

3359-11-17 Conflict of interest, conflict of commitment, scholarly misconduct, and ethical conduct - policies and procedures.

(A) Introduction.

These policies and procedures represent an evolving set of documents. The complexity of the subject matter is such that the current policies and procedures will need a yearly formal review by the senior research officer of the university with the advice of the faculty senate and other bodies which have interest. This policy is intended to conform to all laws and regulations, state or federal, regarding funded research.

(B) Policies and procedures regarding conflicts of interest and/or commitment.

- (1) Each university employee will review and comply with these policies by promptly taking whatever steps are required to avoid, eliminate, remediate or manage an actual conflict of interest and/or commitment. This also includes graduate students, identified as investigators on externally funded grants.
- (2) On the thirtieth of April, each university employee will submit a questionnaire (yearly conflict of interest and commitment report) to her or his immediate supervisor that discloses any outside activities that could represent a conflict of interest and/or commitment.
- (3) Written disclosure to the immediate supervisor is required during the individual's employment contract when additional outside consulting activities arise that could represent a conflict of interest and/or commitment.
- (4) Outside consulting activities of full-time employees will be governed by the following:
  - (a) All forms of outside activities that involve a time commitment at the expense of an employee's primary responsibilities to the university during an individual's employment contract must be disclosed.
  - (b) The maximum allowable time permitted for outside consulting activities is one day per week on average during a quarter during the period of the university academic-year or calendar year contract. Particular circumstances, including but not limited to teaching assignments or other scheduled university duties and/or the terms and conditions of support of university grants or contracts, will be taken into account in approving such arrangements.

- (c) The responsibilities and professional activities that constitute an appropriate and primary commitment will differ across colleges, schools, departments, and disciplines, but should be based on an understanding among the employee, his/her department chair, dean or administrative supervisor(s), and the provost, and in accord with university policies.
  - (d) University resources both human (e.g. students, support staff) and material, may not be used for any purpose that is unrelated to the mission of the university and neither for outside consulting nor for private gain. This shall not apply to use of material resources used in a purely trivial and incidental way.
- (5) Failure to disclose and manage conflicts of interest and/or commitment may subject the employee open to sanctions and possible legal actions. (As defined in paragraphs (d)(3) and (d)(4) of this rule.)
- (6) Outside activities in violation of state or federal laws or regulations subject an employee to discipline, up to and including termination of employment by the university ("objectivity in research rules, 42 C.F.R. sec. 50.601 - 50.607 and 45 C.F.R. sec. 94.1 - 94.6"; "national science foundation investigator financial disclosure policy," 59 fed. reg. 33,308 (1994) and 60 fed. reg. 35,820 (1995); Ohio ethics law chapter 102 of the Revised Code; and section 2921.42 and section 2921.43 of the Revised Code).
- (7) Managing potential conflicts of interest and/or commitment requires timely and accurate disclosure. Therefore, all university employees who engage in outside activities are to disclose those activities as they are encountered in accordance with the following guidelines:
- (a) Some outside activities, which might be considered conflicts in a technical sense, are routinely allowable without permission but with timely notice to the immediate supervisor because they are (i) accepted practices and (ii) generally minimal in their personal financial impact and impact on the university. Examples of such activities: public service in community service agencies, royalties for published scholarly works or institutional royalty sharing, honoraria, prizes and awards for professional recognition, or routine activities for professional organizations and associations.
  - (b) All forms of outside activities which do not fit the above category and do involve (i) a time commitment of one day or less per week (on average) during the employment contract during the period of the university academic year or calendar year contract, and (ii) university employee remuneration of less than ten thousand dollars from a single source during the employees university contract period are to be reported to the employees immediate supervisor.

Disclosure reports are to be made in written form with simple statements of what is being done, for whom, and at what level of compensation (e.g., less than ten thousand dollars). If there is no significant conflict of interest or commitment and the activities are common, the supervisor shall so certify and file the report with signed certification in the department or equivalent level personnel file. Certification is required prior to an employee engaging in any such activity. Examples of such activities: extensive activities for professional organizations and associations.

- (c) All other forms of outside activity which involve a time commitment in excess of one day per week on average during the period of the university academic year or calendar year contract or outside activities for which an employee receives remuneration valued at ten thousand dollars or above from a single source during the employees university contract period are to be reported to the immediate supervisor (e.g., department chair or supervisor). Disclosure reports are to be in written form with simple statements of what is being done, for whom, and at what level of compensation (e.g., more than ten thousand dollars). Certification is required prior to an employee engaging in any such activity. If the immediate supervisor certifies, he/she will, with signed certification forward the request to his/her immediate supervisor (e.g., college dean or division director). If the intermediate supervisor certifies, he/she will report the request to the appropriate central administration officer (e.g., senior research officer or executive director for human resources). The request will be kept on file at that location.
- (8) All university employees are to complete the yearly conflict of interest and commitment report questionnaire on or before the thirtieth of April. Completed reports are to be sent for certification to the employees' immediate supervisor. If an item on the questionnaire is checked yes, then the employees immediate supervisor will forward the report to his/her immediate supervisor (i.e., college dean, division chair) for certification who will, in turn, forward the report to the appropriate central administrative officer (i.e., senior research officer or executive director for human resources). Forwarded annual disclosure reports will be kept in the appropriate central administrative office. Annual reports with all no responses will be kept at the department level. Nothing in this paragraph shall be construed to prohibit disclosures required as defined in paragraph (b)(17) of this rule.

University student assistants employed solely on an hourly pay basis, part-time teaching faculty, and employees working less than half-time are exempt from submitting the annual disclosure form but nonetheless are to comply with the university's conflict of interest and related policies.

