

# 1 University at Albany Policy and Procedures on Misconduct 2 in Research and Scholarship<sup>1</sup>

## 3I. Introduction

### 4 A. Policy

5 Maintenance of high ethical standards in research and scholarship is a central and  
6 critical responsibility of the University at Albany (“University”). In keeping with its  
7 commitment to integrity in the conduct of research and scholarship, and in compliance  
8 with its obligations under federal regulations, the University will promptly, thoroughly,  
9 competently, objectively, and fairly respond to good faith allegations of misconduct in  
10 research or scholarship consistent with and in the time limits prescribed by the  
11 procedures set forth herein; ensure that individuals responsible for administering this  
12 policy and these procedures or participating in the proceedings governed hereby are  
13 free from bias and have no real or apparent conflicts of interest with either the parties  
14 involved or the subject matter of any allegation; and protect the rights, reputation, and  
15 confidentiality of all involved individuals including the Respondent and good faith  
16 Complainant.

### 17 B. Scope

18 This policy and the associated procedures shall be applicable to all University faculty,  
19 researchers, staff, and students engaged in research and scholarship as those terms are  
20 defined herein. While Federal regulations require that institutions applying for or  
21 receiving federal research funding have an established administrative process for  
22 reviewing, investigating, and reporting allegations of research misconduct, the following  
23 procedures outline the University's process for responding to allegations of misconduct  
24 in all areas of research or scholarship regardless of the funding source or whether the  
25 research or scholarship was funded externally or internally. In the case of allegations of  
26 misconduct involving students, except as otherwise required by law, or because of the  
27 involvement of students in cases involving other persons subject to this policy, this policy  
28 shall not apply to academic course work which ordinarily will be addressed under the  
29 University’s policies regarding academic integrity.

## 30II. Definitions

---

1 This policy document implements the “*Recommendations and Policy Framework on Responding to Misconduct in*  
2 *Research and Scholarship*,” approved by the University Senate on March 17, 2003. A first draft version was completed by the Office  
3 of the Vice President for Research in May 2003. The Committee on Ethics in Research and Scholarship completed a substantially  
4 revised version in summer 2004. The final version incorporated additional input that was received from the Council on Research, the  
5 Vice President for Research, the Office of the University Counsel, and a number of faculty during fall 2004, and passed as Senate bill  
6 0405-02. It has been amended by Senate bills 00405-25, 0506-27. After further consultation, the policy was substantially revised by  
7 CERS during 2008-2009 and passed as Senate bill 09-10 xxx

- 31       **A. Allegation** means any written or oral statement or other evidence of possible  
32       misconduct in research or scholarship made to an institutional official.
- 33       **B. Complainant** means a person who makes a good faith allegation of misconduct in  
34       research or scholarship.
- 35       **C. Committee on Ethics in Research and Scholarship (CERS)** is the University Senate  
36       committee whose responsibilities include reviewing the implementation of the  
37       policy and procedures on institutional responses to allegations of misconduct in  
38       research and scholarship and recommending to the University Senate revisions  
39       to the policy and procedures, as needed.
- 40       **D. Conflict of Interest** means the real or apparent interference of one person's  
41       interests with the interests of another person, where potential bias may occur  
42       due to prior or existing personal, professional, or financial relationships.
- 43       **E. Deciding Official (DO)** means the institutional official who makes final  
44       determinations on allegations of research misconduct and any institutional  
45       administrative actions. The University President is the University's Deciding  
46       Official.
- 47       **F. Fabrication** means making up data or results and recording or reporting them.
- 48       **G. Falsification** means manipulating research materials, equipment, processes, or  
49       changing or omitting data or results so that the research is not accurately  
50       represented in the research record.
- 51       **H. Good Faith** as applied to a complainant or witness, means having a belief in the  
52       truth of one's allegation or testimony that a reasonable person in the  
53       complainant's or witness's position could have based on the information known  
54       to the complainant or witness at the time. An allegation or cooperation with a  
55       research misconduct proceeding is not in good faith if made with knowing or  
56       reckless disregard for information that would negate the allegation or testimony.  
57       Good faith as applied to a committee member means cooperating with the  
58       research misconduct proceeding by carrying out the duties assigned impartially  
59       for the purpose of helping an institution meet its responsibilities under this part.  
60       A committee member does not act in good faith if his/her acts or omissions on  
61       the committee are dishonest or influenced by personal, professional, or financial  
62       conflicts of interest with those involved in the research misconduct proceeding.
- 63       **I. Inquiry** means information gathering and initial fact-finding to determine  
64       whether an allegation or apparent instance of misconduct warrants an  
65       investigation.
- 66       **J. Inquiry Committee** means the committee that is charged with conducting an  
67       inquiry into an allegation of misconduct.

