

## **MEMORANDUM**

To: Sue Ott Rowlands, Provost and Vice President for Academic Affairs  
From: Matthew Zacate, Faculty Senate President  
Re: Proposed change to section 16.7 of the Faculty Handbook to update the Scientific/Research Misconduct Policy  
Date: December 12, 2019

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Appended at the end of this memo is the text of an updated Scientific/Research Misconduct Policy to replace the current policy in section 16.7 of the Faculty Handbook. It was approved by the faculty senate at its meeting on October 28, 2019. When I first became aware of this issue in 2018, I was given the impression that it is urgent that the policy be updated to bring it into compliance with federal regulations, thereby ensuring that NKU faculty do not lose access to federal grant opportunities. I hope that you will be able to pass this new version of the policy along to Pres. Vaidya with your approval so that he, in turn, can recommend that the Board of Regents approve this update to the Faculty Handbook.

In what follows, you will find a history of this proposed policy's evolution, additional clarification on two contentious aspects of the proposed policy, and the text of the proposed policy.

### **History**

On April 27, 2017, a Policy Request Form was filed by Anita Southwick, Manager of Research Compliance, as part of a proposal to adopt a university-wide policy on Research Misconduct. In February of 2018, I was made aware of this proposed policy by Ken Katkin, Chair of the Professional Concerns Committee (PCC) when the PCC was asked to review it as part of the policy process map. For me, the proposed policy was problematic because it contained a number of incompatibilities with the Scientific/Research Misconduct Policy in the Faculty Handbook.

On March 9, 2018, Ken and I met with you, Janel, in her role as Policy Coordinator, Anita, and Sam Langley, in her role as Vice Provost for Graduate Education, Research, and Outreach, to discuss the proposed policy. I had hoped that the proposed policy could be modified so that it would be compatible with the Faculty Handbook. By the end of the meeting, I thought that we had made good progress toward achieving that.

Later, on June 19, 2018, I met with Anita, Joan Gates, and others – I believe you attended part of the meeting as well. Anita and Joan communicated their belief that it would not be possible to only change the proposed new policy to make it compatible with the Faculty

Handbook because some elements of the Research Misconduct Policy in the Faculty Handbook were not compliant with federal regulations. It was not obvious to me that many of the changes they wanted were actually required by federal regulations, but most of them seemed “reasonable” in the sense they would provide more clarity to certain procedures and would better specify expectations for reporting.

Over the next several months, I worked in consultation with Anita to draft changes to the Scientific/Research Misconduct Policy in the Faculty Handbook that would bring it into compliance with federal regulations, as judged by Anita and by Joan. Once I had approval that the draft was compliant with federal regulations, I brought it to the Faculty Senate Executive Committee for review. It, in turn, asked the PCC to vote on the proposed changes after wordsmithing it, as needed, and adding definitions.

The PCC reported back to the Executive Committee on May 6, 2019 with its approval of a new draft of the Scientific/Research Misconduct Policy. There were five types of changes made to the draft that the Executive Committee sent to the PCC (the version approved by Anita and Joan):

- (1) Improved wording throughout
- (2) Addition of a section with definitions
- (3) Simplified procedures/reporting requirements at the preliminary inquiry stage for non-federally funded research
- (4) Changed definition of research misconduct to include explicitly self-plagiarism and duplicate publication with definitions of both
- (5) Explicit indication that there is no statute of limitations for investigating allegations of research misconduct

Before bringing the PCC’s revised version to the senate for its consideration, I sent the new version to Anita, who, in turn, sent it to Joan, to review. Quite some time passed. Eventually, I met with you, Janel, and Joan to discuss the Scientific/Research Misconduct Policy on August 1, 2019. I learned that Joan would recommend that you *not* approve the PCC’s version of the policy unless two parts were changed: (1) the definition of research misconduct and (2) the explicit rejection of a statute of limitations.

With the belief that it was urgent to get an updated policy in place as soon as possible so that NKU faculty did not lose access to federal grant funds, I recommended to the Faculty Senate Executive Committee that it send a modified version of the PCC’s version – one that met with Joan’s approval – to the senate for its consideration, and the Executive Committee agreed. Accordingly, it was discussed at the senate meeting held on August 26, 2019.

