

1 **1University at Albany Policy and Procedures on Misconduct**
2 **in Research and Scholarship¹**

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
28 policy shall not apply to academic course work which ordinarily will be addressed under
29 the University's policies regarding academic integrity.

30II. **Definitions**

1 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
34 in research or scholarship.
- 35 **C. Committee on Ethics in Research and Scholarship (CERS)** is the University
36 Senate committee whose responsibilities include reviewing the implementation
37 of the policy and procedures on institutional responses to allegations of
38 misconduct in research and scholarship and recommending to the University
39 Senate revisions 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 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. A committee
60 member does not act in good faith if his/her acts or omissions on the committee
61 are dishonest or influenced by personal, professional, or financial conflicts of
62 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. Misconduct** means fabrication, falsification, plagiarism, or other practices that
75 seriously deviate from those that are commonly accepted within the academic
76 community for proposing, conducting, reviewing, or reporting research or
77 scholarship, including artistic expression, and includes misrepresentation of
78 academic credentials or scholarship in proposing or securing awards, grants, or
79 professional recognition. It does not include honest error or disagreements,
80 honest differences in interpretations or judgments of data or disputes among
81 collaborators about relative credit, or informal presentations, such as classroom
82 lectures. For there to be a finding of misconduct it must be determined by a
83 preponderance of the evidence that: (1) there was a significant departure from
84 accepted practices of the relevant research or scholarly community and (2) the
85 misconduct was intentional, knowing or reckless. Reckless means evincing
86 disregard of or indifference to accepted scholarly practices although no harm is
87 intended.
- 88 **O. Office of Research Integrity (ORI)** is the federal office located within the Office of
89 Public Health and Science (OPHS) within the Office of the Secretary of Health and
90 Human Services (OS) in the Department of Health and Human Services (DHHS)
91 which oversees and directs Public Health Service (PHS) research integrity
92 activities on behalf of the Secretary of Health and Human Services of the U.S.
93 Department of Health and Human Services.
- 94 **P. Plagiarism** means the appropriation of another person's ideas, processes, results
95 or words without giving appropriate credit.
- 96 **Q. Preponderance of the evidence** means proof by evidence that, compared with
97 that opposing it, leads to the conclusion that the fact at issue is more probably
98 true than not.
- 99 **R. Research** means a systematic investigation, including research development,
100 testing and evaluation, designed to develop or contribute to generalizable
101 knowledge.
- 102 **S. Research Compliance Officer (RCO)** is the individual in the Office of Regulatory
103 Research Compliance (ORRC), or designee, designated by the RIO and charged
104 with the responsibility to provide administrative support for all research
105 misconduct proceedings and to assist the RIO to respond to allegations of

106 research misconduct. The RCO or designee shall be present at all inquiry and
 107 investigative committee meetings, interviews, and other proceedings regarding
 108 allegations of research misconduct.

109 **T. Research Integrity Officer (RIO)** is the institutional official who has
 110 responsibilities related to the handling of allegations of research misconduct
 111 involving biomedical or behavioral research or research training that is
 112 supported by PHS. The University's Vice President for Research (VPR) is the
 113 University's RIO.

114 **U. Research Record** means any data, document, computer file, computer storage
 115 medium, or any other written or non-written account or object that reasonably
 116 may be expected to provide evidence or information regarding the proposed,
 117 conducted or reported misconduct that constitutes the subject of an allegation
 118 of misconduct. A research record includes, but is not limited to, grant or
 119 contract applications, whether sponsored or not; grant or contract progress
 120 reports; laboratory notebooks; notes; correspondence; electronic
 121 communication; videos; photographs; X-ray or other film; slides; biological
 122 materials; computer files and printouts; manuscripts and publications;
 123 equipment use logs; laboratory procurement records; animal facility records;
 124 and human and animal subject records and protocols.

125 **V. Respondent** means the person against whom an allegation of misconduct in
 126 research or scholarship is directed or who is the subject of a misconduct
 127 proceeding.