- 68       **K.     Institutional Counsel** means legal counsel who represents the University during  
69       misconduct proceedings.
- 70       **L.     Investigation** means the formal examination and evaluation of all relevant facts  
71       to determine if misconduct has occurred.
- 72       **M.     Investigation Committee** means the committee that is charged with conducting  
73       an investigation into an allegation of misconduct.
- 74       **N.     Knowing or knowingly** means that a person acts in such a manner that the  
75       individual is aware that his/her action or conduct is wrong, or is aware of the  
76       high likelihood that the action or conduct of another is wrong.
- 77       **O.     Misconduct** means fabrication, falsification, plagiarism, or other practices that  
78       seriously deviate from those that are commonly accepted within the academic  
79       community for proposing, conducting, reviewing, or reporting research or  
80       scholarship, including artistic expression, and includes misrepresentation of  
81       academic credentials or scholarship in proposing or securing awards, grants, or  
82       professional recognition. It does not include honest error or disagreements,  
83       honest differences in interpretations or judgments of data or disputes among  
84       collaborators about relative credit, or informal presentations, such as classroom  
85       lectures. For there to be a finding of misconduct it must be determined by a  
86       preponderance of the evidence that: (1) there was a significant departure from  
87       accepted practices of the relevant research or scholarly community and (2) the  
88       misconduct was intentional, knowing, or reckless.
- 89       **P.     Office of Research Integrity (ORI)** is the federal office located within the Office of  
90       Public Health and Science (OPHS) within the Office of the Secretary of Health and  
91       Human Services (OS) in the Department of Health and Human Services (DHHS)  
92       which oversees and directs Public Health Service (PHS) research integrity  
93       activities on behalf of the Secretary of Health and Human Services of the U.S.  
94       Department of Health and Human Services.
- 95       **Q.     Plagiarism** means the appropriation of another person's ideas, processes, results,  
96       or words without giving appropriate credit.
- 97       **R.     Preponderance of the evidence** means proof by evidence that, compared with  
98       that opposing it, leads to the conclusion that the fact at issue is more probably  
99       true than not.
- 100       **S.     Reckless** means evincing disregard of or indifference to accepted scholarly  
101       practices although no harm is intended.
- 102       **T.     Research** means a systematic investigation, including research development,  
103       testing, and evaluation, designed to develop or contribute to generalizable  
104       knowledge.

- 105 **U. Research Compliance Officer (RCO)** is the individual in the Office of Regulatory  
 106 Research Compliance (ORRC), or designee, designated by the RIO and charged  
 107 with the responsibility to provide administrative support for all research  
 108 misconduct proceedings and to assist the RIO to respond to allegations of  
 109 research misconduct. The RCO or designee shall be present at all inquiry and  
 110 investigative committee meetings, interviews, and other proceedings regarding  
 111 allegations of research misconduct.
- 112 **V. Research Integrity Officer (RIO)** is the institutional official who has  
 113 responsibilities related to the handling of allegations of research misconduct  
 114 involving biomedical or behavioral research or research training that is supported  
 115 by PHS. The University's Vice President for Research (VPR) is the University's  
 116 RIO.
- 117 **W. Research Record** means any data, document, computer file, computer storage  
 118 medium, or any other written or non-written account or object that reasonably  
 119 may be expected to provide evidence or information regarding the proposed,  
 120 conducted, or reported misconduct that constitutes the subject of an allegation  
 121 of misconduct. A research record includes, but is not limited to, grant or contract  
 122 applications, whether sponsored or not; grant or contract progress reports;  
 123 laboratory notebooks; notes; correspondence; electronic communication; videos;  
 124 photographs; X-ray or other film; slides; biological materials; computer files and  
 125 printouts; manuscripts and publications; equipment use logs; laboratory  
 126 procurement records; animal facility records; and human and animal subject  
 127 records and protocols.
- 128 **X. Respondent** means the person or persons against whom an allegation of  
 129 misconduct in research or scholarship is directed or who is the subject of a  
 130 misconduct proceeding.
- 131 **Y. Retaliation** means any adverse action taken against a complainant, witness, or  
 132 committee member by an institution or one of its members in response to:
- 133 (a) A good faith allegation of research misconduct; or  
 134 (b) Good faith cooperation with a research misconduct proceeding.
- 135 **Z. Scholarship** means original contributions or artistic works which constitute  
 136 advances or contributions to the individual's discipline or to practice in the field.

### 137III. Rights and Responsibilities

#### 138 A. Research Integrity Officer (RIO)

139 The University's RIO will have primary responsibility for implementation of the  
 140 procedures set forth in this policy, and shall ensure that all individuals responsible for

141 administering this policy and these procedures or participating in the proceedings  
142 governed hereby, including, but not limited to, the RIO and the CERS Chair, are free from  
143 bias and have no real or apparent conflicts of interest with either the parties involved or  
144 the subject matter of any allegation. The RIO will, in consultation with the CERS Chair,  
145 appoint the inquiry and investigation committees and shall take all reasonable steps to  
146 ensure an impartial and unbiased misconduct proceeding to the maximum extent  
147 practicable. Those conducting the inquiry or investigation shall be selected on the basis  
148 of expertise that is pertinent to the matter and, prior to selection, shall be thoroughly  
149 screened by the RIO for any real or apparent personal, professional, or financial conflicts  
150 of interest with the respondent, complainant, potential witnesses, or others involved in  
151 the matter. Any such conflict which a reasonable person would consider to demonstrate  
152 potential bias shall disqualify the individual from selection.

153 At the time of or before beginning an inquiry, an institution must make a good faith  
154 effort to notify in writing the presumed respondent, if any. If the inquiry subsequently  
155 identifies additional respondents, the institution must notify them.

156 To the extent allowed by law, the RIO shall maintain the identity of respondents and  
157 complainants and any information obtained during a misconduct proceeding that might  
158 identify the subjects of research securely and confidentially and shall not be disclosed,  
159 except to: (1) those who need to know in order to carry out a thorough, competent,  
160 objective, and fair misconduct proceeding; (2) the applicable federal agency as it  
161 conducts its review of the misconduct proceeding and any subsequent proceedings; or  
162 (3) as otherwise required by law.

163 The RIO, or designee, will assist the inquiry and investigation committees and all  
164 University personnel in complying with these procedures and with applicable standards  
165 imposed by government or external funding sources. The RIO is also responsible for  
166 securing and maintaining files of all documents and evidence and for the confidentiality  
167 and the security of the files.

