

**UNIVERSITY SENATE**

UNIVERSITY AT ALBANY  
STATE UNIVERSITY OF NEW YORK

Introduced by: CERS

Date: April 2, 2012

**TITLE OF BILL**

IT IS HEREBY PROPOSED THAT THE FOLLOWING BE ADOPTED:

1. That this takes effect for the Fall 2012semester.
2. That this proposal be forwarded to President George M. Philip for approval.

## **University at Albany Policy and Procedures on Misconduct in Research and Scholarship**

### **I. Introduction**

#### **A. Policy**

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

#### **B. Scope**

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

### **II. Definitions**

**A. Allegation** means any written or oral statement or other evidence of possible misconduct in research or scholarship made to an institutional official.

- B. Complainant** means a person who makes a good faith allegation of misconduct in research or scholarship.
- C. Committee on Ethics in Research and Scholarship (CERS)** is the University Senate committee whose responsibilities include reviewing the implementation of the policy and procedures on institutional responses to allegations of misconduct in research and scholarship and recommending to the University Senate revisions to the policy and procedures, as needed.
- D. Conflict of Interest** means the real or apparent interference of one person's interests with the interests of another person, where potential bias may occur due to prior or existing personal, professional or financial relationships.
- E. Deciding Official (DO)** means the institutional official who makes final determinations on allegations of misconduct and any institutional administrative actions. The University President is the University's Deciding Official.
- F. Fabrication** means making up data or results and recording or reporting them.
- G. Falsification** means manipulating research materials, equipment, processes, or changing or omitting data or results so that the research is not accurately represented in the research record.
- H. Good Faith** as applied to a complainant or witness, means having a belief in the truth of one's allegation or testimony that a reasonable person in the complainant's or witness's position could have based on the information known to the complainant or witness at the time. An allegation or cooperation with a misconduct proceeding is not in good faith if made with knowing or reckless disregard for information that would negate the allegation or testimony. Good faith as applied to a committee member means cooperating with the misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping an institution meet its responsibilities. A committee member does not act in good faith if his/her acts or omissions on the committee are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the misconduct proceeding.
- I. Inquiry** means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.
- J. Inquiry Committee** means the committee that is charged with conducting an inquiry into an allegation of misconduct.
- K. Institutional Counsel** means the University's Office of General Counsel which represents the University during misconduct proceedings.

- L. **Investigation** means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred, and if so, the responsible person or persons and the seriousness of the misconduct.
- M. **Investigation Committee** means the committee that is charged with conducting an investigation into an allegation of misconduct.
- N. **Misconduct** means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic community for proposing, conducting, reviewing, or reporting research or scholarship, including artistic expression, and includes misrepresentation of academic credentials or scholarship in proposing or securing awards, grants, or professional recognition. It does not include honest error or disagreements, honest differences in interpretations or judgments of data or disputes among collaborators about relative credit, or informal presentations, such as classroom lectures. For there to be a finding of misconduct it must be determined by a preponderance of the evidence that: (1) there was a significant departure from accepted practices of the relevant research or scholarly community and (2) the misconduct was intentional, knowing or reckless. Reckless means evincing disregard of or indifference to accepted scholarly practices although no harm is intended.
- O. **Office of Research Integrity (ORI)** is the federal office located within the Office of Public Health and Science (OPHS) within the Office of the Secretary of Health and Human Services in the Department of Health and Human Services (DHHS) which oversees and directs Public Health Service (PHS) research integrity activities on behalf of the Secretary of Health and Human Services of the U.S. Department of Health and Human Services.
- P. **Plagiarism** means the appropriation of another person's ideas, processes, results or words without giving appropriate credit.
- Q. **Preponderance of the evidence** means proof by evidence that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- R. **Research** means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- S. **Research Compliance Officer (RCO)** is the individual in the Office of Regulatory Research Compliance (ORRC) charged with the responsibility to provide regulatory guidance and administrative support for all misconduct proceedings and to assist the RIO in responding to allegations of misconduct. The RCO, or designee, shall be present at all inquiry and investigative committee meetings, interviews, and other proceedings regarding allegations of misconduct. The

University's Assistant Vice President for Research/Director of the ORRC is the University's RCO.

