulation and to otherwise fulfill institutional responsibilities.

Efforts shall be made by the members of the Ethical Screening Committee, the CERP and the Investigative Committee to preserve the confidentiality of the proceedings and to protect the rights and reputations of all individuals who may be involved in any way in the investigation. All participants in the process are expected to maintain confidentiality. The identity of the accused and other participants should be limited to those with a need to know.

#### **Faculty Handbook**

With respect to actions regarding scientific misconduct affecting a member of the faculty, the procedures described in this policy shall supersede any other provisions of the applicable Faculty Handbook.