128 **W. Retaliation** means any adverse action taken against a complainant, witness, or
 129 committee member by an institution or one of its members in response to:

- 130 (a) A good faith allegation of research misconduct; or
- 131 (b) Good faith cooperation with a research misconduct proceeding.

132 **X. Scholarship** means original contributions or artistic works which constitute
 133 advances or contributions to the individual's discipline or to practice in the field.

134III. **Rights and Responsibilities**

135 **A. Research Integrity Officer (RIO)**

136 The University's RIO will have primary responsibility for implementation of the
 137 procedures set forth in this policy, and shall ensure that all individuals responsible for
 138 administering this policy and these procedures or participating in the proceedings
 139 governed hereby, including, but not limited to, the RIO and the CERS Chair, are free
 140 from bias and have no real or apparent conflicts of interest with either the parties
 141 involved or the subject matter of any allegation. The RIO will, in consultation with the

142 CERS Chair, appoint the inquiry and investigation committees and shall take all
143 reasonable steps to ensure an impartial and unbiased misconduct proceeding to the
144 maximum extent practicable. Those conducting the inquiry or investigation shall be
145 selected on the basis of expertise that is pertinent to the matter and, prior to selection,
146 shall be thoroughly screened by the RIO for any real or apparent personal, professional,
147 or financial conflicts of interest with the respondent, complainant, potential witnesses,
148 or others involved in the matter. Any such conflict which a reasonable person would
149 consider to demonstrate potential bias shall disqualify the individual from selection.

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

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

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

165 The RIO will report to ORI as required by law and keep ORI apprised of any
166 developments during the course of the inquiry or investigation that may affect current
167 or potential DHHS funding for the individual(s) under investigation or that PHS needs to
168 know to ensure appropriate use of Federal funds and otherwise protect the public
169 interest.

170 The RIO will, upon receipt of an allegation of misconduct, and in consultation with the
171 CERS Chair, make an initial assessment of whether the allegation warrants an inquiry. If
172 either the RIO or the CERS Chair concludes that an inquiry is warranted, the RIO shall
173 initiate an inquiry as provided herein. The RIO shall take all reasonable steps to ensure
174 an impartial and unbiased misconduct proceeding in accordance with these procedures
175 to the maximum extent practicable. Upon receipt by the RIO of a timely written
176 objection to any member of an inquiry or investigation committee or to the RIO or the

177 CERS Chair on the basis of a real or apparent conflict of interest, the RIO shall promptly
178 determine, in consultation with the CERS Chair, whether to replace the challenged
179 member with a qualified substitute as provided below. The RIO is responsible for
180 maintaining confidentiality of the misconduct proceedings. Therefore, the RIO shall not
181 disclose any information regarding the allegations, the proceedings, or the identity of
182 individuals involved in the proceedings except as may necessary to the proper discharge
183 of her/his responsibilities hereunder, or as required by law.

184 **B. Respondent**

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

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

202 The Respondent may, within five (5) calendar days of receipt of notice of an allegation of
203 misconduct or of the initiation of an inquiry or investigation, submit to the RIO or the
204 CERS Chair a written objection that either the RIO, the CERS Chair, or any appointed
205 member of an inquiry or investigation committee has a real or apparent conflict of
206 interest and the basis thereof. The RIO shall, in consultation with the CERS Chair,
207 promptly determine whether to replace the challenged committee member with a
208 qualified substitute. Objections regarding the RIO shall be referred to the President, or
209 designee, who shall promptly determine whether to replace the RIO with a qualified
210 substitute. Objections regarding the CERS Chair shall be referred to the Chair of the
211 University Senate who shall promptly determine whether to replace the CERS Chair with
212 a qualified substitute. A written record of any decision to replace the RIO, the CERS

213 Chair, or any member of an inquiry or investigation committee, and the reasons
214 therefore, shall be made part of the record of the proceeding.

215 **C. Complainant**

216 The Complainant will ordinarily have an opportunity to be interviewed by the inquiry
217 and investigation committees, to review portions of the inquiry and investigation
218 reports pertinent to his/her allegations, evidence, and testimony and to be informed of
219 the results of the inquiry and investigation and to be protected from retaliation.

