

PROCEDURES CONCERNING
ALLEGATIONS OF MISCONDUCT IN
RESEARCH AND CREATIVE
ACTIVITIES

19 June 2009

Procedures Concerning Allegations of Misconduct In Research and Creative Activities

Procedures Concerning Allegations of Misconduct In Research and Creative Activities (Cont.)

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INTRODUCTION

Safeguarding the integrity of research and creative activities is fundamental to the mission of Michigan State University. We owe no less to the public which sustains institutions like ours and to the governmental agencies and private entities which sponsor the research enterprise. All members of the University community share responsibility to assure that misconduct or fraud in research and creative activity is dealt with effectively and that the University's high standards for scholarly integrity are preserved.

Moreover, the University has explicit obligations to federal agencies to safeguard research integrity. In seeking funds from these agencies, the University is required to establish and abide by uniform policies and procedures for investigating and reporting instances of alleged or apparent misconduct involving research and related activities.

To meet these needs, the University has developed these Procedures Concerning Allegations of Misconduct in Research and Creative Activities. By following these Procedures for the investigation and evaluation of alleged or apparent misconduct, the University will discharge its regulatory obligations and, more importantly, help preserve the integrity of research and creative activities conducted under its auspices. These Procedures will also provide a basis for imposing sanctions, or initiating processes that may result in the imposition of sanctions, on individuals who violate the University's expectations of integrity in research and creative activities.

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I. Definitions

“Advisor” means a member of the University community secured by a Complainant to serve as an advisor to the Complainant in Misconduct Proceedings arising from an Allegation made by the Complainant.

“Allegation” means a disclosure of possible Misconduct by a Respondent to the RIO by any means of communication.

“Bad Faith” means a material and demonstrable failure to meet the standards for Good Faith set forth herein as a Complainant, a witness, a Review Panel member, an Inquiry Panel member, an Investigative Committee member, the Responsible Administrator, or the RIO. The context in which actions have occurred is a relevant and important factor to be taken into account in determining whether an individual has acted in Bad Faith.

“Complainant” means a person who makes an Allegation. A Complainant need not be a member of the University community.

“Conflict of Interest” means any personal, professional, or financial relationship that influences or reasonably would be perceived to influence the impartial performance of a duty assigned under these Procedures by any of the following: a member of an Inquiry Panel, Investigative Committee, or a Review Panel, the Responsible Administrator, the RIO, the VPRGS, or the President.

“Counsel” means lay or legal counsel secured by a Respondent to serve as an advisor to the Respondent in Misconduct Proceedings against the Respondent.

“Creative Activities” means the preparation or creation of computer programs, websites, motion pictures, sound recordings, and literary, pictorial, musical, dramatic, audiovisual, choreographic, sculptural, architectural, and graphic works of any kind by (1) a faculty member or other employee of the University as part of her or his noninstructional scholarly activities, or (2) a student in fulfillment of any independent study requirement at the University whose product is intended to be an original scholarly or creative work of potentially publishable quality (including, without being limited to, a master's or doctoral thesis).

“Evidence” means any document, tangible item, or testimony that is received, or that may be offered, as evidence during a Misconduct Proceeding to prove or disprove the existence of a fact relevant to the Allegation at issue in that Misconduct Proceeding. This could include, depending on the Allegation, materials such as:

- proposals, grant applications, and comments thereon,
- relevant research data and related records,
- laboratory notebooks and computer files,
- telephone logs and memos of calls,
- correspondence, or
- manuscripts, posters, publications, and tapes of oral presentations.

“Fabrication” means making up Research data or results and recording or reporting them.

“Falsification” means manipulating Research materials, equipment, or processes, or changing or omitting Research data or results, such that Research is not accurately represented in the Research Record.

