Hobart and William Smith Colleges
Policy and Procedures
for Responding to Allegations
of Research Misconduct

Revised March 2012

Table of Contents

I. Introduction

A. General Policy

By unanimous vote, faculty at Hobart and William Smith Colleges voted to accept as guidelines for professional conduct AAUP statements regarding faculty rights and responsibilities. Included in these statements is the **AAUP Statement on Professional Ethics:**

Introduction

From its inception, the American Association of University Professors has recognized that membership in the academic profession carries with it special responsibilities. The Association has consistently affirmed these responsibilities in major policy statements, providing guidance to professors in such matters as their utterances as citizens, the exercise of their responsibilities to students and colleagues, and their conduct when resigning from an institution or when undertaking sponsored research. The *Statement on Professional Ethics* that follows sets forth those general standards that serve as a reminder of the variety of responsibilities assumed by all members of the profession.

In the enforcement of ethical standards, the academic profession differs from those of law and medicine, whose associations act to ensure the integrity of members engaged in private practice. In the academic profession the individual institution of higher learning provides this assurance and so should normally handle questions concerning propriety of conduct within its own framework by reference to a faculty group. The AAUP supports such local action and stands ready, through the general secretary and the Committee on Professional Ethics, to counsel with members of the academic community concerning questions of professional ethics and to inquire into complaints when local consideration is impossible or inappropriate. If the alleged offense is deemed sufficiently serious to raise the possibility of adverse action, the procedures should be in accordance with the 1940 *Statement of Principles on Academic Freedom and Tenure* [and Hobart and William Smith Colleges procedures for *Termination of the Faculty* as set forth in the HWS Faculty Bylaws. (Article 1, section g)

The Statement

1. Professors, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed upon them. Their primary responsibility to their subject is to seek and to state the truth as they see it. To this end professors devote their energies to developing and improving their scholarly competence.
They accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. They practice intellectual honesty.

Although professors may follow subsidiary interests, these interests must never seriously hamper or compromise their freedom of inquiry.

2. As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to ensure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom.

3. As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates. In the exchange of criticism and ideas professors show due respect for the opinions of others. Professors acknowledge academic debt and strive to be objective in their professional judgment of colleagues. Professors accept their share of faculty responsibilities for the governance of their institution.

4. As members of an academic institution, professors seek above all to be effective teachers and scholars. Although professors observe the stated regulations of the institution, provided the regulations do not contravene academic freedom, they maintain their right to criticize and seek revision. Professors give due regard to their paramount responsibilities within their institution in determining the amount and character of work done outside it. When considering the interruption or termination of their service, professors recognize the effect of their decision upon the program of the institution and give due notice of their intentions.

5. As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

(*AAUP Policy Documents and Reports*, 10th edition, Baltimore: Johns Hopkins University Press, 2006, p. 171-172.)

B. Scope

This statement of policy and procedures is intended to carry out Hobart and William Smith Colleges' responsibilities under the Public Health Service (PHS) Policies on Research Misconduct, 42 CFR Part 93.· This document applies to allegations of research misconduct (fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results) involving:

- A person who, at the time of the alleged research misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with this institution;[1] and

- (1) PHS support biomedical or behavioral research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information, (2) applications or proposals for PHS support for biomedical or behavioral research, research training or activities related to that research or research training, or (3) plagiarism of research records produced in the course of PHS supported research, research training or activities related to that research or research training. This includes any research proposed, performed, reviewed, or reported, or any research record generated from that research, regardless of whether an application or proposal for PHS funds resulted in a grant, contract, cooperative agreement, or other form of PHS support.[2]

This statement of policy and procedures does not apply to authorship or collaboration disputes and applies only to allegations of research misconduct that occurred within six years of the date the institution or HHS received the allegation, subject to the subsequent use, health or safety of the public, and grandfather exceptions in 42 CFR § 93.105(b).

II. Definitions

Terms used have the same meaning as given them in the Public Health Service Policies on Research Misconduct, 42 CFR Part 93.

Deciding Official (DO) means the institutional official who makes final determinations on allegations of research misconduct and any institutional administrative actions. The Deciding Official is not be the same individual as the Research Integrity Officer and will have no direct prior involvement in the institution's inquiry, investigation, or allegation

· Sections based on 42 CFR Part 93 have endnotes indicating the applicable section.

assessment. A DO's appointment of an individual to assess allegations of research misconduct, or to serve on an inquiry or investigation committee, is not considered to be direct prior involvement.

Research Integrity Officer (RIO) means the institutional official responsible for: (1) assessing allegations of research misconduct to determine if they fall within the definition of research misconduct, are covered by 42 CFR Part 93, and warrant an inquiry on the basis that the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified; (2) overseeing inquires and investigations; and (3) the other responsibilities described in this policy.

III. Rights and Responsibilities

A. Research Integrity Officer

The Provost and Dean of Faculty will serve as the RIO who will have primary responsibility for implementation of the institution's policies and procedures on research misconduct. A detailed listing of the responsibilities of the RIO is set forth in Appendix A. These responsibilities include the following duties related to research misconduct proceedings:

- Consult confidentially with persons uncertain about whether to submit an allegation of research misconduct;
- Receive allegations of research misconduct;
- Assess each allegation of research misconduct in accordance with Section V.A. of this policy to determine whether it falls within the definition of research misconduct and warrants an inquiry;
- As necessary, take interim action and notify ORI of special circumstances, in accordance with Section IV.F. Of this policy;
- Sequester research data and evidence pertinent to the allegation of research misconduct in accordance with Section V.C. of this policy and maintain it securely in accordance with this policy and applicable law and regulation;
- Provide confidentiality to those involved in the research misconduct proceeding as required by 42 CFR § 93.108, other applicable law, and institutional policy;
- Notify the respondent and provide opportunities for him/her to review/ comment/respond to allegations, evidence, and committee reports in

accordance with Section III.C. of this policy;