220 The Complainant is expected to make allegations in good faith and fully cooperate with
221 the misconduct proceeding. The Complainant is responsible for maintaining
222 confidentiality of the misconduct proceedings. Therefore, the Complainant shall not
223 disclose any information regarding the proceedings, or the identity of individuals
224 involved in the proceedings.

225 **D. Office of University Counsel**

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

231 **IV. Procedure**

232 **A. Confidentiality**

233 All individuals responsible for administering this policy and these procedures or
234 participating in any misconduct proceeding shall, to the maximum extent practicable
235 maintain the confidentiality of information regarding a complainant, a respondent and
236 all participants in any misconduct proceeding. Therefore, disclosure of the identity of
237 respondents and complainants in research misconduct proceedings is limited, to the
238 extent possible, to those who need to know, consistent with a thorough, competent,
239 objective and fair research misconduct proceeding, and as allowed by law. Furthermore,
240 except as may otherwise be prescribed by applicable law, confidentiality must be
241 maintained for any records or evidence from which research subjects might be
242 identified. Disclosure in all circumstances shall be limited to those who have a need to
243 know to carry out a research misconduct proceeding.

244 **B. Allegations of Misconduct**

- 245 1. All members of the University community are expected to report
246 observed, suspected, or apparent misconduct. All allegations of research
247 misconduct from sources inside or outside the University will be
248 considered.
- 249 2. Allegations should be directed to the RIO, or designee, or the CERS Chair.
250 However, any member of the University community who receives an
251 allegation of misconduct shall promptly forward it to the RIO. 1While the
252 University will fully consider oral or anonymous allegations, written
253 allegations containing the following information, though not required,
254 are ordinarily more useful:
- 255 a. Name of Respondent(s);
 - 256 b. Name of Complainant(s);
 - 257 c. Names of witnesses, if known;
 - 258 d. Description of misconduct;
 - 259 e. When misconduct occurred;
 - 260 f. Where misconduct occurred;
 - 261 g. Supporting documentation, if any;
 - 262 h. Grant number or title, if applicable; and
 - 263 i. Funding source, if any.
- 264 3. Upon receipt of an allegation of misconduct, the RIO or the CERS Chair, as the
265 case may be, will promptly and fully inform the other.
- 266 4. To the extent practicable, or as otherwise required by law, the identity of
267 Complainants who wish to remain anonymous will be kept confidential.

268 C. **Preliminary Assessment of Allegations**

- 269 1. Upon receiving an allegation of research misconduct, the RIO, in consultation
270 with the CERS Chair, will immediately assess the allegation to determine
271 whether it:
- 272 a. falls within the definition of misconduct in research or scholarship; and
 - 273 b. is sufficiently credible and specific so that potential evidence of research
274 misconduct may be identified; and

- 275 c. falls within the applicable limitation period.
- 276 2. An inquiry is warranted if an allegation falls within the definition of misconduct
 277 as provided herein and is sufficiently credible and specific so that potential
 278 evidence of misconduct may be identified. If the RIO, in consultation with the
 279 CERS Chair, determines that an allegation warrants an inquiry, then the RIO
 280 shall, within fourteen (14) calendar days of receipt of an allegation, initiate an
 281 inquiry, or as appropriate, an investigation.² If either the RIO or the CERS
 282 Chair concludes that an inquiry is warranted, the RIO shall initiate an
 283 inquiry as provided herein.
- 284 3. The RIO, or designee, shall, on or before the date on which the Respondent is
 285 notified or the inquiry begins, whichever is earlier, promptly take all reasonable
 286 and practical steps to obtain custody of all the research records and evidence
 287 needed to conduct the research misconduct proceeding, inventory the records
 288 and evidence, and sequester them in a secure manner, except that where the
 289 research records or evidence encompass scientific instruments shared by a
 290 number of users, custody may be limited to copies of the data or evidence on
 291 such instruments, so long as those copies are substantially equivalent to the
 292 evidentiary value of the instruments.
- 293 4. The RIO shall prepare a written record of the decision of whether to initiate an
 294 inquiry or investigation, as the case may be, which shall be made part of the
 295 record of the proceeding.
- 296 5. If no inquiry or investigation is initiated, the RIO shall notify the Respondent and
 297 Complainant that the allegation did not warrant an inquiry or an investigation,
 298 as the case may be, under these procedures.

