

Faculty Senate Policy Committee

Meeting Minutes

October 14, 2015

3:30 p.m. to 5:00 p.m.

Members Present: Kimberly Gauderman (Vice-Chair), Lee Brown, Barbara Hannan, Marsha Baum, and Jamal Martin

Ex-Officio: John Trotter, HSC Vice Chancellor Emeritus, Vivian Valencia, University Secretary, Office of the Secretary, Kimberly Bell, Deputy University Counsel, University Counsel Office, and Carol Parker, Senior Associate Provost, Office of the Provost & EVP for Academic Affairs

Members Absent: Martha Muller (Chair), Leslie Oakes, Melinda Tinkle and Leslie Morrison, HSC Vice Chancellor

Staff Present: Candyce Torres, Office of the Secretary, Administrative Coordinator
Carol Stephens, Office of the Secretary, Professional Consultant

Guest Present: Richard Larson, HSC Vice Chancellor for Research

Meeting began at 3:30pm

1. The regular meeting of the Faculty Senate (FS) Policy Committee was called to order at 3:30PM on Wednesday September 23, 2015 in Scholes Hall, Suite 327 by Vice Chair, Kimberly Gauderman.
2. **Introductions.** New members were introduced to the Committee, Jamal Martin and Barbara Hannan.

E40 “Research Misconduct”. Larson explained that one of the policy documents before the Committee was an E40 policy draft. The Office of the University Secretary staff took what was requested by Office of Research Integrity (ORI) and incorporated into the HSC policies, and then put into one E40 draft. Larson explained some history surrounding an issue involving research misconduct. Larson informed the Committee that several years ago HSC had a faculty member who left. That individual went to the University of Kansas and while there an allegation of

misconduct came in both to the HSC and University of Kansas. At that time a joint investigation with HSC and led by the University of Kansas. This ultimately resulted in that faculty member leaving the University of Kansas. That faculty member raised several concerns and exercised all the rights relative to that process; including contacting ORI. This office oversees research integrity policies at Universities, and assures that grant funding is used appropriately. ORI conducted an audit of HSC research integrity policies as a result of that. ORI sent a letter at the beginning of January 2015 with their point by point review. Attached to the letter were their findings dated December 2, 2014. In that there are very specific enhancements to the existing Faculty Handbook policy E40. Dr. Larson indicated that he responded informing ORI that action would be taken to adopt these changes. Dr. Larson stated he formed an administrative policy to put in place at HSC and it was processed through the FS HSC Council at the request of Chancellor Roth. Larson indicated FS HSC Council concurred with the changes. Brown explained that he sent all the materials to the University Secretary's office to request that E40 be entered into the formal Faculty Senate process. Dr. Larson further noted that once the FS HSC Council and Chancellor Roth approved and signed off on the changes all of that documentation was sent to the University Secretary's Office. The University Secretary's Office then placed all the applicable language from ORI and the HSC administrative policy into the new E40 policy format. The Office of the University Secretary sent Dr. Larson the new draft for his review, comment and approval. Dr. Larson then responded by sending back the draft document with comments.

Dr. Larson informed the FS Policy Committee that most of the changes are not substantive but rather procedural. He also stated the biggest change actually allows the faculty member more time to respond rather than less. Dr. Larson also provided some detail about the process reflected in this policy. When there is an allegation the claim initially goes to Larson or Dougher. The administrator involved is given 7 days under that policy to make a determination of whether there is any creditable basis for that to go to the second phase which is an inquiry stage. The inquiry stage is a committee of 3 faculty, 2 of which are tenured and they have 60 days to make a determination of whether or not there is enough credible evidence that it can move forward with an investigation. The investigation consists of 5 faculty members that actually determine whether or not there was misconduct and make recommendations relative to what should be done about it. Then there is an appeals process. When the committee issues its finding the policy use to state the committee has to give the respondent 15 days to respond to that letter. Now they get 30 days.

Dr. Larson went over each section of the policy with the FS Policy Committee. He indicated that the language in red are the changes to the existing E40 as applied by the University Secretary. The language highlighted in yellow reflects his comments.

Dr. Larson indicated that ORI requested additional language be added under the Policy Statement:

This policy is intended to carry out UNM HSC's responsibilities under the PHS regulations on Research Misconduct, 42 CFR Part 93. UNM extends this policy to PHS and non-PHS supported research.

The FS Policy Committee discussed that HSC should be struck as it applies to all of UNM.