168 The RIO will report to governmental or other external funding sources, including ORI, as  
169 required by law and keep them apprised of any developments during the course of the  
170 inquiry or investigation that may affect current or potential DHHS funding for the  
171 individual(s) under investigation or that PHS needs to know to ensure appropriate use of  
172 Federal funds and otherwise protect the public interest.

173 The RIO shall, upon receipt of an allegation of misconduct, and in consultation with the  
174 CERS Chair, make an initial assessment of whether the allegation warrants an inquiry.  
175 The RIO shall take all reasonable steps to ensure an impartial and unbiased misconduct

176 proceeding in accordance with these procedures to the maximum extent practicable.  
177 Upon receipt by the RIO of a timely written objection to any member of an inquiry or  
178 investigation committee or to the RIO or the CERS Chair on the basis of a real or  
179 apparent conflict of interest, the RIO shall promptly determine, in consultation with the  
180 CERS Chair, whether to replace the challenged member with a qualified substitute as  
181 provided below. The RIO is responsible for maintaining confidentiality of the misconduct  
182 proceedings. Therefore, the RIO shall not disclose any information regarding the  
183 allegations, the proceedings, or the identity of individuals involved in the proceedings  
184 except as may necessary to the proper discharge of her/his responsibilities hereunder, or  
185 as required by law.

186 **B. Respondent**

187 The Respondent shall be entitled to a prompt, thorough, competent, objective, and fair  
188 response to allegations of misconduct. The Respondent will be informed of the  
189 allegations and notified in writing of the final determinations of any inquiry or  
190 investigation of the allegations and the resulting institutional actions, if any. The  
191 Respondent will also have the opportunity to be interviewed by and present evidence to  
192 the inquiry and investigation committees, to review the inquiry and investigation  
193 reports, and to have the advice of an advisor, who may be legal counsel. The advisor for  
194 the Respondent, however, may not actively participate in the misconduct proceedings. If  
195 the Respondent is found not to have engaged in misconduct, the University will make a  
196 diligent effort to restore his or her reputation. The Respondent is expected to cooperate  
197 with the misconduct proceeding, and, except as may be necessary to respond fully to an  
198 allegation of misconduct or as appropriate to restoring his or her reputation after the  
199 conclusion of the proceedings, the Respondent is responsible for maintaining  
200 confidentiality of the misconduct proceedings including all documents and other  
201 evidence generated as part of the proceedings, and shall not disclose any information  
202 regarding the proceedings or the identity of individuals involved in the proceedings.

204 If the case becomes public, the University may take such steps as may be appropriate,  
205 consistent with applicable law, to defend its actions.

206 The Respondent may, within five (5) calendar days of receipt of notice of an allegation of  
207 misconduct or of the initiation of an inquiry or investigation, submit to the RIO a written  
208 objection that either the RIO, the CERS Chair, or any appointed member of an inquiry or  
209 investigation committee has a real or apparent conflict of interest and the basis thereof.  
210 The RIO shall, in consultation with the CERS Chair, promptly determine whether to  
211 replace the challenged committee member with a qualified substitute. Objections

212 regarding the RIO shall be referred to the President, or designee, who shall promptly  
213 determine whether to replace the RIO with a qualified substitute. Objections regarding  
214 the CERS Chair shall be referred to the Chair of the University Senate who shall promptly  
215 determine whether to replace the CERS Chair with a qualified substitute. A written  
216 record of any decision to replace the RIO, the CERS Chair, or any member of an inquiry or  
217 investigation committee, and the reasons therefore, shall be made part of the record of  
218 the proceeding.

219 **C. Complainant**

220 The Complainant will ordinarily have an opportunity to be interviewed by the inquiry  
221 and investigation committees, to review portions of the inquiry and investigation reports  
222 pertinent to his/her allegations, evidence and testimony and to be informed of the  
223 results of the inquiry and investigation and to be protected from retaliation. The  
224 Complainant is expected to make allegations in good faith and fully cooperate with the  
225 misconduct proceeding, and, except as may be necessary or appropriate to restoring his  
226 or her reputation after the conclusion of the proceedings, the Complainant is  
227 responsible for maintaining confidentiality of the misconduct proceedings including all  
228 documents and other evidence generated as part of the proceedings, and shall not  
229 disclose any information regarding the proceedings or the identity of individuals  
230 involved in the proceedings.

231 **D. Office of University Counsel**

232 The Office of the University Counsel shall serve as legal advisor to the University, the  
233 RIO, the RCO and the inquiry and investigation committees, as needed. Upon request of  
234 the RIO, a member of the Office of the University Counsel shall attend meetings,  
235 interviews, and other proceedings during the inquiry and/or investigation, but will not  
236 actively participate in such meetings, interviews or other proceedings.

237 **E. Deciding Official**

238 The Deciding Official will receive the inquiry and/or investigation report and any written  
239 comments made by the respondent or the complainant on the draft report. The Deciding Official  
240 will consult with the RIO or other appropriate officials and will determine whether to conduct an  
241 investigation, whether research misconduct occurred, whether to impose sanctions, or whether  
242 to take other appropriate administrative actions [see Section IV.F] consistent with this policy.