- T. **Research Integrity Officer (RIO)** is the institutional official who has primary responsibility for implementation of this policy including assessing allegations of misconduct; overseeing inquires and investigations; and fulfilling such other responsibilities as are outlined in this policy. The University's Vice President for Research is the University's RIO.
- U. **Research Record** means any data, document, computer file, computer storage medium, or any other written or non-written account or object that reasonably may be expected to provide evidence or information regarding the proposed, conducted or reported misconduct that constitutes the subject of an allegation of misconduct. A research record includes, but is not limited to, grant or contract applications, whether sponsored or not; grant or contract progress reports; laboratory notebooks; notes; correspondence; electronic communication; videos; photographs; X-ray or other film; slides; biological materials; computer files and printouts; manuscripts and publications; equipment use logs; laboratory procurement records; animal facility records; and human and animal subject records and protocols.
- V. **Respondent** means the person or persons against whom an allegation of misconduct in research or scholarship is directed or who is the subject of a misconduct proceeding.
- W. **Retaliation** means any adverse action taken against a complainant, witness, or committee member by an institution or one of its members in response to:
  - (a) A good faith allegation of misconduct; or
  - (b) Good faith cooperation with a misconduct proceeding.
- X. **Scholarship** means original contributions or artistic works which constitute advances or contributions to the individual's discipline or to practice in the field.

### III. **Rights and Responsibilities**

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

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

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

At the time of or before beginning an inquiry, the RIO must make a good faith effort to notify in writing the presumed respondent(s), if any, of the allegations of misconduct. If the inquiry subsequently identifies additional respondents, the institution must notify them.

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

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

The RIO will report to government or other external funding sponsors and ORI as required by law and keep them apprised of any developments during the course of the inquiry or investigation that may affect current or potential funding for the individual(s) under investigation or that the government or other external funding sponsors need to know to ensure appropriate use of research funds and otherwise protect the public interest.

The RIO will, upon receipt of an allegation of misconduct, and in consultation with the CERS Chair and institutional counsel, make an initial assessment of whether the allegation warrants an inquiry. The RIO shall take all reasonable steps to ensure an impartial and unbiased misconduct proceeding in accordance with these procedures to the maximum extent practicable. Upon receipt by the RIO of a timely written objection to any member of an inquiry or investigation committee or to the RIO or the CERS Chair

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

## **B. Respondent**

The Respondent shall be entitled to a prompt, thorough, competent, objective and fair response to allegations of misconduct. The Respondent will be informed of the allegations and notified in writing of the final determinations of any inquiry or investigation of the allegations and the resulting institutional actions, if any. The Respondent will also have the opportunity to be interviewed by and present evidence to the inquiry and investigation committees, to review the inquiry and investigation reports, and to have the advice of an advisor, who may be legal counsel, throughout the misconduct proceedings. The advisor for the Respondent, however, may not actively participate in the misconduct proceedings. If the Respondent is found not to have engaged in misconduct, the University will make a diligent effort to restore his or her reputation. The Respondent is expected to cooperate with the misconduct proceeding, and, except as may be necessary to respond fully to an allegation of misconduct or as appropriate to restoring his or her reputation after the conclusion of the proceedings, the Respondent is responsible for maintaining confidentiality of the misconduct proceedings including all documents and other evidence generated as part of the proceedings. If the Respondent refuses to cooperate with the misconduct proceeding, the RIO and any inquiry or investigation committee will use their best efforts to reach a conclusion concerning the allegations, noting in their reports the Respondent's failure to cooperate and its effect on the evidence.

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

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

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

### **C. Complainant**

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

The Complainant is expected to make allegations in good faith and fully cooperate with the misconduct proceeding. If the Complainant refuses to cooperate with the misconduct proceeding, the RIO and any inquiry or investigation committee will use their best efforts to reach a conclusion concerning the allegations, noting in their reports the Complainant's failure to cooperate and its effect on the evidence. The Complainant is responsible for maintaining confidentiality of the misconduct proceedings. Therefore, the Complainant shall not disclose any information regarding the proceedings, or the identity of individuals involved in the proceedings.

### **D. Office of General Counsel**

The Office of General Counsel shall serve as legal advisor to the University, the RIO, the RCO and the inquiry and investigation committees, as needed. The Office of the General Counsel shall be consulted regarding any question of the application or interpretation of the provisions of this policy and these procedures. Upon request of the RIO, a member of the Office of General Counsel shall attend meetings, interviews, and other proceedings during the inquiry and/or investigation, but will not actively participate in such meetings, interviews or other proceedings.