299 **D. Inquiry**

- 300 1. The purpose of an inquiry is to determine whether an allegation warrants an
 301 investigation. An investigation is warranted if the allegation falls within the
 302 definition of misconduct in research and scholarship, and preliminary
 303 information-gathering indicates that the allegation may have substance. The
 304 inquiry phase may draw on testimony or written statements of the Complainant,
 305 Respondent, and key witnesses, if necessary, to determine whether there is
 306 sufficient evidence of possible misconduct to warrant an investigation. An
 307 inquiry does not require a full review of all the evidence related to the
 308 allegation. The purpose of the inquiry is not to reach a final conclusion about
 309 whether misconduct occurred or who was responsible. The inquiry shall be

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.

310 completed with sixty (60) calendar days of its initiation unless circumstances
311 clearly warrant a longer period. If the inquiry takes longer than 60 days to
312 complete, the inquiry record shall include documentation of the reasons for
313 exceeding the 60-day period.

314 2. To initiate an inquiry, the RIO shall:

315 a. within five (5) calendar days of the determination to initiate an
316 inquiry, provide a written notice to the Respondent which shall include
317 a description of all allegations of research misconduct made against
318 the Respondent, a list of the members of the inquiry committee, an
319 explanation and documentation of the University's policies regarding
320 allegations of misconduct, and which shall inform Respondent of
321 his/her obligations of cooperation and confidentiality;

322 b. take all reasonable and practical steps necessary to obtain custody,
323 inventory, and secure all original research records and evidence
324 relevant to the allegation at the time or before the Respondent is
325 notified of an allegation. University students, faculty and staff including
326 but not limited to the Complainant and Respondent, shall promptly
327 provide all available records and data, including primary research
328 material identified as relevant to the allegation. Copies of such records
329 and data will be returned to individuals who supply the same to the
330 RIO except for materials not amenable to copying. All reasonable steps,
331 consistent with time constraints and other obligations imposed by
332 federal regulations, shall be taken to eliminate or minimize any
333 disruption that might be created for ongoing research efforts by such
334 requirements to produce documentation;

335 c. appoint, within ten (10) calendar days after the determination to
336 initiate an inquiry, and in consultation with the CERS Chair, an inquiry
337 committee consisting of normally three (3), but not more than five (5)
338 individuals who do not have real or apparent conflicts of interest in the
339 proceeding. The members may be from within or outside the
340 institution. The inquiry committee, which shall elect its own chair, shall
341 include at least one (1) member of CERS, but shall not include the CERS
342 Chair or the RIO;

343 d. provide a written notice to the Complainant that an inquiry has been
344 initiated, which shall include a copy of the University's policies
345 regarding allegations of misconduct and which shall inform the
346 Complainant of her/his obligations of cooperation, good faith and
347 confidentiality; and