243

244

**245IV. Procedure****246 A. Confidentiality**

247 All individuals responsible for administering this policy and these procedures or  
248 participating in any misconduct proceeding shall, to the maximum extent practicable,  
249 maintain the confidentiality of information regarding a complainant, a respondent, and  
250 all participants in any misconduct proceeding. Therefore, disclosure of the identity of  
251 respondents and complainants in research misconduct proceedings is limited, to the  
252 extent possible, to those who need to know, consistent with a thorough, competent,  
253 objective and fair research misconduct proceeding, and as allowed by law. Furthermore,  
254 except as may otherwise be prescribed by applicable law, confidentiality must be  
255 maintained for any records or evidence from which research subjects might be  
256 identified. Disclosure in all circumstances shall be limited to those who have a need to  
257 know to carry out a research misconduct proceeding.

**258 B. Allegations of Misconduct**

- 259 1. All members of the University community are expected to report  
260 observed, suspected, or apparent misconduct. All allegations of research  
261 misconduct from sources inside or outside the University will be  
262 considered.
- 263 2. Allegations should be directed to the RIO, or designee, or the CERS Chair.  
264 However, any member of the University community who receives an  
265 allegation of misconduct shall promptly forward it to the RIO. 2While the  
266 University will fully consider oral or anonymous allegations, written  
267 allegations containing the following information, though not required, are  
268 ordinarily more useful:
  - 269 a. Name of Respondent(s);
  - 270 b. Name of Complainant(s);
  - 271 c. Names of witnesses, if known;
  - 272 d. Description of misconduct;
  - 273 e. When misconduct occurred;
  - 274 f. Where misconduct occurred;
  - 275 g. Supporting documentation, if any;

- 276 h. Grant number or title, if applicable; and
- 277 i. Funding source, if any.
- 278 3. Upon receipt of an allegation of misconduct, the RIO or the CERS Chair, as the  
279 case may be, will promptly and fully inform the other.
- 280 4. To the extent practicable, or as otherwise required by law, the identity of  
281 Complainants who wish to remain anonymous will be kept confidential.
- 282 **C. Preliminary Assessment of Allegations**
- 283 1. Upon receiving an allegation of research misconduct, the RIO, in consultation  
284 with the CERS Chair, will immediately assess the allegation to determine  
285 whether it:
- 286 a. falls within the definition of misconduct in research or scholarship; and
- 287 b. is sufficiently credible and specific so that potential evidence of research  
288 misconduct may be identified; and
- 289 c. falls within the applicable limitation period.
- 290 2. An inquiry is warranted if an allegation falls within the definition of misconduct  
291 as provided herein and is sufficiently credible and specific so that potential  
292 evidence of misconduct may be identified. If the RIO or the CERS Chair  
293 concludes that an allegation warrants an inquiry, then the RIO shall, within  
294 fourteen (14) calendar days of receipt of an allegation, initiate an inquiry, or as  
295 appropriate, an investigation.<sup>2</sup>
- 296
- 297 3. The RIO, or designee, shall, on or before the date on which the Respondent is  
298 notified or the inquiry begins, whichever is earlier, promptly take all reasonable  
299 and practical steps to obtain custody of all the research records and evidence  
300 needed to conduct the research misconduct proceeding, inventory the records  
301 and evidence, and sequester them in a secure manner, except that where the  
302 research records or evidence encompass scientific instruments shared by a  
303 number of users, custody may be limited to copies of the data or evidence on  
304 such instruments, so long as those copies are substantially equivalent to the  
305 evidentiary value of the instruments.

---

8 2 Sometimes, however, when there is sufficient evidence already at hand, for example as the result of an audit of a clinical  
9 trial, the University may move directly to the investigation stage. In such instance, the RIO shall prepare a written record of the  
10 decision to move directly to the investigation phase, which shall be made part of the proceeding record.

- 306 4. The RIO shall prepare a written record of the decision of whether to initiate an  
307 inquiry or investigation, as the case may be, which shall be made part of the  
308 record of the proceeding.
- 309 5. If no inquiry or investigation is initiated, the RIO shall notify the Respondent and  
310 Complainant that the allegation did not warrant an inquiry or an investigation,  
311 as the case may be, under these procedures.

312 **D. Inquiry**

- 313 1. The purpose of an inquiry is to determine whether an allegation warrants an  
314 investigation. An investigation is warranted if the allegation falls within the  
315 definition of misconduct in research and scholarship, and preliminary  
316 information-gathering indicates that the allegation may have substance. The  
317 inquiry phase may draw on testimony or written statements of the Complainant,  
318 Respondent, and key witnesses, if necessary, to determine whether there is  
319 sufficient evidence of possible misconduct to warrant an investigation. An  
320 inquiry does not require a full review of all the evidence related to the  
321 allegation. The purpose of the inquiry is not to reach a final conclusion about  
322 whether misconduct occurred or who was responsible. The inquiry shall be  
323 completed with sixty (60) calendar days of its initiation unless circumstances  
324 clearly warrant a longer period. If the inquiry takes longer than 60 days to  
325 complete, the inquiry record shall include documentation of the reasons for  
326 exceeding the 60-day period.
- 327 2. To initiate an inquiry, the RIO shall:
- 328 a. within five (5) calendar days of the determination to initiate an inquiry,  
329 provide a written notice to the Respondent which shall include a  
330 description of all allegations of research misconduct made against the  
331 Respondent, a list of the members of the inquiry committee, an  
332 explanation and documentation of the University's policies regarding  
333 allegations of misconduct, and which shall inform Respondent of  
334 his/her obligations of cooperation and confidentiality;
- 335 b. take all reasonable and practical steps necessary to obtain custody,  
336 inventory, and secure all original research records and evidence  
337 relevant to the allegation at the time or before the Respondent is  
338 notified of an allegation. University students, faculty and staff including  
339 but not limited to the Complainant and Respondent, shall promptly  
340 provide all available records and data, including primary research  
341 material identified as relevant to the allegation. Copies of such records  
342 and data will be returned to individuals who supply the same to the  
343 RIO except for materials not amenable to copying. All reasonable steps,