Questions or concerns of these persons on these matters are to be referred to their department chair.

- (9) University employees with knowledge of an impending arrangement between the university and an outside entity with which they or their family members have financial interests, employment, or other involvements are to disclose those facts to their administrative superior before the university approves the proposed arrangement. Examples of such arrangements: gifts in kind, contributions; sponsored research or other sponsored programs; patenting, licensing, or technology transfer or other intellectual property agreements; procurement, contracts, and/or subcontracts, and similar agreements as defined in paragraph (h)(5) of this rule.
- (10) The president, vice presidents, deans, and other officers, as may be designated by the board of trustees from time to time, are to submit for review and approval an annual disclosure statement which includes memberships on any corporate boards, partnerships, or associations held by such officers. In addition to any proposed outside activities, including consulting, such disclosures also are to identify any office or fiduciary relationship with a not-for-profit corporation or public board or agency.
- (11) No university employee is to use or attempt to use his/her public position or state property, including property leased by the state, to secure or attempt to secure anything or the promise or offer of a thing of value that is of such a degree to manifest an improper substantial influence upon him/her with respect to his/her duties.
- (12) No university employee is to solicit or accept from any person or organization anything of value pursuant to an expressed or implied understanding that his/her conduct of university business would be influenced thereby.
- (13) No university employee is to intentionally use or disclose confidential or proprietary university information and/or intellectual property in any way that could harm the university or result in the receipt of anything of value for him/herself, for his/her family member, or for any other person or organization with which the university of Akron employee is associated as defined in paragraph (h)(5) of this rule.
- (14) No university employee is to receive private financial gain arising from the sale of textbooks or other materials used in a course in which the employee is an instructor. When the employee as instructor believes that such textbook or material is appropriate for the benefit of the students, the employee must arrange either to (i) waive royalties or other type of personal financial gain or (ii) designate the university or a recognized professional organization or honorary to receive such royalties or gain. The latter option must ensure that there will be no potential for future

personal financial gain by the employee from this classroom use. All proposed plans are to be submitted to the university for prior approval through the department chair.

- (15) Inventions and patent rights of university employees developed or obtained during the course of the individual's employment contract with the university belong to the university unless otherwise stipulated in a specific written university patent rights agreement signed by an authorized university official delegated such authority by the university board of trustees. Computer software developed by university employees during the course of the individual's employment contract with the university or using university resources is the property of the university.

Inventions or discoveries made using any university facilities or other university resources belong to the university even if the inventors are not university employees, unless otherwise stipulated in a specific written university patent rights agreement signed by an authorized university official delegated such authority by the university board of trustees.

University intellectual property, including inventions and computer software, is to be managed under rule 3359-02-05 of the Administrative Code. The university will share with inventors and software authors any net royalties or royalty-type income that may be gained as a direct result of licensing or attempting to license the intellectual property.

University employees are to disclose in a timely manner to the university: (i) their own creation or discovery of inventions and computer software which are developed using university resources, regardless of sponsorship; (ii) any discoveries and inventions utilizing university resources, including those resulting from their participation in sponsored research or other sponsored programs, other remunerative outside activities in their field of academic interest or specialization, or any other activities of an outside commercial enterprise, including any university employee-owned or employee-managed company; and/or (iii) the creation or discovery of inventions of any others associated with them when that development involved any university resources.

No university employee is to provide confidential or proprietary information including disclosures or other information regarding inventions or other intellectual property, to a company or other entity or its agents without prior disclosure to and specific permission by the university.

- (16) University employees who wish to propose or are involved in university sponsored research or other sponsored programs are expected to review and adhere to all university policies, procedures, and obligations related to proposing, managing, reporting of results, and other aspects of such projects.

- (17) The university requires that investigators disclose to the university's director of research services and sponsored programs any potential conflicts of interest prior to the submission of a proposal for funding. If a new conflict of interest arises at any time during the period after submission of the proposal through the period of award, the filing of a disclosure and immediate action toward remediation is required. Each investigator must disclose all significant financial interests including those of family members if legally required, as well as any other potential conflicts of interest as defined in paragraphs (h)(6) and (h)(21) of this rule.
- (a) That would reasonably appear to be directly and significantly affected by the research or educational activities funded, or proposed for funding, by an external sponsor or
  - (b) In entities whose financial interests would reasonably appear to be directly and significantly affected by such activities.
- (18) Conflict policies regarding research projects:
- (a) University employees are prohibited from independently submitting or negotiating proposals or contracts for any externally sponsored research or other sponsored programs on behalf of the university. Proposals, and any subsequent negotiations, awards, other agreements, or changes are to be processed through and require the prior written authorization of the university through the director of research services and sponsored programs.
  - (b) All university employee involvement in proposals for sponsored research or other programs at other institutions must be approved in advance through the office of research services and sponsored programs. University employee involvement in a program or project at another institution that might be conducted appropriately at the university of Akron as part of normal employee duties could result in situations that place students and staff in conflicts of interest, and deprive students and colleagues of the faculty members or other employees primary intellectual energies. A bona fide subgrant or subcontract agreement of equitable terms, normally involving one institution as fiscal agent and the other(s) as subgrantee(s), negotiated in advance between the university and the other institution(s), and naming the university employee among the key personnel for the project, is an appropriate means for a university employee or team to participate in inter-institutional research projects or other sponsored programs.
  - (c) University employees must receive specific prior written approval from the senior research officer to divert funded research

opportunities or other sponsored program support from the university to other institutions or external entities.