- 348 e. prepare a charge for the inquiry committee that describes the
349 allegations and any related issues identified during the allegation
350 assessment and that states the purpose of the inquiry. 1
- 351 3. At the inquiry committee's first meeting, the committee will elect a chair and
352 the RCO will review the inquiry committee's charge, discuss the allegations and
353 any related issues, outline the purpose of the inquiry, i.e., to determine
354 whether the allegation warrants an investigation, review the appropriate
355 procedures for the conduct of the inquiry, answer any questions raised by the
356 committee, and otherwise assist the committee in the planning and conduct of
357 the inquiry.
- 358 4. In the conduct of the inquiry, the committee shall interview the Respondent,
359 and, if necessary, the Complainant and other key witnesses and shall examine
360 relevant records and other evidence. Interviews of all witnesses interviewed by
361 the committee shall be transcribed or recorded. The committee shall evaluate
362 the testimony and other evidence and shall determine whether there is
363 sufficient evidence of possible misconduct to warrant an investigation.
- 364 5. The committee shall ordinarily complete its inquiry and submit a final report of
365 its findings to the RIO within twenty one (21) calendar days of its appointment
366 unless the RIO grants an extension for good cause. The RIO shall prepare a
367 written record of the decision of whether to grant an extension which shall be
368 made part of the record of the proceeding. The RIO shall notify the CERS Chair,
369 the Respondent, and the Complainant of the reasons for any delay.
- 370 The committee shall prepare and submit to the RIO, an inquiry report that
371 includes: the name and title of the committee members and experts, if any, the
372 allegations, the sponsor support, if any, a summary of the inquiry process used,
373 a list of the evidence reviewed, summaries of any interviews, a description of
374 the evidence in sufficient detail to demonstrate whether an investigation is
375 warranted, and the committee's determination as to whether an investigation
376 is recommended and whether any other actions should be taken if an
377 investigation is not recommended.
- 378 6. The RIO shall, within five (5) calendar days of receipt of the report from the
379 committee, provide the Respondent with a copy of the inquiry report, and,
380 concurrently, a copy of, or supervised access to, the evidence on which the
381 report is based, for comment and rebuttal, and will provide the Complainant
382 with those portions of the draft report that address the Complainant's
383 testimony and evidence. Within ten (10) calendar days of their receipt of the
384 report or the portions thereof as the case may be, the Respondent and the
385 Complainant may provide their comments to the committee. The comments

386 shall be made part of the record of the proceeding, and the committee may
387 revise its report based upon the comments as appropriate.

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

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

401 9. The inquiry is completed when the President makes the determination of
402 whether the findings of the committee provide sufficient evidence of possible
403 misconduct to justify conducting an investigation. The RIO shall thereafter
404 notify the Respondent and the Complainant in writing of the President's
405 determination, and shall notify the CERS Chair.

406 **E. Investigation**

407 1. The purpose of the investigation is to explore the allegations of misconduct in
408 detail, to examine the evidence in depth, and to determine specifically whether
409 the respondent has committed misconduct. The investigation may also
410 determine whether there are additional instances of possible misconduct that
411 would justify broadening the scope beyond the initial allegations. The
412 investigation, including conducting the investigation, preparing the report of
413 findings, providing the draft report for comment and sending the final report to
414 the President, and ORI if the matter involves federal research support, shall be
415 completed with one hundred twenty (120) calendar days of its initiation unless
416 circumstances clearly warrant a longer period. If the investigation takes longer
417 than 120 days to complete, the inquiry record shall include documentation of
418 the reasons for exceeding the 120 day period. The CERS Chair, the Complainant,
419 and the Respondent will be notified of the reasons for the delay.

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

421 a. within five (5) calendar days of the determination to initiate an
422 investigation, provide a written notice to the Respondent which shall

423 include a description of all allegations of research misconduct made
424 against the Respondent, a copy of the inquiry report and proceeding
425 record, the President's determination, a list of the members of the
426 investigation committee, an explanation and documentation of the
427 University's policies regarding allegations of misconduct, and a
428 description of the Respondent's obligations of cooperation and
429 confidentiality;

430 b. take all reasonable and practical steps necessary to obtain custody,
431 inventory, and secure any additional original research records and
432 evidence relevant to the allegation at the time or before the
433 Respondent is notified that an investigation has been initiated. The
434 need for additional sequestration of records may occur for any number
435 of reasons, including the institution's decision to investigate additional
436 allegations not considered during the inquiry stage or the identification
437 of records during the inquiry process that had not been previously
438 secured. University students, faculty and staff including, but not limited
439 to, the Complainant and Respondent, shall promptly provide all
440 available records and data, including primary research material
441 identified as relevant to the allegation. Copies of such records and data
442 will be returned to individuals who supply the same to the RIO except
443 for materials not amenable to copying. All reasonable steps, consistent
444 with time constraints and other obligations imposed by federal
445 regulations, shall be taken to eliminate or minimize any disruption that
446 might be created for ongoing research efforts by such requirements to
447 produce documentation;