“Good Faith” as applied to a Complainant or witness, means having a belief in the truth of one’s Allegation or testimony that a reasonable person in the Complainant’s or witness’s position could have based on the information known to the Complainant or witness at the time. An Allegation or cooperation with a Misconduct Proceeding is not in Good Faith if made with a knowing or reckless disregard for information that would negate the Allegation or testimony. Good Faith as applied to an Inquiry Panel member, an Investigative Committee member, a Review Panel member, the Responsible Administrator, or the RIO means cooperating with the Misconduct Proceeding by impartially carrying out the duties assigned under these Procedures for the purpose of helping the University meet its responsibilities for research integrity. An Inquiry Panel member, an Investigative Committee member, a Review Panel member, the Responsible Administrator, or the RIO does not act in Good Faith if his or her acts or omissions in carrying out any such duty are dishonest or influenced by a Conflict of Interest.

“Inquiry” means information gathering and initial fact finding to determine whether an Allegation warrants an Investigation.

“Inquiry Panel” means a group of at least three persons appointed by the Responsible Administrator to conduct an Inquiry.

“Investigation” means the formal, thorough examination and evaluation of all facts relevant to an Allegation to determine if Misconduct occurred and to assess its extent, gravity, and actual and potential consequences.

“Investigative Committee” means a group of at least three persons appointed by the Responsible Administrator to conduct an Investigation.

“Misconduct” means Fabrication, Falsification, Plagiarism, or any other practice that seriously deviates from practices commonly accepted in the discipline or in the academic and research communities generally in proposing, performing, reviewing, or reporting Research and Creative Activities. Misconduct does not include appropriate practices in the Creative Arts insofar as they accord with accepted standards in the relevant discipline. Misconduct does not include honest error or honest differences in the interpretation or judgment of Research data.

“Misconduct Proceeding” means any proceeding under these Procedures related to the review of an Allegation, including Preliminary Assessments, Inquiries, Investigations, and internal appeals.

“Misconduct Proceeding Records” means: (1) Evidence secured for any Misconduct Proceeding; (2) a record of the RIO’s review of other documents, tangible items, and testimony received or secured by the RIO in connection with that Misconduct Proceeding but determined by the RIO to be irrelevant to the Allegation at issue in the Misconduct Proceeding or to duplicate Evidence that has been retained; (3) the Preliminary Assessment report or referral and final (not draft) documents produced in the course of preparing that report or referral, including any other documentation of a decision that an Inquiry is not warranted; (4) the Inquiry report and final (not draft) documents produced in the course of preparing that report, including any other documentation of a decision that an Investigation is not warranted; (5) the Investigation report and all records (other than drafts of the Investigation report) in support of that report, including the transcripts of each interview or hearing conducted during an Investigation; (6) the complete record of an internal appeal (see Section IX below) from a finding of Misconduct; and (7) the complete record of any challenge or review under Section II(l) below.

“Plagiarism” means the appropriation of another person’s ideas, processes, results, or words without giving appropriate credit.

“Preliminary Assessment” means initial information gathering to determine whether there is credible Evidence to support further review of an Allegation and whether the Respondent’s alleged conduct could constitute Misconduct or Unacceptable Research Practices.

“Preponderance of the Evidence” means proof by Evidence that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

“Procedures” means these Procedures Concerning Allegations of Misconduct in Research and Creative Activities.

“Questionable Research Practices” means practices that do not constitute Misconduct or Unacceptable Research Practices but that require attention because they could erode confidence in the integrity of Research or Creative Activities.

“Research” means formal investigation conducted for the purpose of producing or contributing to generalizable knowledge, and the reporting thereof, by (1) a faculty member or other employee of the University as part of his or her noninstructional scholarly activities, or (2) a student in fulfillment of any independent study requirement at the University whose product is intended to be an original scholarly or creative work of potentially publishable quality (including, without being limited to, a master's or doctoral thesis).

“RIO” means the University's Research Integrity Officer.

“Respondent” means a person who is the subject of an Allegation. A Respondent must be an employee of the University or a student at the University, or must have been an employee or a student at the time the Misconduct allegedly occurred.