- Inform respondents, complainants, and witnesses of the procedural steps in the research misconduct proceeding;

- Appoint the chair and members of the inquiry and investigation committees, ensure that those committees are properly staffed and that there is expertise appropriate to carry out a thorough and authoritative evaluation of the evidence;

- Determine whether each person involved in handling an allegation of research misconduct has an unresolved personal, professional, or financial conflict of interest and take appropriate action, including recusal, to ensure that no person with such conflict is involved in the research misconduct proceeding;

- In cooperation with other institutional officials, take all reasonable and practical steps to protect or restore the positions and reputations of good faith complainants, witnesses, and committee members and counter potential or actual retaliation against them by respondents or other institutional members;

- Keep the Deciding Official and others who need to know apprised of the progress of the review of the allegation of research misconduct;

- Notify and make reports to ORI as required by 42 CFR Part 93;

- Ensure that administrative actions taken by the institution and ORI are enforced and take appropriate action to notify other involved parties, such as sponsors, law enforcement agencies, professional societies, and licensing boards of those actions; and

- Maintain records of the research misconduct proceeding and make them available to ORI in accordance with Section VIII.F. of this policy.

B. Complainant

The complainant is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with the inquiry and investigation. As a matter of good practice, the complainant should be interviewed at the inquiry stage and given the transcript or recording of the interview for correction. The complainant must be interviewed during an investigation, and be given the transcript or recording of the interview for correction.[3] The complainant will have 30 days to submit any revisions and/or corrections.

C. Respondent

The respondent is responsible for maintaining confidentiality and cooperating with the conduct of an inquiry and investigation. The respondent is entitled to:

- A good faith effort from the RIO to notify the respondent in writing at the time of or before beginning an inquiry;[4]

- An opportunity to comment on the inquiry report and have his/her comments attached to the report;[5]

- Be notified of the outcome of the inquiry, and receive a copy of the inquiry report that includes a copy of, or refers to 42 CFR Part 93 and the institution's policies and procedures on research misconduct;[6]

- Be notified in writing of the allegations to be investigated within a reasonable time after the determination that an investigation is warranted, but before the investigation begins (within 30 days after the institution decides to begin an investigation), and be notified in writing of any new allegations, not addressed in the inquiry or in the initial notice of investigation, within a reasonable time after the determination to pursue those allegations;[7]

- Be interviewed during the investigation, have the opportunity to correct the recording or transcript, and have the corrected recording or transcript included in the record of the investigation;[8]

- Have interviewed during the investigation any witness who has been reasonably identified by the respondent as having information on relevant aspects of the investigation, have the recording or transcript provided to the witness for correction, and have the corrected recording or transcript included in the record of investigation;[9] and

- Receive a copy of the draft investigation report and, concurrently, a copy of, or supervised access to the evidence on which the report is based, and be notified that any comments must be submitted within 30 days of the date on which the copy was received and that the comments will be considered by the institution and addressed in the final report.[10]

The respondent should be given the opportunity to admit that research misconduct occurred and that he/she committed the research misconduct. With the advice of the RIO and/or other institutional officials, the Deciding Official may terminate

the institution's review of an allegation that has been admitted, if the institution's acceptance of the admission and any proposed settlement is approved by ORI.[11]

As provided in 42 CFR § 93.314(a), the respondent will have the opportunity to request an institutional appeal if the institution's procedures provide for an appeal.

D. Deciding Official

The DO will receive the inquiry report and after consulting with the RIO and/or other institutional officials, decide whether an investigation is warranted under the criteria in 42 CFR § 93.307(d). Any finding that an investigation is warranted must be made in writing by the DO and must be provided to ORI, together with a copy of the inquiry report meeting the requirements of 42 CFR § 93.309, within 30 days of the finding. If it is found that an investigation is not warranted, the DO and the RIO will ensure that detailed documentation of the inquiry is retained in the Provost office for at least 7 years after termination of the inquiry, so that ORI may assess the reasons why the institution decided not to conduct an investigation.[12]

The DO will receive the investigation report and, after consulting with the RIO and/or other institutional officials, decide the extent to which this institution accepts the findings of the investigation and, if research misconduct is found, decide what, if any, institutional administrative actions are appropriate. ***The DO shall ensure that the final investigation report, the findings of the DO and a description of any pending or completed administrative actions are provided to ORI, as required by 42 CFR § 93.315.***

IV. General Policies and Principles

A. Responsibility to Report Misconduct

All institutional members will report observed, suspected, or apparent research misconduct to the RIO **(Provost and Dean of the Faculty).** If an individual is unsure whether a suspected incident falls within the definition of research misconduct, he or she may contact the RIO at x3304 to make an appointment to discuss the suspected research misconduct informally, which may include discussing it anonymously and/or hypothetically. If the circumstances described by the individual do not meet the definition of research misconduct, the RIO will refer the individual or allegation to other offices or officials with responsibility for resolving the problem.

At any time, an institutional member may have confidential discussions and consultations about concerns of possible misconduct with the RIO and will be counseled about appropriate procedures for reporting allegations.

B. Cooperation with Research Misconduct Proceedings

Institutional members will cooperate with the RIO and other institutional officials in the review of allegations and the conduct of inquiries and investigations. Institutional members, including respondents, have an obligation to provide evidence relevant to research misconduct allegations to the RIO or other institutional officials.

C. Confidentiality

The RIO shall, as required by 42 CFR § 93.108 : (1) limit disclosure of the identity of respondents and complainants to those who need to know in order to carry out a thorough, competent, objective and fair research misconduct proceeding; and (2) except as otherwise prescribed by law, limit the disclosure of any records or evidence from which research subjects might be identified to those who need to know in order to carry out a research misconduct proceeding. The RIO should use written confidentiality agreements or other mechanisms to ensure that the recipient does not make any further disclosure of identifying information. All information obtained from witnesses involved in the investigation will be treated confidentially.