The FS Policy Committee discussed additional requested language under the Policy Statement about the “scope” as it was requested by ORI:

Scope. This policy applies to allegations of research misconduct (as defined below), or in reporting research results involving:

- any individual who, at the time of the alleged research misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with UNM; including, but not limited to, faculty, graduate/undergraduate students, staff, employees, contractors, visiting scholars, and any other member of UNM’s academic community and
- one or more of the following:
(1) Public Health Service (PHS) supported or non-PHS supported biomedical or behavioral research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information, (2) applications or proposals for PHS support or non-PHS supported biomedical or behavioral research, research training or activities related to that research or research training, or (3) plagiarism or research records produced in the course of research, research training or activities related to that research or research training. This includes any research proposed, performed, reviewed, or reported, or any research record generated from that research, regardless of whether an application or proposal resulted in a grant, contract, cooperative agreement, or any other form of support.

These policies and procedures do not apply to authorship or collaboration disputes and apply only to allegations of research misconduct that occurred within six years of the date the institution or HHS received the allegation, subject to the subsequent use, health or safety of the public, and grandfather exceptions in 42 CFR 93.105(b).

The FS discussed the General Principles section:

General Principles

1. Research misconduct cannot be tolerated and will be firmly dealt with when found to exist.
2. For purposes of resolving allegations of research misconduct, the process established by this policy shall apply to allegations of fabrication, falsification or plagiarism. All other allegations of research misconduct shall be resolved utilizing other applicable University policies and procedures.
3. All applicable persons (as described in Applicability section below) will report observed, suspected, or apparent research misconduct in accordance with Procedures Section 1.1 of this policy. Allegations may be made in writing, orally or anonymously and in all cases, must be sufficiently credible and specific. If an individual is unsure whether a suspected incident falls within the definition of research misconduct, he or she may meet with or contact the Vice President for Research, Vice Chancellor or Research, or the appropriate Research Integrity

Office (RIO) to discuss the suspected research misconduct informally, which may include discussing it anonymously and/or hypothetically. A copy of this policy shall be made available to the person who makes the allegation of research misconduct (complainant).

~~Charges of research misconduct shall be promptly reviewed and a copy of this policy shall be made available to the complainant. Allegations must be made in writing, and signed and dated by the complainant. If health or safety is involved, prompt remedial action shall be taken.~~

4. Every effort shall be made to protect the rights and the reputations of everyone involved, including the individual who in good faith alleges perceived misconduct as well as the alleged violator(s). A good faith allegation is made with the honest belief that research misconduct may have occurred. Persons making a good faith allegation shall be protected against retaliation. However, persons making allegations in bad faith will be subject to disciplinary action, up to and including termination or expulsion. An allegation is made in bad faith if the complainant knows that it is false or makes the allegation with reckless disregard for or willful ignorance of facts that would disprove it.

5. All members of the University community are expected to cooperate with committees conducting inquiries or investigations.

6. Confidentiality. Care will be exercised at all times to ensure confidentiality to the maximum extent possible and to protect the privacy of persons involved in the research under inquiry or investigation. The privacy of those who report misconduct in good faith will also be protected to the maximum extent possible. Files involved in an inquiry or investigation shall be kept secure and applicable state and federal law shall be followed regarding confidentiality of personnel records.

7. Conflict of Interest. If the Provost, **the Chancellor for Health Sciences,** the Vice **President Provost** for Research or Vice **Chancellor for Research President for Health Sciences,** as appropriate, has any actual or potential conflict of interest, the persons shall recuse themselves from the case. The President of the University shall appoint designates to act instead. When a case continues to the Inquiry and Investigation stages (Sections 5.3 and 6.3), if the President of the Faculty Senate has any actual or potential conflict of interest, the person shall recuse him/herself from the case and the Senate President-Elect shall appoint a designate to act instead. If any member of the Faculty Senate Operations Committee or the Chair of the Research Policy Committee has any actual or potential conflict of interest, the persons shall recuse themselves from the case. The Faculty Senate President, or designate as appropriate, shall appoint faculty members to act instead.

8. UNM will respond to each research misconduct allegation in a thorough, competent, objective, and fair manner.

9. UNM will ensure its deans, directors, chairs, and graduate advisors are reminded annually of the UNM's policies and procedures on Research Misconduct. UNM will also inform all faculty, students, and staff of the need and importance of research integrity and the importance of compliance with applicable policies and procedures.

Under the Definitions section, language was added about a “Deciding Official”:

Complainant means a person who makes an allegation of research misconduct. There can be more than one complainant in any inquiry or investigation.