- (d) A university employee will inform students and all workers engaged in research or other sponsored programs to be conducted under his or her supervision of all details, policies, and procedures concerning the project needed for the students and workers to perform their role. These include full disclosure of the terms of the agreement in support of the activity, including concerning copyrights or patent rights arising from the research; policies and procedures governing scholarly misconduct; and other as applicable (e.g. health and safety regulations, protection of human rights, ethical care and use of animals, radiation safety, biohazard safety).
- (e) It is the responsibility of each university employee to disclose promptly to the senior research officer any situation or proposal in which the objectivity of a university employee or participant in a research project could be reasonably questioned.

(19) Conflicts involving university contracts:

- (a) University employees are prohibited from negotiating or entering into contracts or other agreements which claim, imply, or appear to involve the university, unless such actions are part of their official university duties and within the scope of their employment. The board of trustees and president will specifically delegate in writing those employees with such signatory authority to contractually commit the university.
- (b) University employees are prohibited from entering into a contract (other than their employment contract) or lease (other than by student employees for student housing) with the university, whether or not the contract or lease derived in whole or part by university funds, except as otherwise provided by law.
- (c) No university employee, in their official capacity, in a position to approve or influence a contract or lease may enter into such a contract or lease which involves the university employees' family members, business associates, or any organization with which the university employee is associated whether or not the contract or lease derived in whole or in part from university funds. It is the duty of each university employee to disclose promptly any such proposed contract, lease, or similar relationship or agreement to the university through the department chair or equivalent immediate supervisor as defined in paragraph (h)(5) of this rule.

- (20) Maintaining the university as a community of scholars requires the free and open exchange of ideas and the results of scholarly activities. To this end:
- (a) University students and scholars involved in research have the right to pursue topics of interest, have access to available information and facilities, and to communicate the results of their work in accordance with the law and university policies.
  - (b) University employees with outside business interests or outside consulting activities must ensure that the activities of university students, staff, post doctoral fellows, visiting scholars, and other employees are not exploited by those outside interests and activities.
  - (c) All university employees have a right to know the source(s) of funding that support their work.
- (21) Employee pursuit of a degree, when presenting a situation in which a possible conflict of interest or conflict of commitment could reasonably be thought to exist requires prior approval by the employee's immediate supervisor.
- (22) No university employee may give or accept anything of value that may substantially or improperly influence him or her with respect to his or her university duties.
- (23) The university seal, logo, trademarks, and all other university intellectual property may not be used by any person, including any university employee outside his or her scope of employment; not by any firm, corporation, or other entity without the express written permission of the president or the president's designee.
- (24) The university's name will not be used by any employee for the purpose of advertising outside the scope of one's employment by the university or in relation to commercial ventures for private financial gain. In situations when it is not clear whether or not the use of the university's name is appropriate, the employee must obtain the written permission of the president.
- (25) All equipment, apparatus, museum materials, scientific collections, books, and other university property are in the immediate care of the university employees of the respective departments to which such materials belong. University employees are expected to practice good stewardship in the use and care of university property.
- (26) Nepotism is an impermissible conflict of interest as defined in paragraph (h)(5) of this rule.

- (a) No university employee may participate, formally or informally, in the decision to hire, retain, grant tenure to, promote, determine salary of, discipline, renew, modify or terminate a family member's individual employment with the university, or to renew, modify, or terminate any other condition of employment.
  - (b) No university employee may give preferential or favored treatment in the supervision or management of another university employee who is a family member.
  - (c) No university employee may authorize or use his or her authority, formally or informally, to secure authorization of any public contract in which he or she or a family member has an interest.
- (27) Service as an expert witness in any civil or criminal case can be undertaken only when there is no conflict of interest or conflict of commitment. If the university is involved in the case as a named party, there must be prior disclosure and/or approval.
- (28) While executing their university duties, university employees may not use their authority in an exploitative manner in relationships with others.
- (29) A whistle blower, who raises or wishes to raise an allegation against a university employee/employees, of a conflict of interest and/or conflict of commitment, related wrongdoing, or of institutional conflict(s) of interest, must respect the confidentiality of sensitive information and give legitimate institutional structures an opportunity to resolve the matter. Whistle blowers and other witnesses have the responsibility to raise their concerns honorably and with foundation. The university has a duty to undertake review and actions as appropriate and not to tolerate or engage in retaliation against whistle blowers. This duty includes providing appropriate and timely relief to ameliorate the consequences of actual or threatened reprisals, and holding accountable those who retaliate.
- (30) Responsibilities of the department chair or equivalent are:
- (a) To maintain a record of any outside activity disclosed by a university employee under his/her direction.
  - (b) To act in good faith to assist the university in implementation of this policy.
  - (c) To convey to the dean or administrative supervisor the concerns they, or others, have with this policy.
  - (d) To review and forward to the dean and senior research officer with his or her comments any case which appears to have a potential conflict of interest or conflict of commitment. Such comments

should include actions recommended by the chair to manage or remedy the conflict(s).