### **E. Deciding Official**

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

## **IV. Procedure**

### **A. Confidentiality**

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

### **B. Allegations of Misconduct**

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

- h. Grant number or title, if applicable; and
  - i. Funding source, if any.
3. Upon receipt of an allegation of misconduct, the RIO or the CERS Chair, as the case may be, will promptly and fully inform the other.
  4. To the extent practicable, or as otherwise required by law, the identity of Complainants who wish to remain anonymous will be kept confidential.

**C. Preliminary Assessment of Allegations**

1. Upon receiving an allegation of research misconduct, the RIO, in consultation with the CERS Chair, will immediately assess the allegation to determine whether it:
  - a. falls within the definition of misconduct in research or scholarship; and
  - b. is sufficiently credible and specific so that potential evidence of misconduct may be identified; and
  - c. falls within the applicable limitation period set forth below.
2. An inquiry is warranted if an allegation falls within the definition of misconduct as provided herein and is sufficiently credible and specific so that potential evidence of misconduct may be identified. If the RIO, in consultation with the CERS Chair and institutional counsel, determines that an allegation warrants an inquiry, then the RIO shall, within fourteen (14) calendar days of receipt of an allegation, initiate an inquiry, or as appropriate, an investigation. It is appropriate to initiate an investigation directly when there is sufficient evidence already available at the preliminary assessment, for example, as the result of an audit of a clinical trial. In such instance, the RIO shall prepare a written record of the decision to move directly to an investigation, which shall be made part of the proceeding record.
3. The RIO, or designee, shall, on or before the date on which the Respondent is notified or the inquiry begins, whichever is earlier, promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and

sequester them in a secure manner, except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.

4. The RIO shall prepare a written record of the basis for the decision of whether to initiate an inquiry or investigation, as the case may be, including whether the CERS Chair concurred with the RIO's determination and the reasons therefor, all of which shall be made part of the record of the proceeding.
5. If no inquiry or investigation is initiated, the RIO shall notify the Respondent, Complainant, and CERS chair that the allegation did not warrant an inquiry or an investigation, as the case may be, under these procedures.

#### **D. Inquiry**

1. The purpose of an inquiry is to determine whether an allegation warrants an investigation. An investigation is warranted if the allegation falls within the definition of misconduct in research and scholarship, and preliminary information-gathering indicates that the allegation may have substance. The inquiry phase may draw on testimony or written statements of the Complainant, Respondent, and key witnesses, if necessary, to determine whether there is sufficient evidence of possible misconduct to warrant an investigation. An inquiry does not require a full review of all the evidence related to the allegation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct occurred or who was responsible. The inquiry shall be completed with sixty (60) calendar days of its initiation unless circumstances clearly warrant a longer period. If the inquiry takes longer than 60 days to complete, the inquiry record shall include documentation of the reasons for exceeding the 60-day period.
2. To initiate an inquiry, the RIO shall:
  - a. within ten (10) calendar days of the determination to initiate an inquiry, or as soon thereafter as practical, provide a written notice to the Respondent which shall include a description of all allegations of research misconduct made against the Respondent,

a list of the members of the inquiry committee, an explanation and documentation of the University's policies regarding allegations of misconduct, and which shall inform Respondent of his/her obligations of cooperation and confidentiality;

- b. take all reasonable and practical steps necessary to obtain custody, inventory, and secure all original research records and evidence relevant to the allegation at the time or before the Respondent is notified of an allegation. University students, faculty and staff including but not limited to the Complainant and Respondent, shall promptly provide all available records and data, including primary research material identified as relevant to the allegation. Copies of such records and data will be returned to individuals who supply the same to the RIO except for materials not amenable to copying. All reasonable steps, consistent with time constraints and other obligations imposed by federal regulations, shall be taken to eliminate or minimize any disruption that might be created for ongoing research efforts by such requirements to produce documentation;
- c. appoint, within ten (10) calendar days after the determination to initiate an inquiry, or as soon thereafter as practical, and in consultation with the CERS Chair, an inquiry committee consisting of normally three (3), but not more than five (5) individuals who do not have real or apparent conflicts of interest in the proceeding. The members may be from within or outside the institution. The inquiry committee, which shall elect its own chair, shall include at least one (1) member of CERS, but shall not include the CERS Chair or the RIO;
- d. provide a written notice to the Complainant that an inquiry has been initiated, which shall include a copy of the University's policies regarding allegations of misconduct and which shall inform the Complainant of her/his obligations of cooperation, good faith and confidentiality; and
- e. prepare a charge for the inquiry committee that describes the allegations and any related issues identified during the allegation assessment and that states the purpose of the inquiry. 2