“Responsible Administrator” means the administrator who has most immediate responsibility for the Respondent and who is not disqualified from serving as Responsible Administrator by a Conflict of Interest. The RIO shall identify the Responsible Administrator. If the Responsible Administrator is a dean or the VPRGS, she or he may designate a subordinate to act as Responsible Administrator. If the Respondent is a student, the Responsible Administrator shall be the chairperson of the department with which the student is affiliated. If an Allegation involves multiple Respondents, the RIO shall identify an appropriate individual as the Responsible Administrator.

“Research Record” means the record of data or results from scholarly inquiry, including, without being limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, books, and other publications of any kind in any media and any material in any media necessary to support the content of any such document, presentation, or publication.

“Retaliation” means an adverse action taken against an individual who has, in Good Faith, participated in a Misconduct Proceeding (as Complainant, witness, Review Panel member, Inquiry Panel member,

Investigative Committee member, Counsel, Advisor, Responsible Administrator, or RIO) or otherwise cooperated in the review of an Allegation under these Procedures, where there is a clear causal link between the participation or cooperation and the adverse action. The context in which an adverse action has occurred, including its materiality, is a relevant and important factor to be taken into account in determining whether it constitutes Retaliation.

“**Review Panel**” means a body described in Section II(l) below.

“**UGC**” means the University Graduate Council.

“**Unacceptable Research Practices**” means practices that do not constitute Misconduct but that violate applicable laws, regulations, or other governmental requirements, or University rules or policies, of which the Respondent had received notice or of which the Respondent reasonably should have been aware, for proposing, performing, reviewing, or reporting Research or Creative Activities.

“**VPRGS**” means the University's Vice President for Research and Graduate Studies.

II. General

- a. **Applicability.** These Procedures apply to all members of the University community, including students, who engage in Research and Creative Activities.
- b. **Dissemination.** These Procedures shall be widely disseminated in the University community.
- c. **Integrity of Procedures.** Safeguarding the integrity of these Procedures is critical.
 - (1) The Complainant, the Responsible Administrator, the RIO, witnesses, and members of Review Panels, Inquiry Panels, and Investigative Committees shall act in Good Faith.
 - (2) No one shall attempt to prejudice or coerce the judgment or decisions of an Inquiry Panel member, an Investigative Committee member, a Review Panel member, the Responsible Administrator, or the RIO.
 - (3) No one shall attempt to prejudice or coerce the testimony of any witness, the Complainant, or the Respondent.

- (4) No one shall engage in or threaten Retaliation.

The RIO should be informed immediately of any actual or threatened violation of the integrity of these Procedures. In addition, the VPRGS shall be informed of any complaint or report that a member of an Inquiry Panel, an Investigative Committee, or a Review Panel, the Responsible Administrator, or the RIO has not acted in Good Faith in carrying out any of his or her duties under these Procedures.

- d. Indemnification.** The University's policy on indemnification shall govern the indemnification of the RIO, the Responsible Administrator, unpaid Counsel and Advisors who are University employees or students, and members of Inquiry Panels, Investigative Committees, and Review Panels who are University employees or students. Indemnification shall be provided to non-University members of Inquiry Panels, Investigative Committees, and Review Panels and to witnesses (except for non-University expert witnesses appearing on a contractual basis) in accordance with the University's policy on indemnification of volunteers with respect to their activities in Good Faith.
- e. Anonymous Allegations.** The University shall review anonymous Allegations under these Procedures.
- f. Confidentiality.**
- (1) **Limited Disclosure of Allegation/Misconduct Proceedings.** To the extent possible consistent with a fair and thorough review of an Allegation, disclosure of an Allegation and the resulting Misconduct Proceedings should be limited to those who need to know about them. In amplification, and not in limitation, of the foregoing:
- (A) except as otherwise permitted or required by these Procedures, or as required by law, members of Review Panels, Inquiry Panels, and Investigative Committees, the Responsible Administrator, the RIO, and University administrators involved in the review of an Allegation under these Procedures shall make diligent efforts to preserve the confidentiality of the Allegation and resulting Misconduct Proceedings out of respect for the privacy of those involved, especially the Respondent; and