- (31) Responsibilities of the dean or other administrative supervisor are:
    - (a) To maintain a record of any outside activity disclosed by a university employee under his/her direction.
    - (b) To act in good faith to assist the university in implementation of this policy.
    - (c) To convey to the provost the concerns they, or others, have with this policy.
    - (d) To review and forward to the provost and senior research officer with his or her comments any case which appears to have a potential conflict of interest or conflict of commitment. Such comments should include actions recommended by the dean to manage or remediate the conflict(s).
  - (32) The executive director of human resources under this policy is responsible for providing employees with the annual reporting form for each eligible employee under their supervision.
- (C) Procedures for reports, certifications, disclosures, and approvals.
- (1) Disclosures and requests for approvals are to be directed first to the immediate administrative supervisor, as well as to the next higher level.
  - (2) For a matter of disallowed approval a department chair or equivalent will communicate a report and recommendation to the intermediate supervisor. If the intermediate supervisor confirms the disallowance, he or she will communicate the report and recommendation to the senior research officer. In the event the senior research officer determines that the matter may be managed effectively and the management plan suggested is agreed to by the university employee, the senior research officer may authorize the activity.
- (D) Procedures for appeal.
- (1) An inquiry committee will be convened with five appropriate members as defined in paragraph (g)(4) of this rule.
  - (2) Procedure for determination in potential conflict situations by employees:
    - (a) Requests by employees for university review and determination will be signed and submitted in writing to the senior research officer in order to initiate a review.

- (b) The senior research officer is responsible for the timely review (ten business days), maintenance of records, and preservation of confidentiality to the extent permitted by law of: requests for review, annual certifications and disclosures, any ad hoc disclosure reports of employees, and all other related documents received or created.
  - (c) The inquiry committee will collect relevant documentary materials, and thereafter, in a timely manner (ten working days), analyze and render a report to the senior research officer.
  - (d) The inquiry committee may suggest appropriate oversight or management procedures to ensure no conflict of interest or commitment or may recommend other forms of amelioration.
  - (e) The provost can extend these timelines up to ten additional working days.
  - (f) Procedure for resolution of conflict situations by employees.
    - (i) The senior research officer will submit to the provost the inquiry committee report and its recommendation for resolution of the conflict. Additional or subsequent action may be recommended by the provost or office of general counsel.
- (3) Procedure for determination in potential conflict situations when initiated by the senior research officer, provost, president.
- (a) The senior research officer, provost, president, or board of trustees may initiate a review without a written report when, in their judgment, there is sufficient concern to warrant it. The senior research officer will inform all appropriate administrators, as well as the faculty or staff who are subject to this investigation. The senior research officer will submit to the provost a recommendation for resolution of the conflict. Additional or subsequent action may be recommended by the provost or office of general counsel.
  - (b) The senior research officer will convey promptly to the provost any concerns or those raised by others related to matters covered by this policy. The senior research officer will forward to the general counsel a copy of any request for review or disclosure for legal review and comment. The senior research officer may forward a copy also to other administrators, on a need-to-know basis, for review and comment.

All reviews and comments either by the office of the general counsel or by other solicited administrators will be returned to the senior research officer within seven working days.

- (c) The senior research officer or designee will meet with all relevant individuals within seven working days from the reception of the report and forward the materials immediately to the office of the provost with the pertinent recommendations.
  - (d) If necessary, after consultation with the office of general counsel and any others, the senior research officer may ask the provost to refer the matter to the Ohio ethics commission for further determination.
  - (e) The senior research officer will give the results of any review comments from the Ohio ethics commission or other appropriate body in writing to those who simply requested a determination, or to those who were alleged by another to have a conflict of interest. The senior research officer will also send a copy of the results to the general counsel; dean or administrative supervisor; department chair; to the person who requested the review, as the case may be, if not the principal party; and to other responsible university administrators as the senior research officer deems appropriate.
  - (f) Procedure for resolution of conflict situations.
    - (i) The senior research officer will submit to the provost a recommendation for resolution of the conflict. Additional or subsequent action may be recommended by the provost or office of general counsel.
- (E) Procedure for investigation of alleged conflict of interest or conflict of commitment.
- (1) In cases in which an allegation of misconduct by a university employee is made, the senior research officer, general counsel or his designee(s) will take the following steps:
    - (a) Notify the appropriate dean or vice president of the person in question.
    - (b) Take appropriate interim actions to protect government and university funds and assure that the purposes of any governmental financial assistance are being carried out in the interim during the review process, as defined in paragraph (e)(6) of this rule.
    - (c) Meet with both the complainant(s) and the subject(s) thereof. Subject(s) of the allegations will be told, with specificity, the nature of such allegations and be given full opportunity to respond.

They will be encouraged to supply any documentary information supportive of their position and given a reasonable time (ten working days) within which to do so. They will be encouraged to supply the names of any individuals or entities that could supply information helpful to their position or to the full and complete investigation of the matter. The individual who is charged may be accompanied by legal counsel or other advisor during interviews with the committee and/or individual members of the committee. The role of counsel or other advisor is limited to observation and advising his/her client on responding to questions.

- (d) At this time the subject of investigation will be responsible for all fees or expenses in his/her defense of allegations.
- (2) Although a whistleblower enjoys a privilege to report allegations of misconduct, the office of research integrity states (position paper #1, the whistleblower's conditional privilege to report allegations of scientific misconduct, 1993), that abuse of the privilege may leave the whistleblower liable for defamation. In addition, this may subject a whistleblower who abuses the privilege to administrative action by the university as defined in paragraph (g)(11) of this rule. If the allegation of misconduct by the whistleblower proves unfounded, the university should take specific steps for redress of the rights of the unjustly subject of investigation. Among compensatory actions:
- (a) The university will become responsible for the defense expenses of the subject of investigation, if so ordered by a court of competent jurisdiction.
  - (b) The subject of investigation will be given the option to take legal action when appropriate, interview any identified witness(es) and review any and all documentation that might have a bearing on the outcome of the investigation.
  - (c) The university will report to appropriate federal or state agencies and university officials in accordance with federal and state requirements.
- (3) If a university employee is indeed found to have violated university policy or to have violated the terms of a memorandum of understanding or other terms which were required by the university in order to manage or eliminate a potential conflict of interest or conflict of commitment, the provost, in consultation with the senior research officer, the dean or administrative supervisor, the general counsel, and the inquiry committee, may recommend to the president one or more of the following disciplinary sanctions, for action by the university board of trustees:
- (a) Formal reprimand.