- 344 consistent with time constraints and other obligations imposed by  
345 federal regulations, shall be taken to eliminate or minimize any  
346 disruption that might be created for ongoing research efforts by such  
347 requirements to produce documentation;
- 348 c. appoint, within ten (10) calendar days after the determination to  
349 initiate an inquiry, and in consultation with the CERS Chair, an inquiry  
350 committee consisting of normally three (3), but not more than five (5)  
351 individuals who do not have real or apparent conflicts of interest in the  
352 proceeding. The members may be from within or outside the  
353 institution. The inquiry committee, which shall elect its own chair, shall  
354 include at least one (1) member of CERS, but shall not include the CERS  
355 Chair or the RIO;
- 356 d. provide a written notice to the Complainant that an inquiry has been  
357 initiated, which shall include a copy of the University's policies  
358 regarding allegations of misconduct and which shall inform the  
359 Complainant of her/his obligations of cooperation, good faith and  
360 confidentiality; and
- 361 e. prepare a charge for the inquiry committee that describes the  
362 allegations and any related issues identified during the allegation  
363 assessment and that states the purpose of the inquiry. 3
- 364 3. At the inquiry committee's first meeting, the committee will elect a chair and  
365 the RCO will review the inquiry committee's charge, discuss the allegations and  
366 any related issues, outline the purpose of the inquiry, i.e., to determine  
367 whether the allegation warrants an investigation, review the appropriate  
368 procedures for the conduct of the inquiry, answer any questions raised by the  
369 committee, and otherwise assist the committee in the planning and conduct of  
370 the inquiry.
- 371 4. In the conduct of the inquiry, the committee shall interview the Respondent,  
372 and, if necessary, the Complainant and other key witnesses and shall examine  
373 relevant records and other evidence. Interviews of all witnesses interviewed by  
374 the committee shall be transcribed or recorded. The committee shall evaluate  
375 the testimony and other evidence and shall determine whether there is  
376 sufficient evidence of possible misconduct to warrant an investigation.
- 377 5. The committee shall ordinarily complete its inquiry and submit a final report of  
378 its findings to the RIO within twenty one (21) calendar days of its appointment  
379 unless the RIO grants an extension for good cause. The RIO shall prepare a  
380 written record of the decision of whether to grant an extension which shall be

381 made part of the record of the proceeding. The RIO shall notify the CERS Chair,  
382 the Respondent, and the Complainant of the reasons for any delay.

383 The committee shall prepare and submit to the RIO, an inquiry report that  
384 includes: the name and title of the committee members and experts, if any, the  
385 allegations, the sponsor support, if any, a summary of the inquiry process used,  
386 a list of the evidence reviewed, summaries of any interviews, a description of  
387 the evidence in sufficient detail to demonstrate whether an investigation is  
388 warranted, and the committee's determination as to whether an investigation  
389 is recommended and whether any other actions should be taken if an  
390 investigation is not recommended.

391 6. The RIO shall, within five (5) calendar days of receipt of the report from the  
392 committee, provide the Respondent with a copy of the inquiry report, and,  
393 concurrently, a copy of, or supervised access to, the evidence on which the  
394 report is based, for comment and rebuttal, and will provide the Complainant  
395 with those portions of the draft report that address the Complainant's  
396 testimony and evidence. Within ten (10) calendar days of their receipt of the  
397 report or the portions thereof as the case may be, the Respondent and the  
398 Complainant may provide their comments to the committee. The comments  
399 shall be made part of the record of the proceeding, and the committee may  
400 revise its report based upon the comments as appropriate.

401 7. Within ten (10) calendar days of receipt of comments on the report by the  
402 Complainant and Respondent, the committee shall submit a final inquiry report  
403 along with a copy of the record of the proceeding to the RIO who, in turn, shall  
404 promptly submit the report and proceeding record to the University President.

405 8. The University President will, within ten (10) calendar days of receipt of the  
406 final inquiry report and proceeding record, make a final determination, in  
407 writing, of whether the findings of the committee provide sufficient evidence of  
408 possible misconduct to justify conducting an investigation. The President may  
409 also return the report to the inquiry committee with a request for further  
410 information or analysis. In such event, the President's reasons therefore shall  
411 be set forth in writing and included in the proceeding record. The time for the  
412 President's determination hereunder may be extended by the President for  
413 good cause and the reason therefor recorded in the record of the proceeding.

414 9. The inquiry is completed when the President makes the determination of  
415 whether the findings of the committee provide sufficient evidence of possible  
416 misconduct to justify conducting an investigation. The RIO shall thereafter  
417 notify the Respondent and the Complainant in writing of the President's  
418 determination, and shall notify the CERS Chair.

419 **E. Investigation**

420 1. The purpose of the investigation is to explore the allegations of misconduct in  
421 detail, to examine the evidence in depth, and to determine specifically whether  
422 the respondent has committed misconduct. The investigation may also  
423 determine whether there are additional instances of possible misconduct that  
424 would justify broadening the scope beyond the initial allegations. The  
425 investigation, including conducting the investigation, preparing the report of  
426 findings, providing the draft report for comment and sending the final report to  
427 the President, and appropriate governmental agencies, including ORI if the  
428 matter involves federal research support, shall be completed with one hundred  
429 twenty (120) calendar days of its initiation unless circumstances clearly warrant  
430 a longer period. If the investigation takes longer than 120 days to complete, the  
431 investigation record shall include documentation of the reasons for exceeding  
432 the 120 day period. The CERS Chair, the Complainant, and the Respondent will  
433 be notified of the reasons for the delay.