Unfortunately, this expedited process generated concern with members of the PCC. Under the conventions of collegial governance, members of the PCC expected (rightfully so) that the Executive Committee send its modified version to the PCC for review before sending it to the

full senate. Following this convention is a good idea in general, and in this specific case it was especially appropriate because the PCC was better informed about the federal regulations and the legal aspects in play than the Executive Committee. In the time between senate meetings, the PCC met and voted to recommend that the Executive Committee bring the PCC's original version to the September senate meeting, and the Executive Committee, in turn, voted to do just that.

During debate on the resolution to approve the PCC's version of the Scientific/Research Misconduct Policy at the senate meeting of September 30, 2019, concerns were raised about the definition of research misconduct contained in the policy. A motion was made and approved to postpone vote on the policy until the October meeting in order to give the PCC a chance to consider a revised definition that took into account faculty concerns. During debate, senate Vice President Jaqueline Emerine also asked Joan to write a memo that described the minimum, absolute requirements for the policy according to federal regulations.

Between the September and October senate meetings, the PCC considered faculty concerns about the definition of research misconduct and legal concerns raised by Joan. The results of PCC deliberations were (1) a FAQ that contained counter arguments to what was perceived to be Joan's biggest objections to the PCC version and (2) text of a revised definition of research misconduct that would be introduced through a motion-to-amend at the October senate meeting.

By the time the senate met on October 28, 2019, senators had had a chance to review the memo that Joan wrote to respond to Jaqueline's question, the FAQ approved by the PCC, and the newly revised definition of research misconduct. The senate voted to approve the proposed Scientific/Research Misconduct Policy with this new definition of research misconduct. That is, members of the senate found the PCC arguments that the new policy satisfies federal regulations and legal requirements to be more compelling than Joan's arguments that it is not.

### **Additional clarification – research misconduct definition and statute of limitations**

It is understandable that you may be reluctant to approve the proposed Scientific/Research Misconduct Policy given Joan's objections to it. I believe Joan's primary objections to the policy lie in the inclusion of duplicate and redundant publication in the definition of research misconduct and in the explicit rejection of a statute of limitations. Respectfully, I do not believe that these objections are well founded, as explained below.

#### *Definition of research misconduct*

In Joan's memo of October 11, 2019, Joan wrote that federal regulations, specifically 42 CFR 93, requires the following narrow definition of research misconduct.

Research Misconduct means fabrication, falsification or plagiarism in proposing, performing, or reviewing research, or in reporting results.

- (a) Fabrication is making up data or results and recording or reporting them.
- (b) Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
- (c) Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research misconduct does not include honest error or difference of opinion.

This is simply not true. 42 CFR 93 requires that if the text of a university's research misconduct policy contains definitions of fabrication, falsification, and plagiarism, then they must conform to the above definitions. For example, the policy checklist provided by the US Department of Health and Human Services, Office of Research Integrity lists inclusion of definitions of fabrication, falsification, and plagiarism as optional elements. Furthermore, 42 CFR 93 does not restrict research misconduct to just those three types of misconduct. Indeed 42 CFR 93.319.a explicitly allows an institution's definition of research misconduct to be broader. It reads, "Institutions may have internal standards of conduct different from the HHS standards for research misconduct under this part. Therefore, an institution may find conduct to be actionable under its standards even if the action does not meet this part's definition of research misconduct." That is, NKU is allowed to include things other than fabrication, falsification, and plagiarism in its policy, but the Public Health Service and other federal agencies want reports that address misconduct related only to fabrication, falsification, and plagiarism.

I'm including a copy of the PCC's FAQ with this memo. This FAQ provides additional information about federal rules on the definition of research misconduct. I realize that the PCC's FAQ does not address what I view to be the more technical concerns that Joan raised about the proposed policy. The FAQ focuses mainly on the fact that inclusion of redundant and duplicate publication as an aspect of research misconduct is permitted under federal regulations. It does not address, as examples, Joan's concerns about numbered items II, III, and IV or the final two sentences in section 16.7.2.5. I, therefore, cannot argue confidently that Joan's concerns about these items are unfounded. Should one or more of these aspects truly require modification, it may be that the PCC is not as committed to the language in these items and it may be possible to negotiate new wording in those instances. (I do not believe it will be possible to negotiate a significant change in wording to item I or its sub-parts, nor do I believe it to be necessary to meet legal requirements or be compatible with federal regulations.)