- (b) Suspension from the university for a definite period.
  - (c) Dismissal from the university.
  - (d) Other remedial, corrective, or other action which is deemed appropriate.
- (4) Illegal acts under this policy may also be subject to prosecution by state and/or federal authorities separate from any university disciplinary sanctions. A university employee may appeal a negative decision and/or disciplinary sanctions in writing to the president, with a copy to the provost, within fifteen days of receipt of the notice of the decision. The president will consider the appeal in consultation with the inquiry committee; chair, dean or administrative supervisor, senior research officer, and/or provost as he or she deems appropriate; and with the general counsel and any other upper management that he or she deems appropriate. The president will provide a decision on the appeal to the employee with a copy to the provost and general counsel, within thirty days of receiving the appeal. The decision of the president will be final, subject to the approval of the board of trustees.
- (5) In cases of allegation/accusation of wrongdoing, if as a result of this investigation the allegations are found without merit, the matter will be expunged from all personnel records of the subject of investigation, and the allegation/accusation files will be sealed and delivered to the custody of the office of general counsel. The university recognizes its responsibility to report promptly to those involved, in public and/or in private as may be appropriate, those allegations which prove to be unsubstantiated or substantiated.
- (6) All proceedings and actions should be conducted in conformity with Ohio Revised Code and code of federal regulations. If it becomes apparent during the course of any review, inquiry, or investigation that there is illegal conduct or activity and/or that the conduct indicated or complained of may be criminal in nature, the university's general counsel will be immediately notified and provided all information and documentation gathered during the investigatory process to date. The decision of how the investigation should proceed, whether the investigation is taken over by the general counsel or whether outside authorities, including police or other law enforcement agencies, should be notified and involved will be determined by the general counsel. Criminal investigations, when necessary, take precedence over normal university academic or advisory reviews. Sequencing of all other reviews which may be needed will be coordinated among the senior research officer, provost, general counsel, and president.
- (7) If a violation of this policy involves a collateral proceeding under university policies regarding scholarly misconduct, then the provost will

defer a final decision on sanctions until the scholarly misconduct inquiry and/or investigation process is also completed.

- (8) The detailed documentation of any allegation/accusation, investigation, and determination will be maintained by the office of general counsel of the university for at least three years from the date of the determination, from the date of acceptance of a final report by the federal office of research integrity or any inspector(s) general involved, or at least three years from the termination date of any related grant or contract, whichever date is later. Documentation must be provided when required by law or upon request to authorized government authorities.
  - (9) Departmental, college, committee, and other university records are to be retained under suitable confidentiality and may not be destroyed without the permission of the university's general counsel and the university archivist.
- (F) University principles for research and sponsored programs.
- (1) The university will deal legally and ethically with external sponsors of research and sponsored programs in ways that avoid institutional conflicts of interest. The same is expected of project personnel and sponsors.
  - (2) The university will not enter into agreements contrary to its mission.
  - (3) The university will not accept an award for a project that is unacceptable to the principal investigator. Once an award is accepted by the university, all parties are expected to fulfill their respective obligations under that agreement.
  - (4) The university, its faculty, and its students will retain the right to use all data for research and educational purposes and to publish results in scholarly publications in accord with university policies. A delay of no more than one year may be mutually agreed upon to permit patent filings or other legal filings. To restrict student theses or dissertations from public access for up to one year to permit patent or other legal filings, a written request must be submitted to the dean of the graduate school along with the final draft. The dean of the graduate school will then forward all copies of the thesis or dissertation to the university archivist with a request to withhold it from public access and the open library shelves for up to one year.
  - (5) Meaningful participation of university students in sponsored research is expected.
  - (6) In all cases, and at a minimum, the university will retain a perpetual, irrevocable, royalty-free right to practice and use patents, copyrights, all other intellectual property, information and/or materials resulting from or

related to any sponsored project for research, testing, and educational purposes only.

- (7) The university will not enter into activities or agreements which could jeopardize its nonprofit tax-exempt status or conflict with its required state of Ohio or federal cost principles and/or accounting methods, including office of management and budget circular A-21 regarding federal cost principles for educational institutions and related administrative or subsequent applicable governing regulations
- (8) The university will not enter into activities or agreements which could jeopardize its eligibility to receive federal or state funds.
- (9) The university will not enter into contracts which are not to be governed or construed under Ohio law.
- (10) The university will not accept contractual terms that require the university to indemnify or hold harmless other parties.
- (11) Title to intellectual property rights resulting from sponsored projects is to vest with the university. Any transfer of these rights to non-governmental entities is subject to specific approval by the board of trustees of the university. An option or a license may be negotiated in good faith and under reasonable terms and rates to share rights through a license with the sponsor, on a non-exclusive, exclusive-by-field-of-use, or similarly limited basis.
- (12) The university will not enter into agreements in which the names of the parties or the facts and terms of the agreement cannot be revealed, but the specific topic of the research may be kept confidential.
- (13) The university will not make any warranties, express or implied, including but not limited to, implied warranties of merchantability and fitness for a particular purpose.
- (14) The university prohibits use of its name or marks or intellectual property by another without its specific prior written permission.
- (15) The university will take title to all equipment and supplies acquired under any sponsored agreement, unless covered under a specific and separate written agreement executed by an authorized representative of the university and that sponsor.
- (16) The university routinely utilizes the personal services of university employees, visiting professionals, students and others who may not be United States citizens or permanent resident aliens of the United States. Sponsoring or collaborating agencies must assume responsibility for inquiry and/or waivers, in advance of entering into any agreement with the university, under the federal export administration regulations,

international traffic in arms regulations, and/or similar or subsequent regulations concerning participation in research by or dissemination of data to foreign nationals.