- (B) if an Allegation results in an Investigation, the RIO may confidentially advise any person or entity that has plans to publish or disseminate the results of the Research or Creative Activity to which the Allegation relates of the pending Investigation.
 - (2) Complainant Identity. The University shall make diligent efforts to honor the request of any Complainant that her or his identity be kept confidential during the University's review of his or her Allegation under these Procedures.
 - (3) Breaches of Confidentiality. The RIO should be informed immediately of breaches of confidentiality. The RIO will investigate the breach of confidentiality and refer the matter to the appropriate administrator for review and such further action, if any, as the administrator may deem appropriate.
- g. Cooperation.** To preserve the integrity of the environment for Research and Creative Activities, members of the University community are expected to cooperate in the review of Allegations under these Procedures, for example, by providing documents and testimony if requested to do so by the RIO.
- h. Location of Alleged Misconduct.** An Allegation may be reviewed by the University under these Procedures no matter where or when the Misconduct allegedly occurred.
- i. Events Requiring Immediate Action.** If, at any stage of these Procedures, the RIO obtains reasonable information about
- (1) a possible criminal violation,
 - (2) an immediate health hazard or other imminent risk of danger to public health or safety or to experimental subjects,
 - (3) the need to take immediate action to protect the funds or equipment of any governmental or other sponsor of Research or Creative Activities, or to assure compliance with the terms of a contract sponsoring Research or Creative Activities,
 - (4) the need to take immediate action to protect any Complainant, Respondent, witness, member of an Inquiry Panel, an Investigative Committee, or a Review Panel, or other person involved in any Misconduct Proceeding,

- (5) the need to take immediate action to prevent the loss, destruction, or adulteration of any Evidence,
- (6) the need to take immediate action to prevent or stop an imminent or continuing violation of an applicable law, regulation, or other governmental requirement or of a University rule or policy, or
- (7) the probable public disclosure of an Allegation or any Misconduct Proceeding,

the RIO shall immediately so notify the President, the Provost, the VPRGS, the General Counsel, and, if appropriate, the pertinent government official or sponsor of Research or Creative Activities, and, following consultation with the Office of the General Counsel, the RIO shall promptly make recommendations to the VPRGS, the Provost, and the President as to responsive actions.

Notwithstanding any other provision of these Procedures, appropriate University administrators shall have authority to take any actions they deem necessary or appropriate to safeguard University personnel, other participants in any Misconduct Proceeding, public health or safety, experimental subjects, sponsors' funds or equipment, Evidence, or the integrity of the research environment. That any such action is taken shall not be deemed to predetermine any finding or conclusion from the University's review of an Allegation under these Procedures, but any information arising from any such action may constitute Evidence.

j. Notice. Any notice or other document issued pursuant to these Procedures shall be in writing and shall include an explanation of any decision or opinion stated therein. The RIO shall provide the Respondent copies of all such documents in a timely manner.

k. Interpretation.

- (1) Time Periods. Unless otherwise specified in these Procedures:
 - (A) the failure to exercise any right granted under these Procedures within the stated time period shall constitute a waiver of that right; and
 - (B) references to days in these Procedures shall mean calendar days.

- (2) Plural Usage. The text of these Procedures generally assumes a single Complainant, Respondent, witness, and Allegation. Where there are multiple Complainants, Respondents, witnesses, or Allegations, these Procedures shall be construed accordingly.
- (3) Headings. Headings used in these Procedures are for convenience of reference only and shall not be used for interpreting content.

I. Challenges; Review by VPRGS/Panel

- (1) Challenges. The Complainant may challenge a determination by the RIO at the end of the Preliminary Assessment that no Inquiry into the Allegation is warranted, but only on the grounds that
 - (A) the Respondent's alleged conduct could constitute Misconduct, and
 - (B) there is credible Evidence to support further review of the Allegation.