3. At the inquiry committee's first meeting, the committee will elect a chair and the RCO will review the inquiry committee's charge, discuss the allegations and any related issues, outline the purpose of the inquiry, i.e., to determine whether the allegation warrants an investigation, review the appropriate procedures for the conduct of the inquiry, answer any questions raised by the committee, and otherwise assist the committee in the planning and conduct of the inquiry.
4. In the conduct of the inquiry, the committee shall interview the Respondent, and, if necessary, the Complainant and other key witnesses and shall examine relevant records and other evidence. Interviews of all witnesses interviewed by the committee shall be transcribed or recorded. The committee shall evaluate the testimony and other evidence and shall determine whether there is sufficient evidence of possible misconduct to warrant an investigation.
5. The committee shall ordinarily complete its inquiry and submit a final report of its findings to the RIO within twenty one (21) calendar days of the date of its first meeting unless the RIO grants an extension for good cause. The RIO shall prepare a written record of the decision of whether to grant an extension which shall be made part of the record of the proceeding. The RIO shall notify the CERS Chair, the Respondent, and the Complainant of the reasons for any delay.

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

6. The RIO shall, within five (5) calendar days of receipt of the report from the committee, or as soon thereafter as practical, provide the Respondent with a copy of the inquiry report, and, concurrently, a copy of, or supervised access to, the evidence on which the report is based, for comment and rebuttal, and will provide the Complainant with those portions of the draft report that address the Complainant's testimony

and evidence. Within ten (10) calendar days of their receipt of the report or the portions thereof as the case may be, the Respondent and the Complainant may provide their comments to the committee. The comments shall be made part of the record of the proceeding, and the committee may revise its report based upon the comments as appropriate. Institutional counsel shall review the report for legal sufficiency.

7. Within ten (10) calendar days of receipt of comments on the report by the Complainant and Respondent, or as soon thereafter as practical, the committee shall submit a final inquiry report along with a copy of the record of the proceeding to the RIO who, in turn, shall promptly submit the report and proceeding record to the University President.
8. The University President will, within ten (10) calendar days of receipt of the final inquiry report and proceeding record, or as soon thereafter as practical, make a final determination, in writing, of whether the findings of the committee provide sufficient evidence of possible misconduct to justify conducting an investigation. The President may also return the report to the inquiry committee with a request for further information or analysis. In such event, the President's reasons therefore shall be set forth in writing and included in the proceeding record. The time for the President's determination hereunder may be extended by the President for good cause and the reason therefor recorded in the record of the proceeding.
9. The inquiry is completed when the President makes the determination of whether the findings of the committee provide sufficient evidence of possible misconduct to justify conducting an investigation. The RIO shall thereafter notify the Respondent and the Complainant in writing of the President's determination, and shall notify the CERS Chair.

#### **E. Investigation**

1. The purpose of the investigation is to explore the allegations of misconduct in detail, to examine the evidence in depth, and to determine specifically whether the respondent has committed misconduct. The investigation may also determine whether there are additional instances of possible misconduct that would justify broadening the scope beyond the initial allegations. The investigation, including conducting the

investigation, preparing the report of findings, providing the draft report for comment and sending the final report to the President, and ORI if the matter involves federal research support, shall be completed with one hundred twenty (120) calendar days of its initiation unless circumstances clearly warrant a longer period. If the investigation takes longer than 120 days to complete, the inquiry record shall include documentation of the reasons for exceeding the 120 day period. The CERS Chair, the Complainant, and the Respondent will be notified of the reasons for the delay.

2. To initiate an investigation, the RIO shall:
  - a. within ten (10) calendar days of the determination to initiate an investigation, or as soon thereafter as practical, provide a written notice to the Respondent which shall include a description of all allegations of research misconduct made against the Respondent, a copy of the inquiry report and proceeding record, the President's determination, a list of the members of the investigation committee, an explanation and documentation of the University's policies regarding allegations of misconduct, and a description of the Respondent's obligations of cooperation and confidentiality;
  - b. take all reasonable and practical steps necessary to obtain custody, inventory, and secure any additional original research records and evidence relevant to the allegation at the time or before the Respondent is notified that an investigation has been initiated. The need for additional sequestration of records may occur for any number of reasons, including the institution's decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured. University students, faculty and staff including, but not limited to, the Complainant and Respondent, shall promptly provide all available records and data, including primary research material identified as relevant to the allegation. Copies of such records and data will be returned to individuals who supply the same to the RIO except for materials not amenable to copying. All reasonable steps, consistent with time constraints and other obligations imposed by

federal regulations, shall be taken to eliminate or minimize any disruption that might be created for ongoing research efforts by such requirements to produce documentation;