(G) Policies and procedures governing scholarly misconduct.

- (1) While encouraging freedom of inquiry, the university of Akron is committed to the scientific method and the ethical conduct of research. Scholarly misconduct by employees, visiting scholars, or students in research and scholarship broadly construed as applying to scientific experimentation, artistic expression, and all other areas of scholarship in any disciplines not in the spirit of the mission of the university and therefore is not acceptable. The scholarly misconduct policy governs any type of research or scholarship that is publicly disseminated, either by presentation (formal or informal) or publication.
- (2) Investigations of alleged scholarly misconduct are conducted within the scope of the law and limited to the discovery of information that would support or refute the allegation. Adverse findings may provide grounds for disciplinary action, up to and including dismissal from the university.
- (3) Inquiry and investigation procedures for scholarly misconduct relating to university-related research or scholarship that is publicly disseminated.
  - (a) Reports of alleged scholarly misconduct may be submitted in writing to, and will be investigated under the direction of, the senior research officer. In addition, the senior research officer, the provost, the president, or board of trustees may themselves initiate such an investigation without a written allegation.
  - (b) Investigations of alleged scholarly misconduct are conducted by an impartial inquiry committee formed by the senior research officer. The inquiry committee is advised by the office of the general counsel. Members of the inquiry committee are individuals with no real or potential conflict of interest with regard to the alleged misconduct, and with the necessary background to investigate it.
  - (c) If the subject of investigation is an employee or assignee of an academic unit, the inquiry committee consists of two full-time faculty members from the college of primary appointment of the subject of investigation and one full-time faculty member from each of three different colleges or universities.
  - (d) If the subject of investigation is not an employee or assignee of an academic unit, the inquiry committee consists of two members appointed by the vice president to whom the subject of investigation reports and three members appointed by the senior research officer.

- (e) The composition of the inquiry committee is not necessarily limited to university of Akron employees.
  - (f) The subject of the investigation may object to the selection of specific members, with foundation, in writing to the senior research officer.
  - (g) Inquiry committee chairs are elected by the committee. If the subject of investigation is a faculty member, the chair's primary appointment must be in a different college.
  - (h) If the inquiry raises questions about the protection of human subjects, ethical animal care and use, radiation safety, biohazards, and/or campus safety, the inquiry committee will contact the appropriate university standing committee for assistance. At the request of the inquiry committee or the senior research officer, a member of each appropriate standing committee may be added as an ex-officio but non-voting member of the inquiry committee.
- (4) The guidelines for the operation of the inquiry committee are as follows:
- (a) The work of the inquiry committee is divided into two processes. The process that occurs first is the preliminary review of charges of scholarly misconduct to determine if a charge of misconduct will stand. The second process that may occur is a formal investigation of charges of scholarly misconduct.
  - (b) When charges of scholarly misconduct are filed against an individual the senior research officer notifies the individual of the substance of the charges in writing.
  - (c) The inquiry committee conducts interviews with appropriate individuals and collects relevant information. The senior research officer provides the committee with all information provided to him/her in the filing of the charge. The provost or senior research officer shall provide assistance and support to the inquiry committee when requested.
  - (d) The individual who is charged may be accompanied by legal counsel or other advisor during interviews with the committee and/or individual members of the committee. The role of counsel or other advisor is limited to observation and advising his/her client on responding to questions.
  - (e) After collection, review, and discussion of factual information, the committee submits a written report of their findings to the senior research officer and the individual charged with one of two recommendations:

- (i) The charges are without merit and the matter should be expunged from all personnel records of the individual charged and the files of the committee sealed and delivered to general counsel or
  - (ii) The charges have merit and warrant a formal investigation.
- (f) The written report of the committee following the preliminary review must be completed within thirty days of the notification of charges to the individual by the senior research officer. The formal investigation must begin within fifteen days from the completion of the preliminary review. A written report of the formal investigation must be completed and submitted to the senior research officer within 60 days of the notification of the charges to the individual.
- (g) Written reports of the committee must contain evidence reviewed, summaries of all interviews conducted, and the conclusion/recommendation of the committee.
- (h) The senior research officer provides a copy of the committee's report(s) to the individual charged.
- (i) The individual charged can provide written comments on the proceedings of the committee and these comments become part of the permanent records of the committee's proceedings.
- (j) If the recommendation of the committee, at the conclusion of the preliminary inquiry, is that the charges are without merit and the matter should be expunged from the personnel records of the individual charged and the senior research officer does not agree with this recommendation, the senior research officer informs the provost of such and directs the committee to begin a formal investigation of the charges.
- (k) The individual charged must be notified in writing that a formal investigation is to be conducted. This notification includes details of the charges of misconduct, summary of the general nature of the evidence supporting the charges, and statements as to the rights of the individual charged to i) have a hearing, ii) confront and cross-examine adverse witnesses, iii) be heard in person and iv) present witnesses and documentary evidence, and to have legal counsel at his or her expense with the same limitations as in the preliminary review.
- (l) If a formal investigation is to be held, the senior research officer or designee takes appropriate administrative actions to protect federal funds and to ensure that the purposes of any federal financial assistance is being carried out. The federal office of research

integrity, located within the national institutes of health of the public health service, is notified that an investigation is being conducted.