Both the Respondent and the Complainant may challenge the RIO's identification of the Responsible Administrator, but only on the basis of asserted Conflict of Interest on the part of the Responsible Administrator.

Both the Respondent and the Complainant may challenge the Responsible Administrator's identification of an Inquiry Panel member or an Investigative Committee member, but only on the basis of asserted Conflict of Interest on the part of the Inquiry Panel member or Investigative Committee member.

A Respondent or Complainant who wishes to file such a challenge must do so in writing, with accompanying rationale, within ten days of receiving notice of the determination or identification. The challenge shall be submitted to the RIO. The RIO or the Responsible Administrator, as appropriate, must respond to the challenge in writing within five business days, either accepting it and taking appropriate action, or rejecting it for stated cause.

- (2) Reviews. If not satisfied with the RIO's or the Responsible Administrator's response to a permissible challenge, the Respondent or Complainant may have the RIO's or the

Responsible Administrator's response reviewed by the VPRGS or a Review Panel. The request for review must be in writing, must set forth the basis for the request, and must be filed with the VPRGS within five business days after the Respondent's or the Complainant's receipt of the RIO's or the Responsible Administrator's response to the challenge. A Respondent may request that the review be conducted either by a Review Panel or by the VPRGS alone. A Complainant may request that the review be conducted by the VPRGS or by a Review Panel, but the Respondent has the right to require that the review be conducted by the VPRGS.

If the review is to be conducted by a Review Panel, the VPRGS shall convene that Panel within five business days of the filing of the request for review. The Review Panel shall be composed of three members without Conflicts of Interest selected by the VPRGS from a pool of 25 individuals chosen every two years by the University Research Council. The pool may include emeritus faculty.

Within five business days of being convened, the Review Panel will review the challenge, the response, and the request for review, and render a binding decision on the challenge.

If the review is to be conducted by the VPRGS, the VPRGS will review the challenge, the response, and the request for review, and render a binding decision on the request for review within five business days of the filing of the request for review.

- (3) Extensions of Time. The deadlines in this Section II(I) may be extended by the RIO through written notice to the parties for good cause shown.
- (4) Other Objections and Complaints. If the Complainant or Respondent objects to any other decision, procedural or substantive, made during the current or any previous Misconduct Proceeding in the review of the Allegation, he or she may raise that objection:
 - (A) with the RIO during the Preliminary Assessment;
 - (B) with the Inquiry Panel during the Inquiry;
 - (C) with the Investigative Committee during the Investigation; and

- (D) with the President during an internal appeal under Section IX below.

Neither procedural or substantive decisions nor findings made under these Procedures by the RIO, a Responsible Administrator, an Inquiry Panel, an Investigative Committee, a Review Panel, the VPRGS, or the President can be challenged or overturned under the Faculty Grievance Procedure, the Anti-Discrimination Policy, Graduate Student Rights and Responsibilities, or any other University policy, contract, or procedure.

III. Role of the RIO

The RIO shall coordinate implementation of these Procedures and shall be responsible for their fair and impartial administration. The RIO shall not be an advocate for the Complainant or the Respondent.

The RIO shall serve as an advisor to Inquiry Panels and Investigative Committees. If so requested, the RIO shall provide logistical support, recruit expert witnesses, and arrange for legal advice through the Office of the General Counsel.

When an Allegation involves Research or Creative Activity supported by a federal funding source, the RIO shall see that the University meets all legal requirements to apprise it of the status of an Inquiry or an Investigation into that Allegation. The RIO also shall report regularly to the President, the Provost, and the VPRGS on the status of each Inquiry and each Investigation.

The RIO shall identify the Responsible Administrator. The RIO also shall disqualify any Responsible Administrator, and any potential or sitting member of an Inquiry Panel or Investigative Committee, if the RIO determines that such person has a Conflict of Interest.

The RIO shall take all reasonable and practical steps to obtain custody of all the Evidence needed to conduct the review of an Allegation under these Procedures, inventory the Evidence, and sequester it in a secure manner, except where the Evidence encompasses scientific instruments shared by a number of users. The RIO may take custody of copies of the Evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments. The RIO will give the Respondent copies of, or reasonable, supervised access to, the Evidence.