D. Protecting complainants, witnesses, and committee members

Institutional members may not retaliate in any way against complainants, witnesses, or committee members. Institutional members should immediately report any alleged or apparent retaliation against complainants, witnesses or committee members to the RIO, who shall review the matter and, as necessary, make all reasonable and practical efforts to counter any potential or actual retaliation and protect and restore the position and reputation of the person against whom the retaliation is directed.

E. Protecting the Respondent

As requested and as appropriate, the RIO and other institutional officials shall make all reasonable and practical efforts to protect or restore the reputation of persons alleged to have engaged in research misconduct, but against whom no finding of research misconduct is made.[13]

During the research misconduct proceeding, the RIO is responsible for ensuring that respondents receive all the notices and opportunities provided for in 42 CFR Part 93 and the policies and procedures of the institution. Respondents may consult with legal counsel or a non-lawyer personal adviser (who is not a principal or witness in the case) to seek advice and may bring the counsel or

personal adviser to interviews or meetings on the case. In these instances, legal counsel will be strictly limited to an advisory role.

F. Interim Administrative Actions and Notifying ORI of Special Circumstances

Throughout the research misconduct proceeding, the RIO will review the situation to determine if there is any threat of harm to public health, federal funds and equipment, or the integrity of the PHS supported research process. In the event of such a threat, the RIO will, in consultation with other institutional officials and ORI, take appropriate interim action to protect against any such threat.[14] Interim action might include additional monitoring of the research process and the handling of federal funds and equipment, reassignment of personnel or of the responsibility for the handling of federal funds and equipment, additional review of research data and results or delaying publication. The RIO shall, at any time during a research misconduct proceeding, notify ORI immediately if he/she has reason to believe that any of the following conditions exist:

- Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;
- HHS resources or interests are threatened;
- Research activities should be suspended;
- There is a reasonable indication of possible violations of civil or criminal law;
- Federal action is required to protect the interests of those involved in the research misconduct proceeding;
- The research misconduct proceeding may be made public prematurely and HHS action may be necessary to safeguard evidence and protect the rights of those involved; or
- The research community or public should be informed.[15]

V. Conducting the Assessment and Inquiry

A. Assessment of Allegations

Upon receiving an allegation of research misconduct, the RIO will immediately assess the allegation to determine whether it is sufficiently credible and specific so that potential evidence of research misconduct may be identified, whether it is within the jurisdictional criteria of 42 CFR § 93.102(b), and whether the

allegation falls within the definition of research misconduct in 42 CFR § 93.103.[16] An inquiry must be conducted if these criteria are met.

The assessment period should be brief, preferably concluded within a week. In conducting the assessment, the RIO need not interview the complainant, respondent, or other witnesses, or gather data beyond any that may have been submitted with the allegation, except as necessary to determine whether the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified. The RIO shall, on or before the date on which the respondent is notified of the allegation, obtain custody of, inventory, and sequester all research records and evidence needed to conduct the research misconduct proceeding, as provided in paragraph C. of this section.

B. Initiation and Purpose of the Inquiry

If the RIO determines that the criteria for an inquiry are met, he or she will immediately initiate the inquiry process. The purpose of the inquiry is to conduct an initial review of the available evidence to determine whether to conduct an investigation. An inquiry does not require a full review of all the evidence related to the allegation.[17]

C. Notice to Respondent; Sequestration of Research Records

At the time of or before beginning an inquiry, the RIO must make a good faith effort to notify the respondent in writing, if the respondent is known. If the inquiry subsequently identifies additional respondents, they must be notified in writing. On or before the date on which the respondent is notified, or the inquiry begins, whichever is earlier, the RIO must 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.[18] The RIO may consult with ORI for advice and assistance in this regard.

D. Appointment of the Inquiry Committee

The RIO, in consultation with other institutional officials as appropriate, will appoint an inquiry committee and committee chair as soon after the initiation of the inquiry as is practical. The inquiry committee must consist of individuals who do not have unresolved personal, professional, or financial conflicts of interest with those involved with the inquiry and should include individuals with the

appropriate scientific expertise to evaluate the evidence and issues related to the allegation, interview the principals and key witnesses, and conduct the inquiry.[19]

E. Charge to the Committee and First Meeting

The RIO will prepare a charge for the inquiry committee that:

- Sets forth the time for completion of the inquiry;
- Describes the allegations and any related issues identified during the allegation assessment;
- States that the purpose of the inquiry is to conduct an initial review of the evidence, including the testimony of the respondent, complainant and key witnesses, to determine whether an investigation is warranted, not to determine whether research misconduct definitely occurred or who was responsible;
- States that an investigation is warranted if the committee determines: (1) there is a reasonable basis for concluding that the allegation falls within the definition of research misconduct and is within the jurisdictional criteria of 42 CFR § 93.102(b); and, (2) the allegation may have substance, based on the committee's review during the inquiry.
- Informs the inquiry committee that they are responsible for preparing or directing the preparation of a written report of the inquiry that meets the requirements of this policy and 42 CFR § 93.309(a).

At the committee's first meeting, the RIO will review the charge with the committee, discuss the allegations, any related issues, and the appropriate procedures for conducting the inquiry, assist the committee with organizing plans for the inquiry, and answer any questions raised by the committee. The RIO will be present or available throughout the inquiry to advise the committee as needed.

F. Inquiry Process

The inquiry committee will normally interview the complainant, the respondent, and key witnesses as well as examining relevant research records and materials. Then the inquiry committee will evaluate the evidence, including the testimony obtained during the inquiry. After consultation with the RIO, the committee members will decide whether an investigation is warranted based on the criteria in this policy and 42 CFR § 93.307(d). The scope of the inquiry is not required to and does not normally include deciding whether misconduct definitely occurred, determining definitely who committed the research misconduct or conducting

exhaustive interviews and analyses. However, if a legally sufficient admission of research misconduct is made by the respondent, misconduct may be determined at the inquiry stage if all relevant issues are resolved. In that case, the institution shall promptly consult with ORI to determine the next steps that should be taken. See Section IX.