#### *Statute of limitations*

Explicitly rejecting a statute of limitations in the research misconduct policy is not out of compliance with federal regulations. Joan wrote in her October 11, 2019 memo that it is not consistent with federal law, citing 42 CFR 93.105; however, this section describes minimum requirements needed to satisfy investigation and reporting on research misconduct funded by grants from the Public Health Service. It does not prohibit institutions from investigating

alleged incidents of research misconduct older than 6 years. It only indicates that reports of findings of research misconduct older than 6 years need not be reported to the federal agency (unless one of the exceptions apply). Furthermore, I was told that the National Science Foundation – an important federal funding agency – does not require a 6-year statute of limitations.

Joan also wrote in her memo that not having a statute of limitations would subject NKU and researchers to greater liability due to the difficulty in investigating older claims. But, one purpose of the preliminary inquiry described in 16.7.4.2 is to determine whether there is sufficient evidence to warrant a formal investigation. Presumably, it would be determined that evidence is not available to investigate old cases at this stage, resulting in dismissal of accusations of research misconduct that occurred more than, as an example, 6 years prior, effectively acting as a 6-year statute of limitations.

I have not investigated this myself, but I am told that at least one member of the PCC discovered that some universities do not have statutes of limitations in their research misconduct policies. That is, NKU is not unique in not having a statute of limitations in its current policy, and NKU would not be unique if it adopts the proposed policy, which explicitly indicates there is no statute of limitations. I'm also told that a law-blog article laments that many(?) universities essentially ignore their 6-year limits anyway; *i.e.*, universities choose to investigate older allegations despite a statute of limitations. (After all, how would it look to the general public if a university chose not to investigate wrong-doing simply because it happened 7+ years prior?) In this sense, the proposed policy is superior to policies at universities that effectively disregard the statutes-of-limitations in their own policies.

#### *Summary of additional clarification*

To summarize, the proposed Scientific/Research Misconduct Policy that follows is fully compliant with federal regulations, including 42 CF 93 from Public Health Services.

The PCC, the membership of which includes a lawyer with experience in working on federal regulations, reviewed Joan's memo of October 11, 2019 and respectfully disagrees with Joan's determination that the definition of research misconduct and the explicit statement that there is no statute of limitations contained in the proposed policy is out of compliance with federal regulations. Furthermore, the PCC does not agree with Joan's conclusions that aspects of the proposed policy are "not consistent with federal law or widely understood standards." The PCC and members of the senate, as judging by the outcome of their vote to approve the proposed policy, was not persuaded that elements of the proposed policy create "ambiguities, vagueness, unfairness, unnecessary risk, and due process concerns." (Phrases in quotations are used here to indicate phrases taken from Joan's memo of October 11.)

It has been a long road to get to this point, but in my view the effort put into this endeavor has been worth it. Arguably, the proposed policy is better than the current policy. Faculty accused of misconduct, faculty recruited to investigate allegations of misconduct, and

administrators responsible for overseeing investigations should all benefit from the added clarity this proposed policy provides. Moreover, the proposed policy is constructed in a way that will allow development of a university-wide policy on scientific/research misconduct that includes administrators, staff, and students as potential respondents – the goal, I believe, of the original efforts of Anita back in early 2017.

I recommend that you approve this proposed policy to replace section 16.7 of the Faculty Handbook.

### **Text of proposed policy**

## **16.7. SCIENTIFIC/RESEARCH MISCONDUCT**

### **16.7.1. PREAMBLE AND POLICY STATEMENT**

The preeminent principle in all research is the quest for truth. The credibility of such research must be above reproach if the public trust is to be maintained. Any compromise of the ethical standards required for conducting academic research cannot be condoned. While breaches in such standards are rare, these must be dealt with promptly and fairly by all parties in order to preserve the integrity of the research community.