Misconduct Proceeding Records will be kept in a secure room, accessible only to the RIO's administrative staff. The RIO shall keep all Misconduct Proceeding Records for at least seven years after the completion of the

Misconduct Proceedings to which they relate, except that the RIO shall keep Preliminary Assessment reports and related Misconduct Proceeding Records for three years after the completion of the Preliminary Assessment to which they relate and then destroy them.

Other RIO responsibilities are set forth elsewhere in these Procedures.

Provisions regarding the selection, reporting responsibilities, and evaluation of the RIO are set forth in the Appendix.

IV. Other Internal or External Proceedings

The conduct which forms the basis for an Allegation may also involve the possible violation of other University policies or the policies of other institutions, and of external laws and regulations, and may occasion other internal or external adjudicatory proceedings. The following shall govern the handling and sequencing of such proceedings.

- a. Other Institution's Review.** Another educational or research institution may have the right to review the same Allegation (or a related Allegation) against the same Respondent. In such an event, the RIO shall consult her or his counterpart at the other institution to determine whether the University or the other institution is best able to review the Allegation. If the RIO determines that the other institution is best able to review the Allegation, the RIO shall so advise the VPRGS, who has authority to stay or terminate the University's review of the Allegation based on the review conducted at the other institution, as set forth in Section IV(g) below. The University and the other institution may also agree to conduct a joint review of the Allegation.
- b. Research Collaborator.** In the event of an Allegation involving Research or Creative Activities undertaken by a Respondent in collaboration with a colleague at another educational or research institution, the RIO shall advise his or her counterpart at the other institution confidentially of the Allegation, and ask if a similar allegation has been made against the collaborator. If it has, the University, through the RIO, shall attempt to cooperate and share information confidentially with the other institution in their respective reviews of the Allegation and of the related allegation involving the collaborator. The University and the other institution may also agree to conduct a joint review of the Allegation and the related allegation involving the collaborator.
- c. Government Investigation.** Certain federal funding sources have the option, at any stage in these Procedures, to initiate an

independent investigation of an Allegation involving Research or Creative Activity supported by the funding source. In the event a federal funding source initiates such an investigation, the RIO shall consult the federal funding source regarding its investigation and shall advise the VPRGS whether the University should suspend its review of the Allegation during the federal funding source's investigation, which the VPRGS shall have authority to do, as set forth in Section IV(g) below.

- d. **Criminal Process.** In general, University review of an Allegation under these Procedures may occur in parallel with criminal processes. If an Allegation is also the subject of a criminal investigation or proceeding and the pertinent governmental authority advises the University that the University's review of the Allegation under these Procedures may prejudice or interfere with that investigation or proceeding, the President shall have authority to stay any Misconduct Proceeding until the criminal investigation or proceeding is complete.
- e. **Civil Litigation.** The existence of civil litigation involving the University may necessitate staying a Misconduct Proceeding. The President shall make such decisions on a case-by-case basis and promptly report them to the RIO.
- f. **RIO Stay of Proceedings.** The RIO shall have authority to stay any Misconduct Proceeding if, following consultation with the Office of the General Counsel, the RIO determines that other University procedures mandated by law must be completed prior to the University's further review of an Allegation under these Procedures. Such governmentally-mandated procedures may involve various forms of regulatory action (for example, the removal or clean-up of radioactive or other hazardous materials).
- g. **VPRGS Authority.** The VPRGS shall have authority to:
 - (1) stay any Misconduct Proceeding until the completion of the review of the same Allegation, or of a related Allegation against the same Respondent, at another educational or research institution;
 - (2) terminate for good cause shown the review of any Allegation under these Procedures upon the completion of the review of the Allegation at another educational or research institution;

- (3) stay any Misconduct Proceeding until the completion of an independent investigation by a federal funding source of an Allegation involving Research or Creative Activities which it supported; and
 - (4) terminate for good cause shown the review of any Allegation under these Procedures upon the completion of an independent investigation by a federal funding source of an Allegation involving Research or Creative Activities which it supported.
- h. Precedence of Proceedings.** Subject to Section IV(f) above and to the University's right to take interim action under any University policy or contract, review of an Allegation under these Procedures shall precede all other internal University proceedings against a Respondent that relate to or arise out of the alleged Misconduct, including, without being limited to, disciplinary, anti-discrimination, and grievance proceedings.