G. Time for Completion

The inquiry, including preparation of the final inquiry report and the decision of the DO on whether an investigation is warranted, must be completed within 60 calendar days of initiation of the inquiry, unless the RIO determines that circumstances clearly warrant a longer period. If the RIO approves an extension, the inquiry record must include documentation of the reasons for exceeding the 60-day period.[20] In addition, the respondent will be notified of the extension.

VI. The Inquiry Report

A. Elements of the Inquiry Report

A written inquiry report must be prepared that includes the following information: (1) the name and position of the respondent; (2) a description of the allegations of research misconduct; (3) the PHS support, including, for example, grant numbers, grant applications, contracts and publications listing PHS support; (4) the basis for recommending or not recommending that the allegations warrant an investigation; (5) any comments on the draft report by the respondent or complainant.[21]

Institutional counsel should review the report for legal sufficiency. Modifications should be made as appropriate in consultation with the RIO and the inquiry committee.

The inquiry report may also include: the names and titles of the committee members and experts who conducted the inquiry; a summary of the inquiry process used; a list of the research records reviewed; summaries of any interviews; and whether any other actions should be taken if an investigation is not recommended.

B. Notification to the Respondent and Opportunity to Comment

The RIO shall notify the respondent whether the inquiry found an investigation to be warranted, include a copy of the draft inquiry report (or relevant portions of the report) for comment within 10 days, and include a copy of or refer to 42 CFR Part 93 and the institution's policies and procedures on research misconduct.[22] Access to the report will only be granted if a confidentiality agreement has been signed by the respondent.

Any comments that are submitted by the respondent or complainant will be attached to the final inquiry report. Based on the comments, the inquiry committee may revise the draft report as appropriate and prepare it in final form. The committee will deliver the final report to the RIO within 10 days of receiving any comments from the respondent or complainant.

C. Institutional Decision and Notification

1. Decision by Deciding Official

The RIO will transmit the final inquiry report and any comments to the DO, who will determine in writing whether an investigation is warranted. The inquiry is completed when the DO makes this determination.

2. Notification to ORI

Within 30 calendar days of the DO's decision that an investigation **is** warranted, the RIO will provide ORI with the DO's written decision and a copy of the inquiry report. The RIO will also notify those institutional officials who need to know of the DO's decision. The RIO must provide the following information to ORI upon request: (1) the institutional policies and procedures under which the inquiry was conducted; (2) the research records and evidence reviewed, transcripts or recordings of any interviews, and copies of all relevant documents; and (3) the charges to be considered in the investigation.[23]

3. Documentation of Decision Not to Investigate

If the DO decides that an investigation is not warranted, the RIO shall secure and maintain for 7 years after the termination of the inquiry sufficiently detailed documentation of the inquiry to permit a later assessment by ORI of the reasons why an investigation was not conducted. These documents will be secured in the Provost office for 7 years after which time they will be shredded or otherwise destroyed. These documents must be provided to ORI or other authorized HHS personnel upon request.

VII. Conducting the Investigation

A. Initiation and Purpose

The investigation must begin within 30 calendar days after the determination by the DO that an investigation is warranted.[24] The purpose of the investigation is to

develop a factual record by exploring the allegations in detail and examining the evidence in depth, leading to recommended findings on whether research misconduct has been committed, by whom, and to what extent. The investigation will also determine whether there are additional instances of possible research misconduct that would justify broadening the scope beyond the initial allegations. This is particularly important where the alleged research misconduct involves clinical trials or potential harm to human subjects or the general public or if it affects research that forms the basis for public policy, clinical practice, or public health practice. Under 42 CFR § 93.313 the findings of the investigation must be set forth in an investigation report.

B. Notifying ORI and Respondent; Sequestration of Research Records

On or before the date on which the investigation begins, the RIO must: (1) notify the ORI Director of the decision to begin the investigation and provide ORI a copy of the inquiry report; and (2) notify the respondent in writing of the allegations to be investigated. The RIO must also give the respondent written notice of any new allegations of research misconduct within a reasonable amount of time of deciding to pursue allegations not addressed during the inquiry or in the initial notice of the investigation.[25]

The RIO will, prior to notifying respondent of the allegations, take all reasonable and practical steps to obtain custody of and sequester in a secure manner all research records and evidence needed to conduct the research misconduct proceeding that were not previously sequestered during the inquiry. The need for additional sequestration of records for the investigation 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. The procedures to be followed for sequestration during the investigation are the same procedures that apply during the inquiry.[26]

C. Appointment of the Investigation Committee

The RIO, in consultation with other institutional officials as appropriate, will appoint an investigation committee and the committee chair as soon after the beginning of the investigation as is practical. The investigation committee must consist of individuals who do not have unresolved personal, professional, or financial conflicts of interest with those involved with the investigation and should include individuals with the appropriate scientific expertise to evaluate the evidence and issues related to the allegation, interview the respondent and complainant and conduct the investigation. Individuals appointed to the investigation committee may also have served on the inquiry committee. In cases

where individuals with appropriate scientific expertise are not employees of Hobart and William Smith Colleges, the RIO may select committee members from outside the institution.