434 2. To initiate an investigation, the RIO shall:

435 a. within five (5) calendar days of the determination to initiate an  
436 investigation, provide a written notice to the Respondent which shall  
437 include a description of all allegations of research misconduct made  
438 against the Respondent, a copy of the inquiry report and proceeding  
439 record, the President's determination, a list of the members of the  
440 investigation committee, an explanation and documentation of the  
441 University's policies regarding allegations of misconduct, and a  
442 description of the Respondent's obligations of cooperation and  
443 confidentiality;

444 b. take all reasonable and practical steps necessary to obtain custody,  
445 inventory, and secure any additional original research records and  
446 evidence relevant to the allegation at the time or before the Respondent  
447 is notified that an investigation has been initiated. The need for  
448 additional sequestration of records may occur for any number of  
449 reasons, including the institution's decision to investigate additional  
450 allegations not considered during the inquiry stage or the identification  
451 of records during the inquiry process that had not been previously  
452 secured. University students, faculty and staff including, but not limited  
453 to, the Complainant and Respondent, shall promptly provide all  
454 available records and data, including primary research material  
455 identified as relevant to the allegation. Copies of such records and data  
456 will be returned to individuals who supply the same to the RIO except  
457 for materials not amenable to copying. All reasonable steps, consistent

- 458 with time constraints and other obligations imposed by federal  
459 regulations, shall be taken to eliminate or minimize any disruption that  
460 might be created for ongoing research efforts by such requirements to  
461 produce documentation;
- 462 c. appoint within ten (10) calendar days after the determination to initiate  
463 an investigation, and in consultation with the CERS Chair, an  
464 investigation committee, which may include one or more members of  
465 the inquiry committee, normally consisting of no fewer than three (3),  
466 but not more than five (5) individuals, no more than two (2) of whom  
467 may be members of the inquiry committee, who do not have real or  
468 apparent conflicts of interest in the proceeding and have the necessary  
469 expertise to evaluate the evidence and issues related to the allegation,  
470 interview the principals and key witnesses and conduct the  
471 investigation. The members may be individuals from within or outside  
472 the institution. The investigation committee, which shall elect its own  
473 chair, shall include at least one (1) member of CERS, but shall not include  
474 the CERS Chair or the RIO. 4The Respondent may submit a written  
475 objection to any appointed member of the Investigation Committee  
476 based on perceived bias or conflict of interest within ten (10) calendar  
477 days of notice of the initiation of an investigation. Upon receipt of such  
478 an objection the RIO will promptly determine, in consultation with the  
479 CERS Chair, whether to replace any challenged member(s), and if so  
480 determined, will appoint a qualified substitute;
- 481 d. provide a written notice to the Complainant that an investigation has  
482 been initiated which shall include a description of the Complainant's  
483 obligations of cooperation, good faith and confidentiality; and
- 484 e. prepare a charge for the investigation committee that describes the  
485 allegations and any related issues identified during the inquiry and that  
486 states the purpose of the investigation.
- 487 3. At the investigation committee's first meeting, the committee will elect a chair  
488 and the RCO will review the charge with the committee, discuss the allegations  
489 and any related issues, review the appropriate procedures for the conduct of the  
490 investigation, answer any questions raised by the committee and otherwise  
491 assist the committee in the planning and conduct of the investigation.
- 492 4. In the conduct of the investigation, the committee ordinarily will interview the  
493 Complainant, the Respondent and other key witnesses and examine relevant  
494 records and other evidence. Interviews of all witnesses interviewed by the  
495 committee shall be transcribed or recorded. The committee shall evaluate the

- 496 testimony and other evidence and shall determine whether, based upon a  
497 preponderance of the evidence, misconduct has occurred.
- 498 5. The committee shall prepare and submit to the RIO an investigation report that  
499 shall include: a description of the policies and procedures under which the  
500 investigation was conducted; a description of how and from whom information  
501 relevant to the investigation was obtained; a statement of the findings of the  
502 investigation, including whether or not misconduct has been found for each  
503 allegation; an explanation of the basis for the finding, recommendations of the  
504 committee for correcting the public record; and any recommendations for an  
505 institutional response. The report also shall include the actual text or an  
506 accurate summary of the testimony of any individual(s) found to have engaged  
507 in misconduct.
- 508 7. The RIO shall, within five (5) calendar days of receipt of the report from the  
509 committee, provide the Respondent with a copy of the report for comment and  
510 rebuttal, and will provide the Complainant with the Complainant's allegation  
511 and testimony as contained in the report. Within ten (10) calendar days of their  
512 receipt of the report or the portions thereof as the case may be, the Respondent  
513 and the Complainant will provide their comments to the committee. The  
514 comments shall be made part of the record of the proceeding, and the  
515 committee may revise its report based upon the comments as appropriate.
- 516 8. Within ten (10) calendar days of receipt of comments on the report by the  
517 Complainant and Respondent, the committee shall submit a final report along  
518 with a copy of the proceeding record to the RIO who, in turn, shall promptly  
519 submit the report and proceeding record to the University President, and the  
520 CERS Chair along with a written recommendation.
- 521 9. The University President will, within ten (10) calendar days of receipt of the final  
522 investigation report and proceeding record, make a final determination, in  
523 writing, whether to accept the investigation report, its findings, and the  
524 recommended institutional action. The President may also return the report to  
525 the investigation committee with a request for further fact-finding or analysis.  
526 The time for such determination may be extended by the President for good  
527 cause, and the reason therefor shall be recorded in writing in the proceeding  
528 record.
- 529 10. If the President does not accept the investigation report, its findings or the  
530 recommended institutional action, the President may consult with the  
531 investigation committee before finalizing the determination. The investigation is  
532 completed when the President makes a determination of whether to accept the  
533 investigation report, its findings and the recommended institutional action. The

534 RIO shall thereafter notify the Respondent and the Complainant in writing of the  
535 President's determination, and shall notify such other institutional officials of  
536 the determination as may be appropriate.