A critical element of any policy on research misconduct is that it be a fair and effective process for distinguishing instances of genuine and serious misconduct from insignificant deviations from acceptable practices, technical violations of rules, or simple carelessness. The policy defined in this Handbook will allow such distinctions to be made in a manner that minimizes disruption and protects the honest researcher from false or mistaken accusations.

Research misconduct, as defined in Section 16.7.2., below, is not condoned at Northern Kentucky University and allegations of such misconduct will be investigated in accordance with the procedures described below. The policy and procedure discussed herein do not restrict or limit any legal options available to any of the parties through appropriate courts and/or administrative agencies. NKU must comply with federal regulations, and additional policies may apply to faculty engaged in federally sponsored research or submitting work to a federal agency.

### **16.7.2. DEFINITIONS**

#### **16.7.2.1. COMPLAINANT**

Complainant means a person who in good faith makes an allegation of research misconduct.

#### **16.7.2.2. GOOD FAITH**

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 research 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 research misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping an institution meet its responsibilities under this part. 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 research misconduct proceeding.

#### **16.7.2.3. INQUIRY**

Inquiry means preliminary information-gathering and preliminary fact-finding.

#### **16.7.2.4. INVESTIGATION**

Investigation means the formal collection, examination, and evaluation of all relevant facts to determine whether research misconduct has occurred.

#### **16.7.2.5. RESEARCH MISCONDUCT**

The question of what constitutes research misconduct must be resolved by applying the standards and norms of the particular academic discipline at issue.

Research "misconduct," as used herein, is defined as:

- I. Fabrication, falsification, plagiarism, or other serious deviations from those accepted practices in proposing, performing, or reviewing research, or in reporting results from research.
  - A. Fabrication is making up data or results and recording or reporting them.
  - B. Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
  - C. Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
  - D. Substantial recycling of material in redundant or duplicate publications, if compounded by a failure to cite prior work, can constitute a serious deviation from accepted research practices.
    - a. "Redundant or duplicate publications" refers to publications in which a substantial portion of the work has already been published. It also includes the situation in which the work is either so similar to previously published material or so modest an extension of previously published work that it would not be viewed as significant were the previous publication acknowledged.
    - b. "Failure to cite prior work" refers to papers that are presented as if the material were new when in fact the authors have previously published much

of the body of the work before. An extension or recycling of previous work must be viewed as such, not as new and original publication.

- II. Material failure to comply with federal requirements that are uniquely related to the conducting of research.
- III. Failure to comply with federal requirements for protection of researchers, human subjects, or the public, or for insuring the welfare of laboratory animals or
- IV. Failure to meet other material legal requirements governing research.

Research misconduct does not include honest error or difference of opinion.

In cases of allegations involving activities submitted to or supported by a federal agency and definitions or procedures for research misconduct specified in the agency's regulations differ from those in this policy, the definitions and procedures in the agency's regulations will be used.

In cases of allegations involving activities not submitted to or supported by a federal agency, the definitions of research misconduct specified in this policy should be supplemented by (or interpreted in light of) applicable substantive standards of the relevant research community or the academic discipline at issue.

#### **16.7.2.6. RESEARCH RECORD**

Research record means the record of data or results that embody the facts resulting from scientific inquiry, including but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and any documents and materials provided to federal agencies or institutional officials by a respondent in the course of the research misconduct proceeding.

#### **16.7.2.7. RESPONDENT**

Respondent means the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

#### **16.7.2.8. RETALIATION**

Retaliation for the purpose of this part means an 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 research misconduct or (b) good faith cooperation with a research misconduct proceeding.

### **16.7.3. POLICIES**

#### **16.7.3.1. CONFIDENTIALITY**

All parties involved in the inquiry and investigation shall strive to maintain confidentiality of information, respondents, complainants, and research subjects that may be identified from research records or evidence.



#### **16.7.3.2. INTERIM ADMINISTRATIVE ACTION**

As provided by federal regulations, at any stage in the process of inquiry, investigation, formal finding and disposition, NKU may take interim administrative action to protect the welfare of human or animal subjects of research, to prevent the inappropriate use of funds, or to protect the interest of students, colleagues, or the University. A suspension or restriction of activities does not in any way imply that research misconduct has taken place. This action will be temporary and used as an interim measure prior to the conclusion of the formal investigation.