- c. appoint within ten (10) calendar days after the determination to initiate an investigation, or as soon thereafter as practical, and in consultation with the CERS Chair, an investigation committee, which may include one or more members of the inquiry committee, normally consisting of no fewer than three (3), but not more than five (5) individuals, no more than two (2) of whom may be members of the inquiry committee, who do not have real or apparent conflicts of interest in the proceeding and have the necessary expertise to evaluate the evidence and issues related to the allegation, interview the principals and key witnesses, conduct the inquiry, and they may be individuals from within or outside the institution. The investigation committee, which shall elect its own chair, shall include at least one (1) member of CERS, but shall not include the CERS Chair or the RIO. 3The Respondent may submit a written objection to any appointed member of the Investigation Committee based on perceived bias or conflict of interest within ten (10) calendar days of notice of the initiation of an investigation. Upon receipt of such an objection the RIO will promptly determine, in consultation with the CERS Chair, whether to replace any challenged member(s), and if so determined, will appoint a qualified substitute;
  - d. provide a written notice to the Complainant that an investigation has been initiated which shall include a description of the Complainant's obligations of cooperation, good faith and confidentiality; and
  - e. prepare a charge for the investigation committee that describes the allegations and any related issues identified during the inquiry and that states the purpose of the investigation.
3. At the investigation committee's first meeting, the committee will elect a chair and the RCO will review the charge with the committee, discuss the allegations and any related issues, review the appropriate procedures for the conduct of the investigation, answer any questions raised by the

committee and otherwise assist the committee in the planning and conduct of the investigation.

4. In the conduct of the investigation, the committee ordinarily will interview the Complainant, the Respondent and other key witnesses and examine relevant records and other evidence. Interviews of all witnesses interviewed by the committee shall be transcribed or recorded. The committee shall evaluate the testimony and other evidence and shall determine whether, based upon a preponderance of the evidence, misconduct has occurred.
5. The committee shall prepare and submit to the RIO an investigation report that shall include: a description of the policies and procedures under which the investigation was conducted; a description of how and from whom information relevant to the investigation was obtained; a statement of the findings of the investigation, including whether or not misconduct has been found for each allegation; an explanation of the basis for the finding, recommendations of the committee for correcting the public record; and any recommendations for an institutional response. The report also shall include the actual text or an accurate summary of the testimony of any individual(s) found to have engaged in misconduct.
6. The RIO shall, within five (5) calendar days of receipt of the report from the committee, or as soon thereafter as practical, provide the Respondent with a copy of the report for comment and rebuttal, and will provide the Complainant with the Complainant's allegation and testimony as contained in the report. Within ten (10) calendar days of their receipt of the report or the portions thereof as the case may be, the Respondent and the Complainant will provide their comments to the committee. The comments shall be made part of the record of the proceeding, and the committee may revise its report based upon the comments as appropriate. Institutional counsel shall review the report for legal sufficiency.
7. Within ten (10) calendar days of receipt of comments on the report by the Complainant and Respondent, or as soon thereafter as practical, the committee shall submit a final report along with a copy of the proceeding record to the RIO who, in turn, shall promptly submit the report and

proceeding record to the University President, and the CERS Chair along with a written recommendation.

8. The University President will, within ten (10) calendar days of receipt of the final investigation report and proceeding record, , or as soon thereafter as practical, make a final determination, in writing, whether to accept the investigation report, its findings, and the recommended institutional action. The President may also return the report to the investigation committee with a request for further fact-finding or analysis. The time for such determination may be extended by the President for good cause, and the reason therefor shall be recorded in writing in the proceeding record.
9. If the President does not accept the investigation report, its findings or the recommended institutional action, the President may consult with the investigation committee before finalizing the determination. The investigation is completed when the President makes a determination of whether to accept the investigation report, its findings and the recommended institutional action. The RIO shall thereafter notify the Respondent and the Complainant in writing of the President's determination, and shall notify such other institutional officials of the determination as may be appropriate.
10. When the investigation report has been accepted, the RIO shall forward, as appropriate, copies to the responsible federal agencies.
11. The RIO will undertake appropriate efforts to restore the reputation of the Respondent if an allegation of misconduct is unsubstantiated, and to protect the Complainant, as set forth below.