Deciding Official will make the final determination whether to accept the investigation report, its findings, and the recommended institutional actions. The Provost is the University deciding official for cases where the respondent is not a Health Sciences Center employee. The **Chancellor** for Health Sciences is the deciding official for cases where the respondent is a Health Sciences Center employee.

Fabrication is making up data or results and recording or reporting them.

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.

NSF means the National Science Foundation. The NSF has adopted rules establishing standards for institutional responses to allegations of research misconduct.

ORI means the Office of Research Integrity, an office within the U.S. Department of Health and Human Services that is responsible for overseeing the implementation of PHS policies and procedures on research misconduct.

PHS means the Public Health Service, a component of the U.S. Department of Health and Human Services. The PHS has adopted rules establishing standards for institutional responses to allegations of research misconduct.

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

Recklessly means that a person acts in such a manner that the individual consciously disregards a substantial and unjustifiable risk or grossly deviates from the standard of conduct that a reasonable individual would observe.

Research misconduct is defined as fabrication, falsification or plagiarism in proposing, conducting, reporting or reviewing sponsored or unsponsored research. The misconduct must have been committed intentionally, knowingly or recklessly. Research misconduct is further defined to include gross carelessness in conducting research amounting to wanton disregard of truth or objectivity, or failure to comply or at least attempt to comply with material and relevant aspects of valid statutory or regulatory requirements governing the research in question. Research misconduct is more than a simple instance of an error in judgment, a misinterpretation of experimental results, an oversight in attribution, a disagreement with recognized authorities, a failure in either inductive or deductive reasoning, an error in planning or carrying out experiments, or a calculation mistake.

Respondent means the person against whom an allegation of research misconduct is directed or the person who is the subject of the inquiry or investigation. There can be more than one respondent in any inquiry or investigation.

The “Who Should Read This Policy” section was also modified.

- Faculty, staff, students, **contractors, visiting scholars, and any other member of UNM’s academic community** involved in the conduct of research or reporting of research results
- Members of the Faculty Senate and the Research Policy Committee
- Academic deans or other executives, department chairs, directors, and managers
- Administrative staff responsible for sponsored research management
- Any person who brings forth any allegation of research misconduct
- Any person against whom an allegation of research misconduct is directed or the person who is the subject of a research misconduct inquiry or investigation

Dr. Larson informed the FS Policy Committee that the rest of the changes are very minor/cosmetic changes. University Secretary Vivian Valencia indicated that the FS Research Policy Committee (RPC) is another governing body that needs to be involved. Valencia further explained that the FS Policy Committee will discuss any issues/concerns that they would like RPC to consider. Valencia mentioned that the new policy format has built in flexibility to be more responsive to procedural changes. Dr. Larson explained that with regard to the current HSC supplementary policy to E40, it would only be in effect until the alterations were officially made to the current E40 policy. Dr. Larson informed the FS Policy Committee that he expressed to ORI that incorporating their changes into the Faculty Handbook policy E40 is a lengthy process. Dr. Larson further explained that ORI understood the process involved, and that it would take time. Dr. Larson further noted that his purpose for adopting the supplemental policies immediately was to satisfy the ORI requirements.

Faculty Senate President, Stefan Posse informed the FS Policy Committee that there was language struck from current draft language which he sees as a concern. Under the Inquiry Section, 2.2 Securing Research Records:

Immediately upon ensuring that the research records are secure, the respondent shall be notified that an inquiry is being initiated and an inventory of the secured records shall be provided him/her. As soon as practicable, a copy of each sequestered record will be provided to the respondent, or to the individual from whom the record is taken if not the respondent, if requested. The respondent shall be notified of the charges and the procedures to be followed.

The FS Policy Committee determined that the language should be retained and included in the final E40 draft to be published in the Faculty Handbook. The FS Policy Committee carefully considered this document and were in agreement to forward on the discussed changes to the RPC so they can hopefully address this at their October 21st meeting. Marsha Baum expressed concern that the FS Policy Committee may not have another opportunity to review this policy after it is sent off to RPC. Baum would like the opportunity to review it once more. The FS Policy Committee decided to have the Office of University Secretary work inner changes

discussed at this meeting, send out the clean (red-line) version to the FS Policy Committee in the agenda, and discuss this at the next committee meeting.

Dr. Trotter pointed out that the language omitted, which President Posse pointed out, will need to be included in the HSC Supplementary policy to E40. This means that some action will need to be taken to communicate that this language must be reintroduced; otherwise, the HSC Supplementary policy would be in conflict. Vice Chair, Kimberly Gauderman will notify Dr. Larson about his request.