D. Charge to the Committee and the First Meeting

1. Charge to the Committee

The RIO will define the subject matter of the investigation in a written charge to the committee that:

- Describes the allegations and related issues identified during the inquiry;
- Identifies the respondent;
- Informs the committee that it must conduct the investigation as prescribed in paragraph E. of this section;
- Defines research misconduct;
- Informs the committee that it must evaluate the evidence and testimony to determine whether, based on a preponderance of the evidence, research misconduct occurred and, if so, the type and extent of it and who was responsible;
- Informs the committee that in order to determine that the respondent committed research misconduct it must find that a preponderance of the evidence establishes that: (1) research misconduct, as defined in this policy, occurred (respondent has the burden of proving by a preponderance of the evidence any affirmative defenses raised, including honest error or a difference of opinion); (2) the research misconduct is a significant departure from accepted practices of the relevant research community; and (3) the respondent committed the research misconduct intentionally, knowingly, or recklessly; and
- Informs the committee that it must prepare or direct the preparation of a written investigation report that meets the requirements of this policy and 42 CFR § 93.313.

2. First Meeting

The RIO will convene the first meeting of the investigation committee to review the charge, the inquiry report, and the prescribed procedures and standards for the conduct of the investigation, including the necessity for confidentiality and for

developing a specific investigation plan. The investigation committee will be provided with a copy of this statement of policy and procedures and 42 CFR Part 93. The RIO will be present or available throughout the investigation to advise the committee as needed.

E. Investigation Process

The investigation committee and the RIO must:

- Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research records and evidence relevant to reaching a decision on the merits of each allegation;[27]

- Take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical;[28]

- Interview each respondent, complainant, and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the respondent, and record or transcribe each interview, provide the recording or transcript to the interviewee for correction, and include the recording or transcript in the record of the investigation;[29] and

- Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of any additional instances of possible research misconduct, and continue the investigation to completion.[30]

F. Time for Completion

The investigation is to be completed within 120 days of beginning it, including conducting the investigation, preparing the report of findings, providing the draft report for comment and sending the final report to ORI. However, if the RIO determines that the investigation will not be completed within this 120-day period, he/she will submit to ORI a written request for an extension, setting forth the reasons for the delay. The RIO will ensure that periodic progress reports are filed with ORI, if ORI grants the request for an extension and directs the filing of such reports.[31]

VIII. The Investigation Report

A. Elements of the Investigation Report

The investigation committee and the RIO are responsible for preparing a written draft report of the investigation that:

- Describes the nature of the allegation of research misconduct, including identification of the respondent and a copy of their current curriculum vitae.

- Describes and documents the PHS support, including, for example, the numbers of any grants that are involved, grant applications, contracts, and publications listing PHS support;

- Describes the specific allegations of research misconduct considered in the investigation;

- Includes the institutional policies and procedures under which the investigation was conducted, unless those policies and procedures were provided to ORI previously;

- Identifies and summarizes the research records and evidence reviewed and identifies any evidence taken into custody but not reviewed; and

- Includes a statement of findings for each allegation of research misconduct identified during the investigation.[32] Each statement of findings must: (1) identify whether the research misconduct was falsification, fabrication, or plagiarism, and whether it was committed intentionally, knowingly, or recklessly; (2) summarize the facts and the analysis that support the conclusion and consider the merits of any reasonable explanation by the respondent, including any effort by respondent to establish by a preponderance of the evidence that he or she did not engage in research misconduct because of honest error or a difference of opinion; (3) identify the specific PHS support; (4) identify whether any publications need correction or retraction; (5) identify the person(s) responsible for the misconduct; and (6) list any current support or known applications or proposals for support that the respondent has pending with non-PHS federal agencies.[33]

B. Comments on the Draft Report and Access to Evidence

1. Respondent

The RIO must give the respondent a copy of the draft investigation report for comment and, concurrently, a copy of, or supervised access to the evidence on which the report is based. The respondent will be allowed 30 days from the date he/she received the draft report to submit comments to the RIO. The respondent's comments must be included and considered in the final report.[34]

2. Complainant

The complainant may be provided a copy of the draft investigation report, or relevant portions of it, for comment. When this option is chosen by the committee, the complainant will be given a 30 day period to submit comments. The final report will reflect these comments. See 42 CFR §§ 93.312(b) and 93.313(g).]

3. Confidentiality

In distributing the draft report, or portions thereof, to the respondent, the complainant (if the RIO determines this is relevant), the RIO will inform the recipient of the confidentiality under which the draft report is made available and may establish reasonable conditions to ensure such confidentiality. The RIO may require that the recipient sign a confidentiality agreement.

C. Decision by Deciding Official

The RIO will assist the investigation committee in finalizing the draft investigation report, including ensuring that the respondent's and complainants (when applicable) comments are included and considered, and transmit the final investigation report to the DO, who will determine in writing: (1) whether the institution accepts the investigation report, its findings, and the recommended institutional actions; and (2) the appropriate institutional actions in response to the accepted findings of research misconduct. If this determination varies from the findings of the investigation committee, the DO will, as part of his/her written determination, explain in detail the basis for rendering a decision different from the findings of the investigation committee. Alternatively, the DO may return the report to the investigation committee with a request for further fact-finding or analysis.

When a final decision on the case has been reached, the RIO will normally notify

both the respondent and the complainant in writing. After informing ORI, the DO 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.

D. Appeals

An institution's procedures may provide for an appeal by the respondent that could result in a reversal or modification of the institution's findings of research misconduct. If such an appeal is provided for, it must be completed within 120 days of its filing, unless ORI finds good cause for an extension, based upon the institution's written request for an extension that explains the need for the extension. If ORI grants an extension, it may direct the filing of periodic progress reports. 42 CFR § 93.314.