#### **16.7.3.3. EXTRAMURAL ASSURANCE AND REPORTING REQUIREMENTS**

If applicable, NKU will fully and continually cooperate with the appropriate federal agency during its oversight review or any subsequent administrative hearings or appeals. This may include providing research records and evidence under the institution's control, custody, or possession and access to all persons within its authority necessary to develop a complete record of relevant evidence. If required by a funding agency, the Institutional Official (IO) or designee shall submit written assurance that the institution is in compliance with the agency's requirements for handling allegations of misconduct. If the research is supported by an extramural funding agency, the IO or designee is responsible for ensuring compliance with the applicable funding agency's reporting requirements.

#### **16.7.3.4. STATUTE OF LIMITATION**

There is no statute of limitation on investigations of research misconduct at Northern Kentucky University.

However, Federal agencies do not require assurance and reporting of research misconduct allegations made more than six (6) years after publication or submission of the final report on a project for which data was collected. Exceptions to the federal six (6) year limitation are as follows:

- 1) Subsequent use by the respondent by continuation or renewal of any incident of alleged research misconduct that occurred before the six (6) year limitation through the citation, republication or other use for the potential benefit of the respondent of the research record that is alleged to have been fabricated, falsified or plagiarized.
- 2) If the appropriate funding agency or the University in consultation with the funding agency, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public.

#### **16.7.3.5. CONFLICT OF INTEREST**

Individuals responsible for carrying out any part of the research misconduct proceeding must not have any real or apparent unresolved, personal, professional, or financial conflicts of interest with the complainant, respondent, or witnesses. Any conflict of interest must be disclosed.

A conflict of interest may include, but is not limited to, co-authorship on a paper or book, a professional or personal relationship, professional or personal relationship or antagonism, financial ties, or contact regarding possible employment with either the respondent or the complainant.

#### **16.7.3.6 ABSENCE OF THE RESPONDENT OF THE ALLEGATION**

Should the respondent leave NKU before the case is resolved, the dean, on behalf of NKU, when possible, shall continue the examination of the allegation and reach a conclusion. NKU shall cooperate with the process of another institution to resolve such questions to the extent possible under state and federal law.

#### **16.7.3.7. RESTORING REPUTATION**

The dean, or designee, or Provost shall undertake all practical and reasonable efforts to protect and restore the reputation of the individual(s) alleged to have engaged in research misconduct but against whom no finding of research misconduct has been made, if requested by the individual(s) as appropriate. The dean, or designee, or Provost shall undertake reasonable and practical efforts to protect or restore the position and reputation of the individual(s) who in good faith, made an allegation of research misconduct, if requested by the individual(s) and as appropriate. The dean, or designee, or Provost shall undertake 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 these individuals.

#### **16.7.3.8. FALSE ACCUSATIONS**

Regardless of the outcome of an inquiry or investigation, it is the policy of the University that no individual who, in good faith, has reported apparent research misconduct shall be subject to retaliation by the University or by any member of the University community. However, if it is determined that the charges were brought against the respondent with malicious or dishonest intent such that the complainant had a clear understanding that they were probably untrue and that they were designed to harm the respondent, the dean may recommend to the provost that appropriate administrative action be taken against the complainant consistent with the University's governing and administrative regulations.

### **16.7.4. PROCEDURES**

#### **16.7.4.1. ALLEGATIONS OF RESEARCH MISCONDUCT**

It is the policy of Northern Kentucky University to treat fairly both the complainant and the respondent. All allegations of research misconduct will be treated seriously and, to the extent possible, the confidentiality of those who submit allegations will be maintained.

Though allegations of research misconduct may be by any means of communication to an institutional or federal official, the allegation of misconduct shall initially be documented in

writing by either the complainant or the person receiving the allegation. If the allegation is made through the Ethics and Compliance Helpline, the person receiving the allegation should document the allegation in writing. Any other person receiving an allegation of research misconduct should relay the information to the appropriate dean for preliminary inquiry. The Provost may receive reports of research misconduct in situations where the appropriate dean may have a conflict of interest.

