

**Report of HOP Committee regarding New (March 25) Version of Proposed HOP 10.02
Submitted May 2, 2011 on behalf of Committee by Mel Laracey, Chair**

Overview

HOP provision 2.28 currently governs allegations of scholarly misconduct, which is defined as “fabrication, falsification, plagiarism, or other practices that are commonly accepted within the academic community for proposing, conducting, or reporting research.” The provision, slightly over two pages in length, provides essentially that allegations of misconduct go first to a faculty member’s Chair and Dean, who conduct an inquiry and make a written report to the President. If the President finds there is substantial evidence to support the allegations, there must be an investigation “pursuant to the established due process procedures of the University and the Board of Regents.” Corrective action can include a “penalty imposed by the University” and notification to affected or sponsoring agencies.

Several months ago, the Administration, through Marianne Woods, Senior Associate Vice President for Research Administration, proposed a new provision, 10.02, that would govern scholarly misconduct allegations. That provision was 19 pages in length, and incorporated by reference several other lengthy and complex federal regulations, documents, and university guidelines. The Faculty Senate HOP Committee met with Dr. Woods last November and raised a number of questions and concerns regarding the provision. In response, Dr. Woods indicated the proposal would be withdrawn and a new one developed and circulated for comments. The new version was sent to the Faculty Senate chair on Friday, March 25; comments are now due by May 7.¹

Summary of Committee Recommendation.

The Faculty Senate HOP Committee cannot recommend approval of this revised proposal. While some modifications were made to the original proposal in response to the previous comments of the Committee, which were endorsed by the Faculty Senate, many were not and no explanation has been provided of why they were not. In addition, the new proposal is seriously deficient from a faculty perspective, especially in terms of fundamental due process. Finally, the HOP Committee has identified other important concerns with, and questions about, specific provisions and language in the new version that need to be addressed. With more time for review, and with input from other interested faculty, it is likely that still more concerns or questions would be identified.

The HOP Committee recognizes that a new HOP provision for dealing with allegations of scholarly misconduct may be warranted, particularly in light of the extensive federal grant requirements some of which relate to this issue. However, this is a sensitive, complex issue that calls for a long term, cooperative effort between faculty and administration in developing a mutually satisfactory structure for dealing with allegations of scholarly misconduct. The new Faculty Senate Research Advisory Committee would be the ideal vehicle for representing faculty interests in this effort. Taking the extra

¹ Although the transmittal originally indicated that just 28 days, until April 22, would be allowed for Senate comments on the new version, that deadline was subsequently extended to May 7, still less than the usual review period of 60 days.

time to have a truly cooperative effort would not seem to create any administrative problems because, as the Committee has been advised, there are several misconduct proceedings currently going on without difficulty under the current HOP provision and other relevant regulations.

Discussion

Previously identified concerns. Numerous concerns raised by the Committee in its review of the previous proposal have not been addressed in the new proposal. Since the new proposal is not accompanied by any overview or explanation, it is not possible to know whether those concerns were considered and, if so, why they were not addressed. In addition, while some concerns raised by the Committee were addressed, they were generally addressed incompletely, again without any explanation.

Some of the previously raised concerns include the following:

First, the new definition of “scholarly misconduct” is “the creation or use of scholarly works, including, but not limited to, journal articles, books, musical compositions, architectural renderings, and other copyrightable expression.” (see Scope, p. 2 of 20). Even though the reference in the previous provision to “teaching activities” was eliminated, in response to concerns raised by the Committee, this new definition is still broad enough to include scholarly misconduct in teaching. Thus, the concerns of the Committee on this point have not been addressed.

Second, the new provision retains language (page 3 of 20) that would allow charges of misconduct to be brought against someone for “allegedly tainted scholarly work or research” that might have been done years or even decades earlier. This is because charges are permitted beyond the normal six year cutoff if “the alleged wrongdoer has cited, republished, or otherwise used” the work or research record “for his or her potential benefit.” Thus, if someone continued to cite an older work or list it on their c.v. for annual review or other purposes, thus “benefitting” from it, they would potentially for their entire career be subject at any time to charges relating to the work.