V. Procedures for Conduct of Misconduct Proceedings – General

- a. Determination of Procedures.** Those charged with conducting a Misconduct Proceeding shall determine the procedures that will be followed, provided that:
- (1) the procedures they adopt shall be those they deem best suited to achieve a fair and equitable review of the Allegation;
 - (2) the procedures they adopt shall reflect a spirit of mutual respect and collegiality, and may, therefore, be as informal as they deem appropriate under the circumstances;
 - (3) in Preliminary Assessments and Inquiries, testimony shall be obtained from witnesses through private interviews rather than through a formal hearing;
 - (4) in Investigations, the Investigative Committee may choose to obtain testimony from witnesses through a series of private interviews with witnesses, or at a hearing at which the Complainant and the Respondent shall be invited to be present, provided, however, that the Respondent may, within one week of receiving a notice that the Investigative Committee has decided to conduct private interviews, deliver a notice to the RIO requiring that a hearing be conducted instead of such interviews;

- (5) at a hearing, the Respondent and the Complainant shall have the opportunity to raise questions for the Investigative Committee to pose to each witness about the testimony of that witness and the Allegation;
- (6) if a Complainant who has requested that his or her identity be kept confidential declines to appear to give testimony at a hearing, the hearing may nevertheless be held, if the Investigative Committee determines that there is credible Evidence of possible Misconduct by the Respondent apart from the Complainant's Allegation and that such Evidence is sufficient to justify proceeding with the hearing;
- (7) the Respondent shall have the right to be advised by Counsel in all Misconduct Proceedings;
- (8) the Complainant shall have the right to be advised by an Advisor in all Misconduct Proceedings;
- (9) in all Preliminary Assessments, Inquiries, and Investigations, the Respondent shall have the right to present Evidence and to identify persons who might have Evidence about the Allegation;
- (10) formal rules of evidence shall not apply;
- (11) each Misconduct Proceeding shall be conducted confidentially and in private except that, in the event of a hearing, the Investigative Committee may decide that it will be open if requested by the Respondent and if permissible under applicable regulations; and
- (12) to the extent that a published regulation of a federal funding source requires a specific procedural element in the review and adjudication of an Allegation concerning a proposal to or an award from that federal funding source, that procedural element shall be included in the procedures adopted.

At the start of each Misconduct Proceeding, the RIO shall notify the Complainant and the Respondent of the procedures that will be followed during that Misconduct Proceeding.

- b. General Counsel Advice.** The Office of the General Counsel shall, when so requested, provide legal advice regarding the implementation of these Procedures and other aspects of the University's review of an Allegation under these Procedures to the

RIO, the Responsible Administrator, the Inquiry Panel, the Investigative Committee, the VPRGS, a Review Panel, and the President.

- c. **Respondent Questions.** The RIO shall contact the Respondent at the start of each Misconduct Proceeding and attempt to answer any questions about that Misconduct Proceeding.
- d. **Admission of Misconduct.** The VPRGS shall have authority to terminate the University's review of any Allegation under the Procedures upon the admission by the Respondent that Misconduct occurred and that the Respondent was responsible for it, if the termination of the review of that Allegation would not prejudice the University's review of another Allegation against that Respondent or against a different Respondent or the University's ability to assess the extent and consequences of the Misconduct and what action should be taken in response to it.
- e. **Records to Agency.** When the alleged Misconduct involves Research or Creative Activity supported by a federal funding source, the RIO shall make available to its authorized personnel any Misconduct Proceeding Records that such personnel request.
- f. **Additional Respondents.** If, during the course of any Misconduct Proceeding, additional Respondents are identified, they shall be notified immediately, and the RIO and the Responsible Administrator shall, to the degree feasible, attempt to coordinate the Misconduct Proceedings against all the Respondents.