Either before or when the institution notifies the respondent of the allegation, inquiry or investigation, the institution must 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. Respondents may be given supervised access to the research records throughout the inquiry and/or investigation.

#### **16.7.4.2. PRELIMINARY INQUIRY**

The purpose of the preliminary inquiry is to conduct an initial review of evidence to determine if there are sufficient grounds to warrant a formal investigation of the charge of research misconduct. The preliminary inquiry will be conducted by the dean of the college in which the respondent faculty member is appointed. If the allegation of misconduct is brought against a dean, the provost will appoint another dean to conduct the preliminary inquiry. The dean will notify university legal counsel and the provost regarding the nature of the allegations. University counsel shall determine whether the research at issue is governed by any federal legal regulations, and shall instruct the dean to ensure that the preliminary inquiry is conducted in compliance with any applicable regulations. When deemed necessary, the dean may select one or two other individuals to assist in the preliminary inquiry. Any such individuals should have no real or apparent conflict of interest related to the case in question. A conflict of interest may include, but is not limited to, co-authorship on a paper or book, professional or personal relationship or antagonism, financial ties, or contact regarding possible employment with either the respondent or the complainant.

The preliminary inquiry should begin with an informal discussion with the complainant to verify that the allegation should be classified as possible research misconduct. Within ten (10) business days after this discussion with the complainant, the dean shall begin an informal discussion with the respondent regarding the allegations. If federal or state regulations so require, the dean shall also present the respondent with a letter that states: the nature of the allegations; the focus of the inquiry; an invitation to the respondent to provide comments and other relevant information to the dean; other relevant information; and a statement that the respondent has the right to be represented by an attorney.

The preliminary inquiry should be completed within sixty (60) days of receipt of the written allegation of misconduct. If the preliminary inquiry determines that there are not sufficient grounds within the context of the definition of misconduct for a formal investigation, the

respondent and the complainant will be sent letters informing them of the results. All records will be sent to the office of the provost.

A formal investigation will be warranted if:

- a. A reasonable basis for concluding that the allegation falls within the definition of research misconduct; and
- b. Preliminary information-gathering and preliminary fact-finding from the inquiry indicates the allegation may have substance

If the preliminary inquiry determines that there are sufficient grounds for a formal investigation within the context of the definition of misconduct, the respondent and the complainant will be sent letters informing them of this decision. The letter to the respondent may include (or be deemed) the “draft preliminary inquiry report.” The letter to the respondent (i.e., “the draft preliminary inquiry report”) must include, but is not limited to, the following:

- The name and position of the respondent(s);
- That a formal investigation is to be conducted;
- Information pertaining to federal agencies involved including funding numbers, grant applications, contracts, etc., if applicable;
- The nature of the allegation, including a summary of all evidence that currently exists and the right to review it;
- The basis for recommending that the alleged actions warrant an investigation;
- That the respondent will have an opportunity to respond to the charges; and
- That the respondent has the right to be represented by an attorney.

The respondent shall have the opportunity to respond to this letter, in writing, within thirty (30) calendar days of the date on which the respondent receives it. The draft preliminary inquiry report, combined with any comments received from the respondent, shall constitute the preliminary inquiry report.

In the event a formal investigation is deemed to be warranted, the dean shall inform the following individuals and/or organizations: university legal counsel, chairs of any departments that may be involved, the provost, and appropriate regulatory bodies. As required by law or regulation, University counsel shall notify appropriate government agencies when a formal investigation is convened.

If a formal investigation is judged to be unwarranted and it is determined that the charges were brought against the respondent with malicious or dishonest intent such that the complainant had a clear understanding that they were probably untrue and that they were designed to harm the respondent, the dean may recommend to the provost that appropriate administrative action be taken against the complainant. Such appropriate administrative action shall be consistent with the University’s governing and administrative regulations.

Any records produced during the preliminary inquiry stage, including the preliminary inquiry report, must be maintained by University Counsel for at least seven (7) years and, upon request, be provided to the applicable government agencies.