E. Notice to ORI of Institutional Findings and Actions

Unless an extension has been granted, the RIO must, within the 120-day period for completing the investigation (or the 120-day period for completion of any appeal), submit the following to ORI: (1) a copy of the final investigation report with all attachments (and any appeal); (2) a statement of whether the institution accepts the findings of the investigation report (or the outcome of the appeal); (3) a statement of whether the institution found misconduct and, if so, who committed the misconduct; and (4) a description of any pending or completed administrative actions against the respondent.[35]

F. Maintaining Records for Review by ORI

The RIO must maintain and provide to ORI upon request "records of research misconduct proceedings" as that term is defined by 42 CFR § 93.317. Unless custody has been transferred to HHS or ORI has advised in writing that the records no longer need to be retained, records of research misconduct proceedings must be maintained in a secure manner (in the Provost office) for 7 years after completion of the proceeding or the completion of any PHS proceeding involving the research misconduct allegation.[36] The RIO is also responsible for providing any information, documentation, research records, evidence or clarification requested by ORI to carry out its review of an allegation of research misconduct or of the institution's handling of such an allegation.[37]

IX. Completion of Cases; Reporting Premature Closures to ORI

Generally, all inquiries and investigations will be carried through to completion and all significant issues will be pursued diligently. The RIO must notify ORI in advance if there are plans to close a case at the inquiry, investigation, or appeal stage on the basis that respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason, except: (1) closing of a case at the inquiry stage on the basis that an investigation is not warranted; or (2) a finding of no misconduct at the investigation stage, which must be reported to ORI, as prescribed in this policy and 42 CFR § 93.315.[38]

X. Elective Institutional Administrative Actions

If the DO determines that research misconduct is substantiated by the findings, he or she will decide on the appropriate actions to be taken, after consultation with the RIO. The administrative actions may include:

- Withdrawal or correction of all pending or published abstracts and papers emanating from the research where research misconduct was found;
- Removal of the responsible person from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, or initiation of steps leading to possible rank reduction or termination of employment;
- Restitution of funds to the grantor agency as appropriate; and
- Other action appropriate to the research misconduct.

XI. Other Considerations

A. Termination or Resignation Prior to Completing Inquiry or Investigation

The termination of the respondent's institutional employment, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported, ***will not*** preclude or terminate the research misconduct proceeding or otherwise limit any of the institution's responsibilities under 42 CFR Part 93 .

If the respondent, without admitting to the misconduct, elects to resign his or her position after the institution receives an allegation of research misconduct, the assessment of the allegation will proceed, as well as the inquiry and investigation, as appropriate based on the outcome of the preceding steps. If the respondent refuses to participate in the process after resignation, the RIO and any inquiry or investigation committee will use their best efforts to reach a conclusion

concerning the allegations, noting in the report the respondent's failure to cooperate and its effect on the evidence.

B. Restoration of the Respondent's Reputation

Following a final finding of no research misconduct, including ORI concurrence where required by 42 CFR Part 93, the RIO must, at the request of the respondent, undertake all reasonable and practical efforts to restore the respondent's reputation.[39] Depending on the particular circumstances and the views of the respondent, the RIO should consider notifying those individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in any forum in which the allegation of research misconduct was previously publicized, and expunging all reference to the research misconduct allegation from the respondent's personnel file. Any institutional actions to restore the respondent's reputation should first be approved by the DO.

C. Protection of the Complainant, Witnesses and Committee Members

During the research misconduct proceeding and upon its completion, regardless of whether the institution or ORI determines that research misconduct occurred, the RIO must undertake all reasonable and practical efforts to protect the position and reputation of, or to counter potential or actual retaliation against, any complainant who made allegations of research misconduct in good faith and of any witnesses and committee members who cooperate in good faith with the research misconduct proceeding.[40] The DO will determine, after consulting with the RIO, and with the complainant, witnesses, or committee members, respectively, what steps, if any, are needed to restore their respective positions or reputations or to counter potential or actual retaliation against them. The RIO is responsible for implementing any steps the DO approves.

D. Allegations Not Made in Good Faith

If relevant, the DO will determine whether the complainant's allegations of research misconduct were made in good faith, or whether a witness or committee member acted in good faith. If the DO determines that there was an absence of good faith he/she will determine whether any administrative action should be taken against the person who failed to act in good faith.

NOTES:

[1] 42 CFR § 93.214
[2] 42 CFR § 93.102
[3] 42 CFR § 93.310(g)
[4] 42 CFR §§ 93.304(c), 93.307(b)

[5] 42 CFR §§ 93.304(e), 93.307(f)
[6] 42 CFR § 308(a)
[7] 42 CFR § 310(c)
[8] 42 CFR § 310(g)
[9] 42 CFR § 310(g)
[10] 42 CFR §§ 93.304(f), 93.312(a)
[11] 42 CFR § 93.316
[12] 42 CFR § 93.309(c)
[13] 42 CFR § 93.304(k)
[14] 42 CFR § 93.304(h)
[15] 42 CFR § 93.318
[16] 42 CFR § 93.307(a)
[17] 42 CFR § 93.307(c)
[18] 42 CFR §§ 93.305, 93.307(b)
[19] 42 CFR § 93.304(b)
[20] 42 CFR § 93.307(g)
[21] 42 CFR § 93.309(a)
[22] 42 CFR § 93.308(a)
[23] 42 CFR § 93.309(a) and (b)
[24] 42 CFR § 93.310(a)
[25] 42 CFR § 93.310(b) and (c)
[26] 42 CFR § 93.310(d)
[27] 42 CFR § 93.310(e)
[28] 42 CFR § 93.310(f)
[29] 42 CFR § 93.310(g)
[30] 42 CFR § 93.310(h)
[31] 42 CFR § 93.311
[32] 42 CFR § 93.313
[33] 42 CFR § 93.313(f)
[34] 42 CFR §§ 93.312(a), 93.313(g)
[35] 42 CFR § 93.315
[36] 42 CFR § 93.317(b)
[37] 42 CFR §§ 93.300(g), 93.403(b) and (d)
[38] 42 CFR § 93.316(a)
[39] 42 CFR § 93.304(k)
[40] 42 CFR § 93.304(l)

Appendix A

Research Integrity Officer Responsibilities

I. General

The Research Integrity Officer (RIO) has lead responsibility for ensuring that the institution:

- Takes all reasonable and practical steps to foster a research environment that promotes the responsible conduct of research, research training, and activities related to that research or research training, discourages research misconduct, and deals promptly with allegations or evidence of possible research misconduct.