- (i) The subject of investigation may have private legal counsel, but the role of the subject of investigation employee's legal counsel will be limited in the same manner as in the initial inquiry.
- (ii) The inquiry committee will inform the senior research officer, who will promptly notify the federal office of research integrity of:
  - (A) Any reasonable indication of possible criminal violation.
  - (B) Any developments during the investigation that disclose facts that may affect current or potential federal funding for the individual(s) under investigation or facts that the federal agency needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.
- (iii) In executive session the inquiry committee will seek, examine, and evaluate all relevant facts, including but not limited to the charges, consider any written responses to the charges by the subject of investigation, report by experts, advice of consultants, etc. However, the subject of investigation has the right to request a public hearing or a private hearing before the committee at which time the subject of investigation will have the right to present any explanation or rebuttal, to question any complainant, and to question the committee.
- (iv) For allegations substantiated by the formal proceedings, the senior research officer will inform appropriate funding agencies of the allegations and findings regarding the scholarly misconduct.
- (v) The senior research officer will report findings and recommend further action to the provost.
- (vi) The provost may recommend to the president one or more of the following disciplinary sanctions, for action by the university board of trustees:
  - (A) Formal reprimand.

- (B) Suspension from the university for a definite period.
    - (C) Dismissal from the university.
    - (D) Other remedial, corrective, or other action that is deemed appropriate.
  - (vii) Illegal acts may also be subject to prosecution by state and/or federal authorities.
  - (viii) A university employee may appeal a negative decision and/or disciplinary sanctions in writing to the president, with a copy to the provost, within fifteen days of receipt of the notice of the decision. The president may consider the case in consultation with the committee, senior research officer, provost, chair, dean or administrative supervisor, as he/she deems appropriate; and with the general counsel. The president will provide a decision on the appeal to the subject of investigation, with copy to the provost, senior research officer, and the general counsel, within thirty days of receiving the appeal.
  - (ix) The decision of the president will be final, subject to the approval of the board of trustees.
- (5) If, as a result of this investigation the allegations are found without merit, the matter will be expunged from all current personnel records of the subject of investigation, and the accusation file will be sealed and delivered to the custody of the office of general counsel.
- (6) The university will report promptly to those involved, in public and/or in private as may be appropriate, those allegations that prove to be unsubstantiated and those allegations that are substantiated.
- (7) If it becomes apparent during the course of any review, inquiry, or investigation that there are illegal issues and/or that the conduct indicated or complained of may be criminal in nature, the university's general counsel should be immediately notified and provided all information and documentation gathered during the investigatory process to date. The decision of how the investigation should proceed will be determined by the general counsel. Criminal investigations take precedence over normal university academic or advisory reviews. Sequencing of any other reviews will be coordinated among the senior research officer, provost, general counsel, and president.
- (8) If a violation of this policy involves a collateral proceeding under university policies regarding a conflict of interest or conflict of commitment, then the senior research officer will institute the conflict of

interest and/or conflict of commitment review(s), but the provost will defer a final decision or sanctions on that matter until the scholarly misconduct inquiry and/or investigation procedure is completed.

- (9) The detailed documentation of any allegation, accusation, inquiry, investigation, and determination will be maintained by the office of general counsel of the university for at least three years from the date of determination, date of acceptance of a final report if any from the federal office of research integrity and/or any inspector(s) general involved, or at least three years from the termination of any related grant or contract, whichever date is later. Documentation must be provided when required by law or upon request of authorized government authorities.
    - (a) Departmental, college, committee, and other university records are to be retained confidentially to the extent permitted by law and may not be destroyed without the permission of the university's general counsel and the university archivist.
  - (10) A whistleblower who raises or wishes to raise an allegation against a university employee of scholarly or scientific misconduct or related wrongdoing must respect the confidentiality of sensitive information and give legitimate institutional structures an opportunity to function in resolution of the matter. Whistleblowers and other witnesses have responsibility to raise their concerns honorably and only with foundation. The university has a duty to undertake review and actions as appropriate and not to tolerate or engage in retaliation against good-faith whistleblowers. This duty includes providing appropriate and timely relief to ameliorate the consequences of actual or threatened reprisals, and holding accountable those who retaliate. Although a whistleblower enjoys a privilege to report allegations of misconduct, the office of research integrity states (position paper #1, the whistleblower's conditional privilege to report allegations of scientific misconduct, 1993), that abuse of the privilege may leave the whistleblower liable for defamation. In addition, this may subject a whistleblower who abuses the privilege to administrative action by the university.
- (H) Definitions.
- (1) Business associate- Any person legally linked with the employee in business contracts, partnerships, firms, enterprises, franchises, trusts, joint ventures, finances, real estate, or in other for-profit legal entities or agreements.
  - (2) Compensation- money, financial benefit or things of value. Compensation does not include reimbursement for actual and necessary expenses incurred in the performance of official duties or for actual and necessary expenses reimbursed for services to non-profit organizations and outside professional associations and related organizations.