#### 16.7.4.3. FORMAL INVESTIGATION

Before any formal investigation commences, the respondent(s) and any involved collaborators must be notified by written statement of allegations that an investigation is to be conducted. The written statement shall:

- Include a copy of the preliminary inquiry report, which includes information on the nature of the allegations and the focus of the investigation, and inform those being investigated of the opportunity to provide comments and other relevant information to the dean
- Inform the respondent(s), prior to beginning the investigation, of his or her right to be represented by an attorney in preparing and/or giving his or her response in this and all subsequent phases of the investigation.
- Give the respondent a copy of or refer to the institution's policies and procedures related to research misconduct.
- Indicate there can be no actions that are, or could be perceived as, retaliatory against the investigation committee members, witnesses, or the person who raised an allegation or is thought to have raised an allegation.

The dean shall appoint an Investigative Body (IB) with three or more members to initiate an investigation thirty (30) calendar days after receipt of the preliminary inquiry report. IB members must be tenured faculty members with sufficient expertise in the area of investigation to insure a sound base from which to evaluate the nature of the charges. One member of the IB may be from outside the University if necessary to insure an accurate and knowledgeable evaluation of the evidence. All IB members must be free of real or apparent conflicts of interest regarding the investigation. The dean shall document the rationale for selecting IB members based on their expertise and impartiality. All IB members shall be required to sign a statement that they will maintain the confidentiality of the investigation, and that they have no interest that would conflict with those of the respondent, the complainant, the University, or the sponsoring agency for the research. Prior to the beginning of the formal investigation, the respondent shall be given the opportunity to object in writing to the appointment of any member of the IB, based on conflict of interest. If the member is appointed to the IB despite the respondent's objection, this fact shall be noted in the IB's final report.

The IB shall conduct a formal examination and evaluation of all relevant facts to determine if the allegations of misconduct are valid. In order to maintain the integrity of the review process and avoid any appearance of institutional influence over the panel's deliberations or decision-making, the IB shall be insulated from any administrative influence and any *ex parte* communications with the parties. The IB shall seek the advice of university counsel and may engage in, but is not limited to, the following investigative procedures:

- Interviewing witnesses;
- Sequestering and examining research data (both published and unpublished) and other evidence;

- Seeking expert counsel both inside and outside the University; and
- Conducting a hearing in which the respondent may respond to the charges, call witnesses, and question the complainant.

The IB shall pursue diligently all significant issues and leads discovered that are determined relevant to the investigation. A written summary or transcript of each interview conducted must be completed. A copy of the interview summary or transcript shall be provided to the interviewed party for comment.

The investigation must be completed within 120 days of beginning it, including conducting the investigation, preparing the report findings, providing the draft report for comment, and, if applicable, sending the final report to the appropriate federal agency. If a federal agency is to be involved, the IB must notify the Provost, who will facilitate arrangements for the report to be sent. If the IB is unable to complete the investigation in time, a written request for extension that includes an explanation for the delay shall be submitted to and approved by the Provost and be included in the investigation record. Except: if no federal or state regulation requires the investigation to be completed within 120 days, then the timeline for a particular investigation shall automatically be extended until the IB completes the investigation, without any need for written request of extension.

A finding of research misconduct requires that acts constitute research misconduct as defined above and that:

- 1) There is a significant departure from accepted practices of the relevant research community;
- 2) The misconduct is committed intentionally, or knowingly, or recklessly; and
- 3) The allegation is proven by a preponderance of evidence.

The IB shall prepare a draft Investigation Report. The draft report will be sent to all respondents, and all respondents shall be afforded the opportunity to comment upon the draft report and have the comments included in the formal record of the investigation. Any comments shall be submitted in writing within thirty (30) calendar days of the date on which the respondents received the draft report. The IB shall review all respondents' comments prior to issuing the final Investigation Report.

At the completion of the investigation, the IB shall submit its findings, comments from the respondents, and recommend institutional actions (also known as the Investigation Report) in writing to the dean who shall provide a copy to the respondents of the investigation, the Provost, Legal Counsel, and chair(s) of the affected department(s). The dean shall ensure that publishers and editors of journals are informed if manuscripts emanating from fraudulent research have been submitted or published.