- Has written policies and procedures for responding to allegations of research misconduct and reporting information about that response to ORI, as required by 42 CFR Part 93.

- Complies with its written policies and procedures and the requirements of 42 CFR Part 93.

- Informs its institutional members who are subject to 42 CFR Part 93 about its research misconduct policies and procedures and its commitment to compliance with those policies and procedures.

- Takes appropriate interim action during a research misconduct proceeding to protect public health, federal funds and equipment, and the integrity of the PHS supported research process.

II. Notice and Reporting to ORI and Cooperation with ORI

The RIO has lead responsibility for ensuring that the institution:

- Files an annual report with ORI containing the information prescribed by ORI.

- Sends to ORI with the annual report such other aggregated information as ORI may prescribe on the institution's research misconduct proceedings and the institution's compliance with 42 CFR Part 93.

- Notifies ORI immediately if, at any time during the research misconduct proceeding, it has reason to believe that health or safety of the public is at risk, HHS resources or interests are threatened, research activities should be suspended, there is reasonable indication of possible violations of civil or criminal law, federal action is required to protect the interests of those involved in the research misconduct proceeding, the

institution believes that the research misconduct proceeding may be made public prematurely, or the research community or the public should be informed.

- Provides ORI with the written finding by the responsible institutional official that an investigation is warranted and a copy of the inquiry report, within 30 days of the date on which the finding is made.

- Notifies ORI of the decision to begin an investigation on or before the date the investigation begins.

- Within 120 days of beginning an investigation, or such additional days as may be granted by ORI, (or upon completion of any appeal made available by the institution) provides ORI with the investigation report, a statement of whether the institution accepts the investigation's findings, a statement of whether the institution found research misconduct and, if so, who committed it, and a description of any pending or completed administrative actions against the respondent.

- Seeks advance ORI approval if the institution plans to close 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 or a finding of no misconduct at the investigation stage.

- Cooperates fully with ORI during its oversight review and any subsequent administrative hearings or appeals, including providing all 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.

III. Research Misconduct Proceeding

A. General

The RIO is responsible for:

- Promptly taking all reasonable and practical steps to obtain custody of all research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner.

- Taking all reasonable and practical steps to ensure the cooperation of respondents and other institutional members with research misconduct proceedings, including, but not limited to their providing information, research records and evidence.

- Providing confidentiality to those involved in the research misconduct proceeding as required by 42 CFR § 93.108, other applicable law, and institutional policy.

- Determining whether each person involved in handling an allegation of research misconduct has an unresolved personal, professional or financial conflict of interest and taking appropriate action, including recusal, to ensure that no person with such a conflict is involved in the research misconduct proceeding.

- Keeping the Deciding Official (DO) and others who need to know apprised of the progress of the review of the allegation of research misconduct.

- In cooperation with other institutional officials, taking all reasonable and practical steps to protect or restore the positions and reputations of good faith plaintiffs, witnesses, and committee members and to counter potential or actual retaliation against them by respondents or other institutional members.

- Making all reasonable and practical efforts, if requested and as appropriate, to protect or restore the reputation of persons alleged to have engaged in research misconduct, but against whom no finding of research misconduct is made.

- Assisting the DO in implementing his/her decision to take administrative action against any plaintiff, witness, or committee member determined by the DO not to have acted in good faith.

- Maintaining records of the research misconduct proceeding, as defined in 42 CFR § 93.317, in a secure manner (in the Provost office) for 7 years after completion of the proceeding, or the completion of any ORI proceeding involving the allegation of research misconduct, whichever is later, unless custody of the records has been transferred to ORI or ORI has advised that the records no longer need to be retained.

- Ensuring that administrative actions taken by the institution and ORI are enforced and taking appropriate action to notify other involved parties, such as sponsors, law enforcement agencies, professional societies, and licensing boards, of those actions.

B. Allegation Receipt and Assessment

The RIO is responsible for:

- Consulting confidentially with persons uncertain about whether to submit an allegation of research misconduct.

- Receiving allegations of research misconduct.

- Assessing each allegation of research misconduct to determine if an inquiry is warranted because the allegation falls within the definition of research misconduct, is within the jurisdictional criteria of 42 CFR § 93.102(b), and is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

C. Inquiry

The RIO is responsible for:

- Initiating the inquiry process if it is determined that an inquiry is warranted.

- At the time of, or before beginning the inquiry, making a good faith effort to notify the respondent in writing, if the respondent is known.

- On or before the date on which the respondent is notified, or the inquiry begins, whichever is earlier, taking all reasonable and practical steps to obtain custody of all research records and evidence needed to conduct the research misconduct proceeding, inventorying the records and evidence and sequestering 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 the instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.

- Appointing an inquiry committee and committee chair as soon after the initiation of the inquiry as is practical.

- Preparing a charge for the inquiry committee in accordance with the institution's policies and procedures.

- Convening the first meeting of the inquiry committee and at that meeting briefing the committee on the allegations, the charge to the committee, and the appropriate procedures for conducting the inquiry, including the need for confidentiality and for developing a plan for the inquiry, and assisting the committee with organizational and other issues that may arise.

- Providing the inquiry committee with needed logistical support, e.g., expert advice, including forensic analysis of evidence, and clerical support, including arranging witness interviews and recording or transcribing those interviews.

- Being available or present throughout the inquiry to advise the committee as needed and consulting with the committee prior to its decision on whether to recommend that an investigation is warranted on the basis of the criteria in the institution's policies and procedures and 42 CFR § 93.307(d).