448 c. appoint within ten (10) calendar days after the determination to initiate
449 an investigation, and in consultation with the CERS Chair, an
450 investigation committee, which may include one or more members of
451 the inquiry committee, normally consisting of no fewer than three (3),
452 but not more than five (5) individuals, no more than two (2) of whom
453 may be members of the inquiry committee, who do not have real or
454 apparent conflicts of interest in the proceeding and have the necessary
455 expertise to evaluate the evidence and issues related to the allegation,
456 interview the principals and key witnesses, conduct the inquiry, and
457 they may be individuals from within or outside the institution. The
458 investigation committee, which shall elect its own chair, shall include at
459 least one (1) member of CERS, but shall not include the CERS Chair or
460 the RIO. 1The Respondent may submit a written objection to any
461 appointed member of the Investigation Committee based on perceived
462 bias or conflict of interest within ten (10) calendar days of notice of the

- 463 initiation of an investigation. Upon receipt of such an objection the RIO
464 will promptly determine, in consultation with the CERS Chair, whether
465 to replace any challenged member(s), and if so determined, will appoint
466 a qualified substitute;
- 467 d. provide a written notice to the Complainant that an investigation has
468 been initiated which shall include a description of the Complainant's
469 obligations of cooperation, good faith and confidentiality; and
- 470 e. prepare a charge for the investigation committee that describes the
471 allegations and any related issues identified during the inquiry and that
472 states the purpose of the investigation.
- 473 3. At the investigation committee's first meeting, the committee will elect a chair
474 and the RCO will review the charge with the committee, discuss the allegations
475 and any related issues, review the appropriate procedures for the conduct of
476 the investigation, answer any questions raised by the committee and otherwise
477 assist the committee in the planning and conduct of the investigation.
- 478 4. In the conduct of the investigation, the committee ordinarily will interview the
479 Complainant, the Respondent and other key witnesses and examine relevant
480 records and other evidence. Interviews of all witnesses interviewed by the
481 committee shall be transcribed or recorded. The committee shall evaluate the
482 testimony and other evidence and shall determine whether, based upon a
483 preponderance of the evidence, misconduct has occurred.
- 484 5. The committee shall prepare and submit to the RIO an investigation report that
485 shall include: a description of the policies and procedures under which the
486 investigation was conducted; a description of how and from whom information
487 relevant to the investigation was obtained; a statement of the findings of the
488 investigation, including whether or not misconduct has been found for each
489 allegation; an explanation of the basis for the finding, recommendations of the
490 committee for correcting the public record; and any recommendations for an
491 institutional response. The report also shall include the actual text or an
492 accurate summary of the testimony of any individual(s) found to have engaged
493 in misconduct.
- 494 7. The RIO shall, within five (5) calendar days of receipt of the report from the
495 committee, provide the Respondent with a copy of the report for comment and
496 rebuttal, and will provide the Complainant with the Complainant's allegation
497 and testimony as contained in the report. Within ten (10) calendar days of their
498 receipt of the report or the portions thereof as the case may be, the
499 Respondent and the Complainant will provide their comments to the
500 committee. The comments shall be made part of the record of the proceeding,

501 and the committee may revise its report based upon the comments as
502 appropriate.

503 8. Within ten (10) calendar days of receipt of comments on the report by the
504 Complainant and Respondent, the committee shall submit a final report along
505 with a copy of the proceeding record to the RIO who, in turn, shall promptly
506 submit the report and proceeding record to the University President, and the
507 CERS Chair along with a written recommendation.

508 9. The University President will, within ten (10) calendar days of receipt of the
509 final investigation report and proceeding record, make a final determination, in
510 writing, whether to accept the investigation report, its findings, and the
511 recommended institutional action. The President may also return the report to
512 the investigation committee with a request for further fact-finding or analysis.
513 The time for such determination may be extended by the President for good
514 cause, and the reason therefor shall be recorded in writing in the proceeding
515 record.