The Investigation Report will include the following:

- 1) Description of the nature of the allegations of research misconduct



- 2) Description and documentation of federal financial support, if applicable (e.g., grant numbers, grant applications, contracts, etc.)
- 3) Institutional charge (e.g., description of specific allegations of research misconduct for consideration in the investigation)
- 4) Copy of the institutional policies and procedures under which the investigation was conducted
- 5) Research records and evidence. Identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody but not reviewed.
- 6) Statement of findings. For each separate allegation of research misconduct identified during the investigation, provide
  - a. A finding as to whether research misconduct did or did not occur as follows:
    - i. Identify whether research misconduct was falsification, fabrication, plagiarism, or other serious deviation from accepted practices and if it was intentional, knowing, or in reckless disregard;
    - ii. A finding that serious research irregularities have occurred, but that the irregularities are insufficient to constitute misconduct; or
    - iii. A finding that no research misconduct or research irregularities were committed.
  - b. A summary of the facts and the analysis that support the conclusion and consideration of the merits of any reasonable explanation by the respondent;
  - c. Information about the specific federal support affected, if applicable
  - d. Identification of any publications in need of correction or retraction;
  - e. Identification of the person(s) responsible for the misconduct; and
  - f. Listing of any current support or known grant proposal applications that the respondent has pending with federal agencies.
- 7) Comments. Include and consider any comments made by the respondent and complainant on the draft investigation report.

The investigation must be thorough and sufficiently documented including examination of all research records and evidence relevant to reaching a decision on the merits of the allegations. The IB must ensure that it maintains and provides all records from the investigation to the Provost. This is necessary so that they can be provided to any applicable federal agencies, which may request all relevant research records and records of the institution's research misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

#### **16.7.4.4. DOCUMENTATION**

At the conclusion of an allegation assessment, inquiry, or investigation, the dean shall forward all documentation pertaining to the allegation assessment, inquiry, or investigation to the Provost who shall arrange that the documentation be maintained for seven (7) years and ensure that documentation is provided to the appropriate federal agency upon request, if appropriate. Documentation to be maintained for federal agencies must include the following, as applicable:

- 1) Allegation assessment statement
- 2) Preliminary Inquiry final report

- 3) Formal Investigation Report, including a copy of the report, all attachments, and any appeals
- 4) Findings: statement whether or not the institution accepts the investigation's findings
- 5) Final institutional action: statement if the institution found research misconduct, and if so, who committed the misconduct
- 6) Institutional administrative actions: description of any pending or completed administrative actions against the respondents

The institution must notify the relevant federal agency (if applicable), if the institution plans to close out a case at the inquiry, investigation, or appeal stage on the basis that the respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason, except the closing of a case at the inquiry stage on the basis that an investigation is not warranted.

#### **16.7.4.5. DISCIPLINARY ACTION**

If the findings of the investigation substantiate allegations of research misconduct, the Provost, in consultation with Legal Counsel, shall determine appropriate administrative action, consistent with the University's governing and administrative regulations.

#### **16.7.4.6. APPEAL**

The respondent may appeal the decision of the investigative committee in writing to the provost. The respondent shall have thirty (30) days to file an appeal. A reinvestigation of the case will be warranted if one or more of the following conditions are judged by the provost to exist:

- Significant omission of new evidence that was not known or reasonably available at the time of the formal investigation;
- A member of the committee had a conflict of interest; or
- A member of the committee did not accurately interpret the evidence due to lack of expertise concerning the research topic.

The provost must rule within fifteen (15) days of receipt of the respondent's written appeal on whether or not an appeal is warranted. If the provost determines that an appeal is warranted, a new investigative committee will be appointed by the Provost to reexamine the case. The provost's ruling on the issue of appeal is final. The criteria for appointing members to the original investigative committee shall also apply to the qualifications of members of the new investigative committee. The procedures that applied to the original investigative committee will also apply to the new investigative committee. The new committee shall have one hundred twenty (120) days to complete the investigation. The decision of this review committee is final.