- 3. Updates.** Meeting with Ethics Committee. Per meeting in June there were some questions about the Ethics Committee Charge. The addition of adjudication was a concern. Vice Chair Gauderman had a good meeting with the Ethics Committee last week. The Ethics Committee explained to Vice Chair Gauderman that adjudication was added to their charge because at the time the committee was reconstituted, the Provost sent a case to them for adjudication in a peer faculty hearing under C07, section 11. Because of this experience and the fact that it is outlined in C07 that is the reason the charge added adjudication. As a result of this meeting the Ethics Committee modified their charge which is before the Committee:

Faculty Ethics and Advisory Committee

Charge (as of 5.6.15)

The Faculty Senate Ethics and Advisory Committee is guided by the Statement on Professional Ethics (Appendix V, page 53, Policy on Academic Freedom and Tenure), which affirms academic freedom and describes the faculty member's special responsibilities. The committee may arbitrate at the faculty member's request per Faculty Handbook Policy C07 Faculty Disciplinary Policy Section 11. The committee may, at its discretion, choose to advise in the following matters:

1. This committee may advise and consult with the faculty, Faculty Senate, university academic and administrative units, and the University administration regarding ethical issues arising in university policy development, interpretation and/or implementation.
2. The committee may also serve in an advisory capacity in circumstances in which a faculty member or a graduate, teaching, research or project assistant has concerns about potentially unethical behavior (including but not limited to misconduct, conflict, misuse of facilities) as defined by the Statement on Professional Ethics (Appendix V).

The Committee may also serve in an advisory capacity to the President of the University, the Provost and Vice President for Academic Affairs/Health Sciences Center Chancellor, or the Committee on Academic Freedom and Tenure regarding action to be taken in the event that a faculty member or a graduate, teaching, research or project assistant is accused of such behavior.

(Seven faculty members appointed by the Faculty Senate and one graduate student appointed by the Graduate and Professional Student Association. Members of the Committee shall serve for

overlapping, two-year terms. The chairperson shall be elected each year by the Committee and shall be a tenured faculty member.)

The charge will need to be established as it is connected through policy and will prevent the Ethics Committee from acting when called upon. Operations has seen some limitations within this charge.

Meeting with Faculty Senate President. Chair, Martha Muller and Vice Chair, Kimberly Gauderman has a general discussion with Faculty Senate President, Stefan Posse about the functions of the FS Policy Committee and how they prioritize policy committee tasks. Valencia also had a follow-up meeting with President Posse about the FS Policy Committee process. Meeting with Director of Policy Office, and Vice Chair, Kimberly Gauderman indicated that Policy Leadership is working really hard to have good relations with the Policy Office. Chair Muller and Vice Chair Gauderman met with Policy Office Director, Pamina Deutsch over the summer and had a productive meeting where they learned about Regents and administrative policies. Another meeting is being planned for October so that information sharing can occur.

4. **Consent Agenda Topics.** Faculty Handbook policies: A88, C200 and E60 were all approved by unanimous vote with no abstentions. A88 and E60 will be forwarded on to the Faculty Senate for approval.
5. **C09 Respectful Campus.** The Committee discussed what to do about this policy. Vice-Chair Gauderman stated that the FS Policy Committee does not have a formal request to revise this policy. Dr. Geoffrey Miller will be presenting his concerns on due process and free speech at the next Faculty Senate meeting. A memo has been sent to Faculty Senate President Stefan Posse reminding him about policy procedures, and that any motion made in front of the Senate would be in violation of the Senate's procedures. As a Committee because C09 keeps coming back up Chair Gauderman recommended reconstituting the policy committee task force that originally drafted this policy. In preparation for that Chair Gauderman has talked with Jackie Hood who led this task force. This is going to be a major issue coming up and Chair Gauderman asked the FS Policy Committee to reconsider reconstituting it. John Trotter stated there are two aspects. One is that C09 includes both policy and procedure. UAP 2240 is essentially the same policy as C09 but the procedures for 2240 are housed in UAP 2200. Dr. Trotter explained that when talking about looking at C09 as a policy it should be clarified if the issues are policy based or procedurally based. Chair Gauderman made a motion to vote on reconstituting the task force and putting it together and was seconded by Melinda Tinkle.
6. **Committee Leadership.** Vice Chair, Kimberly Gauderman was elected as Co-Chair of the FS Policy Committee.
7. **Adjourn**