- (3) Conflict of commitment- a real or apparent competition of outside activities such that an independent observer might reasonably question whether the employee's professional actions or decisions are or will be adversely affected by competing outside activities and interests to the detriment of the employee's specific and primary duties to the university and its mission.
- (4) Conflict of interest- a real or apparent divergence between a university employee's private interests and his or her professional obligations to the university, such that an independent observer might reasonably question whether the individual's professional actions or decisions are or could be determined by considerations of private gain rather than by potential benefit to the university mission.
- (5) Family member- conflict of interest/commitment/nepotism- the "family shall have the same meaning as defined by section 2921.42 of Revised Code (grandparents, parents, spouse, children, whether dependent or not, grandchildren, brothers and sisters, or a person related by blood or marriage residing in the same household). This will not apply in financial disclosures.
- (6) Family member- financial disclosure in connection with external funding - for purposes of considering issues of disclosure of financial interest and financial relationships, "family" shall be deemed to mean employee, spouse and dependent children.
- (7) Financial interest- anything of monetary value, including but not limited to salary or other payments for services (e.g., consulting fees); equity interests (e.g., stock options or other ownership interests); intellectual property rights (e.g., patents, copyrights, trademarks, trade secrets and royalties from such rights); and any other interest which an employee has in a business enterprise outside the university.
- (8) Intellectual property- an all-encompassing term now widely used to designate as a group at least all of the following: patents or patentable inventions, trademarks, copyrights, trade secrets, and the rights of publicity.
- (9) Invention- a discovery or development which may be patentable (novel, useful, and non-obvious), and certain types of computer software.
- (10) Investigator- a principal investigator, project director, co-investigator, or any other person at the university who is responsible for the design, conduct, or reporting of research or educational activities funded by an external sponsor.
- (11) License- a permission to use a right to intellectual property under defined conditions.

- (12) Mission- the university's mission, including teaching; research; scholarly and creative activities; and community and public service.
- (13) Outside activities- outside professional association activities and outside consulting activities.
- (14) Outside consulting activities- activities of university employees, other than their employment obligations to the university, performed for compensation above actual and necessary expenses or honoraria. These do not include outside professional association activities. These may or may not involve conflict of interest or conflict of commitment, which may need management.
- (15) Outside professional association activities- uncompensated activities (except for actual and necessary expenses and honoraria) such as, but not limited to, those involving recognized professional associations and societies or scholarly or advisory bodies related to academic work or disciplines; serving on public commissions or boards of philanthropic organizations; presenting guest lectures or scholarly papers at academic or professional conferences; leading or participating in seminars, workshops, or short courses sponsored by academic, government, or nonprofit organizations; serving on review panels or accreditation teams; visiting colleagues or model programs at other universities or public or nonprofit institutions. Such uncompensated activities are not considered outside consulting activities.
- (16) Private gain- acquiring something of value, profiting, receiving payment, or otherwise receiving some form of personal financial or material increase or compensation for self or family member(s), from the university of Akron.
- (17) Provost- the senior vice president and provost.
- (18) Quarter- any three consecutive calendar months.
- (19) Scholarly misconduct- academic and/or scientific misconduct construed so as to encompass misconduct in the physical sciences, natural sciences, health sciences, social sciences, humanities, professions, fine arts, applied arts, in artistic expression and in all other academic fields within the university. Terms and categories of misconduct will be deemed to have those meanings and interpretations as reflected by their common usage and understanding in an academic and research community. At the university of Akron, each department is the judge of these meanings and interpretations. Scholarly misconduct is intended to include within it but is not limited to the definitions of the american association of universities' broad categories of classification of scientific misconduct and the federal definitions as published by the national institutes of health of the U.S. public health service, U.S. department of health and human services, and

of the national science foundation, as amended. Scholarly misconduct includes:

- (a) Plagiarism.
  - (b) Falsification of discovery.
  - (c) Theft of another's discoveries, scholarly work, or creations.
  - (d) Violation of accepted scientific procedures in making discoveries.
  - (e) Falsification of data.
  - (f) Abuse of confidentiality.
  - (g) Practices that seriously deviate from those that are commonly accepted within the scientific or academic community or discipline for proposing, conducting, or reporting research (not including honest error or honest differences in interpretations or judgments of data) or in publication, except that this is not intended to cover research or proposals or publications that may be protected as an exercise in academic freedom.
  - (h) Material failure to comply with federal requirements, including protection of researchers, human subjects, and the public; and/or to ensure the welfare and ethical care and use of laboratory animals.
  - (i) Failure to meet other material legal requirements governing research or sponsored programs.
- (20) Senior research officer- the university administrator named by the university to represent the university at the Ohio board of regents as chief research officer.
- (21) Significant financial interest- a financial interest beyond the following:
- (a) An equity interest in an entity that does business with the university of Akron that, when aggregated for the employee and the employee's family members, meets one of the following tests: exceeds ten thousand dollars in value as determined through reference to public prices or other reasonable measures of fair market value, and represents more than a five per cent ownership interest in any single entity as defined in paragraph (h)(6) of this rule.
  - (b) Salary, royalties, or other payments that, when aggregated for the employee and the employee's family members, exceeds ten thousand dollars in an entity doing business with the university of Akron.

- (c) A significant financial interest does not include:
  - (i) Royalties or royalty-type income/remuneration from the university itself.
  - (ii) Income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities.
  - (iii) Income from service on advisory committees or review panels for public or nonprofit entities.
- (22) State- state of Ohio.
- (23) Technology transfer- conveyance from one party to another of knowledge, methods and/or materials used to apply science, especially to industrial or commercial objectives; and/or conveyance of intellectual property, whether through license or otherwise.
- (24) University- the university of Akron.
- (25) Whistleblower- a university employee or student who reports what may be illegal or wrongful activities of the university and/or its employees.
- (26) Central administration officer - either the senior research officer or the executive director for human resources.

Effective: July 5, 2000

Certification: \_\_\_\_\_

Ted A. Mallo

Secretary

Board of Trustees

Prom. Under: 111.15

Rule amp: Ch. 3359.03

Stat. Authority: R.C. 3359.