#### **F. Institutional Administrative Actions**

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

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

## **V. Reporting Requirements**

- A. A decision to initiate an investigation involving allegations of misconduct involving federally-funded research and proposals submitted to federal agencies for research funding, must be reported in writing to ORI or the applicable sponsor, on or before the date the investigation begins and to the Research Foundation of the State University of New York. At a minimum, the notification should include the name of the person(s) against whom the allegations have been made, the general nature of the allegation as it relates to the federal sponsor's definition of research misconduct, and the sponsor applications or grant number(s) involved. The RIO must also be notified of the final outcome of the investigation and must be provided with a copy of the investigation report. Any significant variations from the provisions of the institutional policies and procedures should be explained in any reports submitted to the sponsor.
- B. If the University intends to terminate an inquiry or investigation of misconduct involving federally-funded research and proposals submitted to federal agencies for research funding for any reason without completing all relevant requirements of the sponsor's regulation, the RIO will submit a report of the planned termination to the sponsor, including a description of the reasons for the proposed termination.

- C. If the University determines that it will not be able to complete the investigation of misconduct involving federally-funded research and proposals submitted to federal agencies for research funding in 120 calendar days, the RIO will submit to ORI, or the applicable sponsor, a written request for an extension that explains the delay, reports on the progress to date, estimates the date of completion of the report, and describes other necessary steps to be taken. If the request is granted, the RIO will file periodic progress reports as requested by the ORI or the applicable sponsor.
- D. When external funding or applications for funding are involved and an admission of misconduct is made, the RIO will contact ORI or the applicable sponsor as appropriate for consultation and advice. Normally, the individual making the admission will be asked to sign a statement attesting to the occurrence and extent of misconduct. When the case involves external funds, the University will not accept an admission of misconduct as a basis for closing a case or not undertaking an investigation without prior approval from ORI or the applicable sponsor. Admissions must be fully documented in the proceeding record using the terms of the misconduct definition (falsification, fabrication, or plagiarism) and acknowledging that the action constituted misconduct.
- E. The RIO will, as appropriate, notify ORI or the applicable sponsor and take such interim administrative actions as may be necessary at any stage of a misconduct proceeding if:
1. There is an immediate health hazard involved;
  2. There is an immediate need to protect Federal funds or equipment;
  3. There is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations as well as his/her co-investigators and associates, if any;
  4. It is probable that the alleged incident is going to be reported publicly;
  5. The allegation involves a public health sensitive issue, e.g. a clinical trial;  
or
  6. There is a reasonable indication of possible criminal violation.

Interim actions may include, but shall not be limited to, additional monitoring of the research process and the handling of external funds and equipment, reassignment of personnel or of the responsibility for the handling of external

funds and equipment, additional review of research data and results or delaying publication.

## **VI. Other Notifications**

The President shall decide which concerned parties should be notified of the final determination of the misconduct proceeding. In addition to the Respondent and Complainant, typically this would include the Provost, the CERS Chair, the Investigation Committee members, Inquiry Committee members, and other parties with a legitimate need to know the outcome of the proceedings. In addition, appropriate members of the research and scholarly community may be informed, so as to correct the public record. The University will also notify relevant federal or other external granting agencies and partnering institutions, where applicable and in accordance with regulatory requirements. In addition, the RIO will determine whether law enforcement agencies, professional societies, professional licensing boards, editors of journals in which falsified reports may have been published, collaborators of the respondent in the work, or other relevant parties should be notified of the outcome of the case. The RIO is responsible for ensuring compliance with all notification requirements of funding or sponsoring agencies

## **VII. Annual Report to CERS**

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

## **VIII. Other Considerations**

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

1. The termination of the Respondent's University employment, by resignation or otherwise, before or after an allegation of possible misconduct has been reported, will not preclude or terminate the misconduct proceedings.

2. If the Respondent, without admitting to the misconduct, elects to resign his or her position prior to the initiation of an inquiry, but after an allegation has been reported, or during an inquiry or investigation, the inquiry or investigation will proceed.
3. If the Respondent refuses to participate in the process after resignation, the committee will use its best efforts to reach a conclusion concerning the allegations, noting in its report the Respondent's failure to cooperate and its effect on the committee's review of all the evidence.

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

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

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

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

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

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

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

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

#### **F. Limitations Period**

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

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

A determination whether to pursue an allegation of misconduct in research or scholarship occurring more than six (6) years after receipt of such allegation shall be made by the RIO only after consultation with institutional counsel and CERS Chair.

#### **IX. Record Retention**

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