537 11. When the investigation report has been accepted, the RIO shall forward, as  
538 appropriate, copies to the responsible federal agencies.

539 12. The RIO will undertake appropriate efforts to restore the reputation of the  
540 Respondent if an allegation of misconduct is unsubstantiated, and to protect the  
541 Complainant, as set forth below.

542

543 **F. Institutional Administrative Actions**

544 1. The University will take appropriate administrative actions against a respondent  
545 when an allegation of misconduct against them has been substantiated. If the  
546 President determines that the alleged misconduct is substantiated by the  
547 findings, he or she will decide on the appropriate actions to be taken. Such  
548 administrative actions may include, but shall not be limited to:

549 a. appropriate steps to correct the research record;

550 b. public disclosure;

551 c. counseling and/or disciplinary action in accordance with the provisions  
552 of the applicable collective bargaining agreement;

553 d. withdrawal or correction of all pending or published abstracts and  
554 papers emanating from the research where research misconduct was  
555 found;

556 e. removal of the responsible person from the particular project;

557 f. special monitoring of future work; and

558 g. restitution of funds as appropriate.

559 2. The University will take appropriate administrative actions against any  
560 person found to have violated the confidentiality provisions of this policy.  
561 Such administrative actions may include, but shall not be limited to,  
562 counseling and/or disciplinary action in accordance with the provisions of  
563 the applicable collective bargaining agreement.

564V. **Reporting to ORI and Research Sponsors**

- 565 A. A decision to initiate an investigation involving allegations of misconduct involving  
566 federally-funded research and proposals submitted to federal agencies for research  
567 funding, must be reported in writing to ORI or the applicable sponsor, on or before the  
568 date the investigation begins and to the Research Foundation of the State University of  
569 New York. At a minimum, the notification should include the name of the person(s)  
570 against whom the allegations have been made, the general nature of the allegation as it  
571 relates to the federal sponsor's definition of research misconduct, and the sponsor  
572 applications or grant number(s) involved. The RIO must also be notified of the final  
573 outcome of the investigation and must be provided with a copy of the investigation  
574 report. Any significant variations from the provisions of the institutional policies and  
575 procedures should be explained in any reports submitted to the sponsor.
- 576 B. If the University intends to terminate an inquiry or investigation of misconduct involving  
577 federally-funded research and proposals submitted to federal agencies for research  
578 funding for any reason without completing all relevant requirements of the sponsor's  
579 regulation, the RIO will submit a report of the planned termination to the sponsor,  
580 including a description of the reasons for the proposed termination.
- 581 C. If the University determines that it will not be able to complete the investigation of  
582 misconduct involving federally-funded research and proposals submitted to federal  
583 agencies for research funding in 120 calendar days, the RIO will submit to ORI, or the  
584 applicable federal sponsor, a written request for an extension that explains the delay,  
585 reports on the progress to date, estimates the date of completion of the report, and  
586 describes other necessary steps to be taken. If the request is granted, the RIO will file  
587 periodic progress reports as requested by the ORI or the applicable sponsor.
- 588 D. When Federal funding or applications for funding are involved and an admission of  
589 research misconduct is made, the RIO will contact ORI or the applicable sponsor as  
590 appropriate for consultation and advice. Normally, the individual making the admission  
591 will be asked to sign a statement attesting to the occurrence and extent of misconduct.  
592 When the case involves external funds, the institution cannot accept an admission of  
593 research misconduct as a basis for closing a case or not undertaking an investigation  
594 without prior approval from ORI or the applicable sponsor as appropriate. Admissions  
595 must be fully documented in the proceeding record using the terms of the research  
596 misconduct definition (falsification, fabrication, or plagiarism) and acknowledging that  
597 the action constituted research misconduct.
- 598 E. The RIO will, as appropriate, notify ORI or the applicable sponsor as appropriate at any  
599 stage of the inquiry or investigation if:
- 600 1. There is an immediate health hazard involved;
- 601 2. There is an immediate need to protect Federal funds or equipment;

- 602 3. There is an immediate need to protect the interests of the person(s) making the  
 603 allegations or of the individual(s) who is the subject of the allegations as well as  
 604 his/her co-investigators and associates, if any;
- 605 4. It is probable that the alleged incident is going to be reported publicly;
- 606 5. The allegation involves a public health sensitive issue, e.g. a clinical trial; or
- 607 6. There is a reasonable indication of possible criminal violation. In this instance,  
 608 the institution must inform the sponsor within 24-hours of obtaining that  
 609 information.

**610VI. Other Notifications**

611The President shall make the final determination as to which concerned parties should be notified of the  
 612President's final determination. In addition to the Respondent and Complainant, typically this would  
 613include the Investigation Committee members, Inquiry Committee members, the CERS Chair, the  
 614Provost, and other appropriate institutional officials and other parties with a legitimate need to know  
 615the outcome of the proceedings. In addition, appropriate members of the research and scholarly  
 616community may be informed, so as to correct the public record. The University will also notify relevant  
 617federal or other external granting agencies and partnering institutions, where applicable and in  
 618accordance with regulatory requirements. The RIO shall be responsible for ensuring compliance with all  
 619applicable notice requirements of governmental agencies and external funding sources.