Third, the Committee had raised questions about the requirement in the original proposal that *required* employees to report any instances of suspected misconduct, noting that the UT Austin policy states that employees are “encouraged to report” such instances. The new version in two places (pages 1 of 20 and 9 of 20) states that employees are “encouraged to report” misconduct, but in another (8 of 20) provides they “should report” allegation of misconduct and in another (9 of 20) provides that if an employee “receives such a report, he or she must promptly contact” the Senior Associate Vice President for Research Administration. Thus, some ambiguity remains on this point.

Fourth, the Committee had expressed concerns about the selection process for the separate Inquiry and Investigation Committees that would be established to handle misconduct charges. The Committee suggested there be a pool of potential Committee members, designated by the Faculty Senate. This suggestion was followed partially in the new version. It specifies that, for Inquiry Committees, a “majority” of the members of the Committee must be drawn from the Faculty Senate established pool. However, the new version makes no similar provision for the composition of the

Investigation Committees, leaving that solely in the control of the Senior Associate Vice President for Research Administration (the “Research Integrity Officer”).

Fifth, current 2.28 (II) (A) provides that allegations of scholarly misconduct should first be “brought to the attention of the appropriate Department Chair and Dean.” New proposed 10.02 makes no such provision and puts the entire investigatory process in the hands of the Vice President for Research. (The Provost would be involved only in determining appropriate disciplinary action after a finding of misconduct; see p. 5 of 20.) The Committee believes that chairs and deans should continue to be involved in the process.

Fifth, the Committee had suggested that provision be made for someone who is the subject of a misconduct proceeding to question whether members appointed to the Inquiry or Investigation Committees had the appropriate qualifications to serve in those capacities. This is something that the policy of UT Austin allows. There is no such provision in the new UTSA version.

Sixth, the Committee had noted that, unlike UT Austin’s policy, the UTSA policy made no mention of an accused party having the assistance of legal counsel in the proceedings. The new version provides that an accused may be accompanied by counsel in all proceedings, but that the legal counsel “may not represent or speak for Respondent” at any of the proceedings. The Committee believes that this restriction is improper and would deny an accused party crucial assistance. Indeed, given the stressful, complicated nature of such proceedings, the Committee believes that consideration should be given to the establishment of a Faculty Ombudsman position, as there is at UT Austin, to provide assistance to faculty in these and other situations.

Seventh, the Committee does not believe that “preponderance of the evidence” is the appropriate standard of proof in scholarly misconduct cases. Rather, a stronger standard, such as “clear and convincing (or compelling) evidence,” ought to be employed to assure that such serious professional verdicts are supported by clear, strong evidence.

Broad Due Process Concerns. In addition to the provisions discussed above regarding the standard of proof, selection of the investigation committee, and the assistance of legal counsel, the new proposed policy has other serious procedural inadequacies. The first is that no opportunity is provided for there to be an open hearing on the charges and evidence, at which the accused party would be able to see all the evidence, challenge it as appropriate, and present his or her case in final form to the deciding person or body. The second is that no mechanism is provided for an appeal of the decision, such as through the grievance process. The third is that, when misconduct is found, there should be a subsequent, separate phase, involving the accused party, in which appropriate disciplinary and remedial actions are determined.

Other Concerns. There should be a way to separate relatively minor instances of technical misconduct from truly major ones that carry potentially serious implications. Such minor instances could be dealt with in a less administratively complicated manner than is specified in this proposal.

The proposal excludes from Inquiry Committees anyone found to have committed scholarly misconduct. The Committee questions whether there should be such a blanket provision, or whether consideration ought to be given to a more nuanced approach to disqualification that takes into account the severity and context of the misconduct and leaves open the possibility, in appropriate circumstances, of still allowing someone to serve on a committee.

Finally, consideration should be given to simply adopting, or at least using as the main model, the UT Austin HOP provision on “Misconduct in Science and Other Scholarly Activities.” This provision is Policy Number 11.B.1 in the UT Austin Revised Handbook of Operating Procedures.