- Determining whether circumstances clearly warrant a period longer than 60 days to complete the inquiry (including preparation of the final inquiry report and the decision of the DO on whether an investigation is warranted), approving an extension if warranted, and documenting the reasons for exceeding the 60-day period in the record of the research misconduct proceeding.

- Assisting the inquiry committee in preparing a draft inquiry report, sending the respondent a copy of the draft report for comment (and the complainant if the institution's policies provide that option) within a time period that permits the inquiry to be completed within the allotted time, taking appropriate action to protect the confidentiality of the draft report, receiving any comments from the respondent (and the complainant if the institution's policies provide that option), and ensuring that the comments are attached to the final inquiry report.

- Receiving the final inquiry report from the inquiry committee and forwarding it, together with any comments the RIO may wish to make, to the DO who will determine in writing whether an investigation is warranted.

- Within 30 days of a DO decision that an investigation is warranted, providing ORI with the written finding and a copy of the inquiry report and notifying those institutional officials who need to know of the decision.

- Notifying the respondent (and the plaintiff if the institution's policies provide that option) whether the inquiry found an investigation to be warranted and including in the notice copies of or a reference to 42 CFR Part 93 and the institution's research misconduct policies and procedures.

- Providing to ORI, upon request, the institutional policies and procedures under which the inquiry was conducted, the research records and evidence reviewed, transcripts or recordings of any interviews, copies of all relevant documents, and the allegations to be considered in the investigation.

- If the DO decides that an investigation is not warranted, securing and maintaining (in the Provost office) for 7 years after the termination of the inquiry sufficiently detailed documentation of the inquiry to permit a later assessment by ORI of the reasons why an investigation was not conducted.

D. Investigation

The RIO is responsible for:

- Initiating the investigation within 30 calendar days after the determination by the DO that an investigation is warranted.

- On or before the date on which the investigation begins: (1) notifying ORI of the decision to begin the investigation and providing ORI a copy of the inquiry report; and (2) notifying the respondent in writing of the allegations to be investigated.

- Prior to notifying respondent of the allegations, taking all reasonable and practical steps to obtain custody of and sequester in a secure manner all research records and evidence needed to conduct the research misconduct proceeding that were not previously sequestered during the inquiry.

- In consultation with other institutional officials as appropriate, appointing an investigation committee and committee chair as soon after the initiation of the investigation as is practical.

- Preparing a charge for the investigation committee in accordance with the institution's policies and procedures.

- Convening the first meeting of the investigation committee and at that meeting: (1) briefing the committee on the charge, the inquiry report and the procedures and standards for the conduct of the investigation, including the need for confidentiality and developing a specific plan for the investigation; and (2) providing committee members a copy of the institution's policies and procedures and 42 CFR Part 93.

- Providing the investigation committee with needed logistical support, e.g., expert advice, including forensic analysis of evidence, and clerical support, including arranging interviews with witnesses and recording or transcribing those interviews.

- Being available or present throughout the investigation to advise the committee as needed.

- On behalf of the institution, the RIO is responsible for each of the following steps and for ensuring that the investigation committee: (1) uses diligent efforts to conduct an investigation that includes an examination of all research records and evidence relevant to reaching a decision on the merits of the allegations and that is otherwise thorough and sufficiently documented; (2) takes reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical; (3) interviews each respondent, plaintiff, and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the respondent, and records or transcribes each interview, provides the recording or transcript to the interviewee for correction, and includes the recording or transcript in the record of the research misconduct proceeding; and (4) pursues diligently all significant issues and

leads discovered that are determined relevant to the investigation, including any evidence of any additional instances of possible research misconduct, and continues the investigation to completion.

- Upon determining that the investigation cannot be completed within 120 days of its initiation (including providing the draft report for comment and sending the final report with any comments to ORI), submitting a request to ORI for an extension of the 120-day period that includes a statement of the reasons for the extension. If the extension is granted, the RIO will file periodic progress reports with ORI.

- Assisting the investigation committee in preparing a draft investigation report that meets the requirements of 42 CFR Part 93 and the institution's policies and procedures, sending the respondent (and complainant at the institution's option) a copy of the draft report for his/her comment within 30 days of receipt, taking appropriate action to protect the confidentiality of the draft report, receiving any comments from the respondent (and complainant at the institution's option) and ensuring that the comments are included and considered in the final investigation report.

- Transmitting the draft investigation report to institutional counsel for a review of its legal sufficiency.

- Assisting the investigation committee in finalizing the draft investigation report and receiving the final report from the committee.

- Transmitting the final investigation report to the DO and: (1) if the DO determines that further fact-finding or analysis is needed, receiving the report back from the DO for that purpose; (2) if the DO determines whether or not to accept the report, its findings and the recommended institutional actions, transmitting to ORI within the time period for completing the investigation, a copy of the final investigation report with all attachments, a statement of whether the institution accepts the findings of the report, a statement of whether the institution found research misconduct, and if so, who committed it, and a description of any pending or completed administrative actions against the respondent; or (3) if the institution provides for an appeal by the respondent that could result in a modification or reversal of the DO's finding of research misconduct, ensuring that the appeal is completed within 120 days of its filing, or seeking an extension from ORI in writing (with an explanation of the need for the extension) and, upon completion of the appeal, transmitting to ORI a copy of the investigation report with all attachments, a copy of the appeal proceedings, a statement of whether the institution accepts the findings of the appeal proceeding, a statement of whether the institution found research misconduct, and if so, who committed it, and a description of any pending or completed administrative actions against the respondent.

- When a final decision on the case is reached, the RIO will normally notify both the respondent and the plaintiff in writing and will determine whether law enforcement agencies, professional societies, professional licensing boards, editors of involved journals, collaborators of the respondent, or other relevant parties should be notified of the outcome of the case.

- Maintaining and providing to ORI upon request all relevant research records and records of the institution's research misconduct proceeding, including the results of all interviews and the transcripts or recordings of those interviews.