516 10. If the President does not accept the investigation report, its findings or the
517 recommended institutional action, the President may consult with the
518 investigation committee before finalizing the determination. The investigation is
519 completed when the President makes a determination of whether to accept the
520 investigation report, its findings and the recommended institutional action. The
521 RIO shall thereafter notify the Respondent and the Complainant in writing of the
522 President's determination, and shall notify such other institutional officials of
523 the determination as may be appropriate.

524 11. When the investigation report has been accepted, the President shall forward,
525 as appropriate, copies to the responsible federal agencies.

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

529

530 **F. Institutional Administrative Actions**

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

- 536 a. appropriate steps to correct the research record;
- 537 b. public disclosure;
- 538 c. counseling and/or disciplinary action in accordance with the provisions
539 of the applicable collective bargaining agreement;
- 540 d. withdrawal or correction of all pending or published abstracts and
541 papers emanating from the research where research misconduct was
542 found;
- 543 e. removal of the responsible person from the particular project;
- 544 f. special monitoring of future work; and
- 545 g. restitution of funds as appropriate.
- 546 2. The University will take appropriate administrative actions against any
547 person found to have violated the confidentiality provisions of this policy.
548 Such administrative actions may include, but shall not be limited to,
549 counseling and/or disciplinary action in accordance with the provisions of
550 the applicable collective bargaining agreement.

551V. **Reporting to ORI**

- 552 A. A decision to initiate an investigation involving allegations of misconduct involving
553 federally-funded research and proposals submitted to federal agencies for research
554 funding, must be reported in writing to ORI, on or before the date the investigation
555 begins and to the Research Foundation of the State University of New York. At a
556 minimum, the notification should include the name of the person(s) against whom the
557 allegations have been made, the general nature of the allegation as it relates to the
558 federal sponsor's definition of research misconduct, and the sponsor applications or
559 grant number(s) involved. The RIO must also be notified of the final outcome of the
560 investigation and must be provided with a copy of the investigation report. Any
561 significant variations from the provisions of the institutional policies and procedures
562 should be explained in any reports submitted to the sponsor.
- 563 B. If the University intends to terminate an inquiry or investigation of misconduct involving
564 federally-funded research and proposals submitted to federal agencies for research
565 funding for any reason without completing all relevant requirements of the sponsor's
566 regulation, the RIO will submit a report of the planned termination to the sponsor,
567 including a description of the reasons for the proposed termination.
- 568 C. If the University determines that it will not be able to complete the investigation of
569 misconduct involving federally-funded research and proposals submitted to federal

570 agencies for research funding in 120 calendar days, the RIO will submit to ORI, or the
 571 applicable federal sponsor, a written request for an extension that explains the delay,
 572 reports on the progress to date, estimates the date of completion of the report, and
 573 describes other necessary steps to be taken. If the request is granted, the RIO will file
 574 periodic progress reports as requested by the ORI or the applicable federal sponsor.

575 D. When Federal funding or applications for funding are involved and an admission of
 576 research misconduct is made, the RIO will contact ORI for consultation and advice.
 577 Normally, the individual making the admission will be asked to sign a statement
 578 attesting to the occurrence and extent of misconduct. When the case involves external
 579 funds, the institution cannot accept an admission of research misconduct as a basis for
 580 closing a case or not undertaking an investigation without prior approval from ORI.
 581 Admissions must be fully documented in the proceeding record using the terms of the
 582 research misconduct definition (falsification, fabrication, or plagiarism) and
 583 acknowledging that the action constituted research misconduct.

584 E. The RIO will, as appropriate, notify ORI at any stage of the inquiry or investigation if:

- 585 1. There is an immediate health hazard involved;
- 586 2. There is an immediate need to protect Federal funds or equipment;
- 587 3. There is an immediate need to protect the interests of the person(s) making the
 588 allegations or of the individual(s) who is the subject of the allegations as well as
 589 his/her co-investigators and associates, if any;
- 590 4. It is probable that the alleged incident is going to be reported publicly;
- 591 5. The allegation involves a public health sensitive issue, e.g. a clinical trial; or
- 592 6. There is a reasonable indication of possible criminal violation. In this instance,
 593 the institution must inform the sponsor within 24-hours of obtaining that
 594 information.