**620VII. Annual Report to CERS**

621The RIO shall provide an annual report to CERS with information on misconduct proceedings. The report  
 622will contain no specific information on individuals, but will contain sufficient information to enable CERS  
 623to fulfill its responsibilities for reviewing the implementation of the policy and procedures on  
 624institutional responses to allegations of misconduct in research and scholarship and recommending to  
 625the University Senate revisions to the policy and procedures, as needed. The report shall also contain a  
 626summary of training of CERS members and of University researchers. Prior year reports shall be provided  
 627to the new CERS committee. The outgoing CERS chair and RIO shall provide to the new CERS Chair all  
 628information available to the outgoing chair about all ongoing cases and their disposition.

**629VIII. Other Considerations**

**630 A. Termination of Institutional Employment or Resignation Prior to Completing Inquiry or**  
 631 **Investigation**

- 632 1. The termination of the respondent's institutional employment, by resignation or  
 633 otherwise, before or after an allegation of possible misconduct has been  
 634 reported, will not preclude or terminate the misconduct procedures.

635 2. If the Respondent, without admitting to the misconduct, elects to resign his or  
636 her position prior to the initiation of an inquiry, but after an allegation has been  
637 reported, or during an inquiry or investigation, the inquiry or investigation will  
638 proceed.

639 3. If the Respondent refuses to participate in the process after resignation, the  
640 committee will use its best efforts to reach a conclusion concerning the  
641 allegations, noting in its report the respondent's failure to cooperate and its  
642 effect on the committee's review of all the evidence.

#### 643 **B. Destruction or Absence of Records**

644 The destruction, absence of, or a respondent's failure to provide records adequately  
645 documenting the questioned research is evidence of research misconduct where it is  
646 determined by a preponderance of the evidence that the respondent intentionally, knowingly, or  
647 recklessly had research records and destroyed them, had the opportunity to maintain the  
648 records but failed to do so, or maintained the records, but failed to produce them in a timely  
649 manner, and that respondent's conduct constitutes a significant departure from accepted  
650 practices of the relevant research community.

#### 651 **C. Restoration of the Respondent's Reputation**

652 In proceedings where it is determined that no misconduct occurred, the University will, if  
653 requested, and as appropriate, take all reasonable and practical efforts to protect or restore the  
654 Respondent's reputation.

#### 655 **D. Protection of the Complainant and Others**

656 1. Regardless of whether the institution, ORI or applicable sponsor, as the case  
657 may be, determines that scientific misconduct occurred, the RIO will undertake  
658 reasonable efforts to protect complainants who made allegations of misconduct  
659 in good faith and others who cooperate in good faith with inquiries and  
660 investigations of such allegations.

661 2. Upon completion of a misconduct proceeding, the University will, if requested  
662 and as appropriate, take all reasonable and practical efforts to protect or restore  
663 the position and reputation of any complainant, witness, or committee member  
664 and to counter potential or actual retaliation against those complainants,  
665 witnesses and committee members.

#### 666 **E. Allegations Not Made in Good Faith**

667 If relevant, the President will determine whether the Complainant's allegations of misconduct  
668 were made in good faith. If an allegation was not made in good faith, the President will  
669 determine whether any administrative action should be taken against the Complainant. Such

670 administrative actions may include, but shall not be limited to, counseling and/or disciplinary  
671 action in accordance with the provisions of the applicable collective bargaining agreement.

672 **F. Interim Administrative Actions**

673 Institutional officials will take interim administrative actions, as appropriate, to protect Federal  
674 and other funds, to protect the public health, to safeguard the integrity of the sponsored  
675 research process and to ensure that the purposes of the Federal or other financial assistance are  
676 carried out. The RIO shall, at any time during a misconduct proceeding, immediately notify, as  
677 applicable, ORI and/or the applicable sponsor, if he/she has reason to believe that any of the  
678 following conditions exist:

- 679 1. health or safety of the public is at risk, including an immediate need to protect  
680 human or animal subjects;
- 681 2. sponsor resources or interests are threatened;
- 682
- 683 3. the research activities should be suspended; or
- 684
- 685 4. there is a reasonable indication of possible violations of civil or criminal law.  
686

687 **G. Limitations Period**

688 Ordinarily, allegations of misconduct in research or scholarship occurring more than six (6) years  
689 prior to the University's receipt of an allegation of misconduct will not be pursued unless:

- 690 1. it is determined that a prompt, thorough, competent, objective, and fair investigation of an  
691 allegation occurring more than six (6) years prior to the University's receipt of an allegation  
692 of misconduct may be undertaken based upon data and/or research records that have been  
693 published or are otherwise in the public domain;
- 694
- 695 2. the University, in consultation with the funding agency, if any, determines that the alleged  
696 misconduct, if it occurred, could possibly have a substantial adverse effect on the health or  
697 safety of the public; or
- 698
- 699 3. the Respondent continues or renews any incident of alleged misconduct that occurred  
700 before the six-year limitation through the citation, republication, or other use for the  
701 potential benefit of the Respondent of the research or scholarly record that is alleged to  
702 have constituted misconduct.  
703

704IX. **Record Retention**

705 The RIO will prepare and maintain in a secure manner all records of research misconduct  
706 proceedings as that term is defined in applicable federal regulations for seven (7) years after  
707 completion of the proceedings or the completion of any PHS proceeding involving the research  
708 misconduct allegation.