595VI. Other Notifications

596The President shall make the final determination as to which concerned parties should be notified of the
 597President's final determination. In addition to the Respondent and Complainant, typically this would
 598include the CERS Chair, the Investigation Committee members, Inquiry Committee members, and other
 599parties with a legitimate need to know the outcome of the proceedings. In addition, appropriate
 600members of the research and scholarly community may be informed, so as to correct the public record.
 601The University will also notify relevant federal or other external granting agencies and partnering
 602institutions, where applicable and in accordance with regulatory requirements.

603VII. Annual Report to CERS

604The RIO shall provide an annual report to CERS with information on misconduct proceedings and their
 605disposition. The report will contain no specific information on individuals, but will contain sufficient
 606information to enable CERS to fulfill its responsibilities for reviewing the implementation of the policy
 607and procedures on institutional responses to allegations of misconduct in research and scholarship and
 608recommending to the University Senate revisions to the policy and procedures, as needed. The report
 609shall also contain a summary of training of CERS members and of University researchers. Prior year
 610reports shall be provided to the new CERS committee. The outgoing CERS chair and RIO shall provide to
 611the new CERS chair all information available to the outgoing chair about all ongoing cases.

612VIII. **Other Considerations**

613 **A. Termination of Institutional Employment or Resignation Prior to Completing Inquiry or** 614 **Investigation**

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

618 2. If the Respondent, without admitting to the misconduct, elects to resign his or
 619 her position prior to the initiation of an inquiry, but after an allegation has been
 620 reported, or during an inquiry or investigation, the inquiry or investigation will
 621 proceed.

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

626 **B. Destruction or Absence of Records**

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

634 **C. Restoration of the Respondent's Reputation**

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

638 **D. Protection of the Whistleblower and Others**

- 639 1. Regardless of whether the institution or ORI, as the case may be, determines
 640 that scientific misconduct occurred, the RIO will undertake reasonable efforts to
 641 protect complainants who made allegations of misconduct in good faith and
 642 others who cooperate in good faith with inquiries and investigations of such
 643 allegations.
- 644 2. Upon completion of a misconduct proceeding, the University will, if requested
 645 and as appropriate, take all reasonable and practical efforts to protect or
 646 restore the position and reputation of any complainant, witness, or committee
 647 member and to counter potential or actual retaliation against those
 648 complainants, witnesses and committee members.

649 **E. Allegations Not Made in Good Faith**

650 If relevant, the President will determine whether the Complainant's allegations of misconduct
 651 were made in good faith. If an allegation was not made in good faith, the President will
 652 determine whether any administrative action should be taken against the Complainant. Such
 653 administrative actions may include, but shall not be limited to, counseling and/or disciplinary
 654 action in accordance with the provisions of the applicable collective bargaining agreement.

655 **F. Interim Administrative Actions**

656 Institutional officials will take interim administrative actions, as appropriate, to protect Federal
 657 funds and ensure that the purposes of the Federal financial assistance are carried out.

658 **G. Limitations Period**

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

- 661 1. it is determined that a prompt, thorough, competent, objective, and fair
 662 investigation of an allegation occurring more than six (6) years prior to the
 663 University's receipt of an allegation of misconduct may be undertaken based
 664 upon data/or research records that have been published or are otherwise in the
 665 public domain.
- 666 2. the University, in consultation with the funding agency, if any, determines that
 667 the alleged misconduct, if it occurred, could possibly have a substantial adverse
 668 effect on the health or safety of the public; or
- 669 3. The Respondent continues or renews any incident of alleged misconduct that
 670 occurred before the six-year limitation through the citation, republication or
 671 other use for the potential benefit of the Respondent of the research or
 672 scholarly record that is alleged to have constituted misconduct.

673

674IX. Record Retention

675The RIO will prepare and maintain in a secure manner all records of research misconduct proceedings as
676that term is defined in applicable federal regulations for seven (7) years after completion of the
677proceedings or the completion of any PHS proceeding involving the research misconduct allegation.