VI. Allegations of Misconduct and Preliminary Assessments

- a. **Allegation of Misconduct.** Any member of the University community or other person who wishes to make an Allegation shall contact the RIO.

The RIO shall notify the Respondent promptly of an Allegation and of the Respondent's right to be advised by Counsel during all Misconduct Proceedings.¹ The RIO shall also notify the Complainant of the Complainant's right to be advised by an Advisor during all Misconduct Proceedings.

The RIO shall advise the VPRGS and the Provost of all Allegations.

¹ If the Respondent requests, the RIO will assist the Respondent in locating faculty members who are familiar with the Procedures and who might be willing to serve as Counsel.

- b. **Preliminary Assessment.** In the event of an Allegation, the RIO shall promptly conduct a Preliminary Assessment to determine whether an Inquiry is warranted.
- c. **Purpose and Nature of Preliminary Assessment.** The Preliminary Assessment is a preliminary process whose purpose is to cull out a clearly erroneous, unsubstantiated, or Bad Faith Allegation before the Respondent is subjected to an Inquiry or an Investigation. Hence, in conducting the Preliminary Assessment, the RIO is not obligated to do any interviews on the Allegation or to engage in an exhaustive review of all Evidence relevant to such Allegation.
- d. **Preliminary Assessment - Standard for Determination.** The RIO shall determine that an Inquiry is warranted if, in his or her judgment, (1) the Respondent's alleged conduct could constitute Misconduct or Unacceptable Research Practices, and (2) there is credible Evidence to support further review of the Allegation.
- e. **Inquiry Warranted.** If the RIO determines that an Inquiry is warranted, the RIO shall prepare a Preliminary Assessment referral which explains the basis for his or her determination. The RIO shall transmit copies of the Preliminary Assessment referral to the Respondent and the VPRGS. The RIO shall also notify the Complainant of the outcome of the Preliminary Assessment and provide the Complainant with a brief summary of the Preliminary Assessment referral.

After completing the Preliminary Assessment referral, the RIO shall identify the Responsible Administrator, who shall then immediately initiate an Inquiry.

- f. **Inquiry Not Warranted.**
 - (1) **Preliminary Assessment Report.** If the RIO determines that an Inquiry is not warranted, the RIO shall prepare a Preliminary Assessment report that states the basis and rationale for his or her determination. The RIO shall provide a copy of the Preliminary Assessment report to the Respondent, the Complainant, and the VPRGS.
 - (2) **Challenge.** Within ten days following receipt of the Preliminary Assessment report, the Complainant may challenge the RIO's determination that an Inquiry is not warranted, pursuant to Section II(l) above, but only on the grounds that (A) the Respondent's alleged conduct could

constitute Misconduct, and (B) there is credible Evidence to support further review of the Allegation.

(3) End of Review. The RIO's determination that an Inquiry is not warranted, unless overturned pursuant to Section II(l) above, shall conclude the University's review of that Allegation.

g. Bad Faith. If the RIO concludes that the Complainant acted in Bad Faith in making the Allegation, or that the Complainant or any witness acted in Bad Faith during the Preliminary Assessment, the RIO shall refer the matter for administrative review and appropriate action as set forth in Section XII(a)(1) below.

VII. Inquiry

- a. Panel.** If the RIO or, pursuant to Section II(l) above, the VPRGS or a Review Panel determines that an Inquiry is warranted, the Responsible Administrator shall promptly appoint an Inquiry Panel of at least three members, chosen for their pertinent expertise. While Inquiry Panels will usually be composed of University faculty, they may also include persons other than University faculty when the Responsible Administrator determines that such persons have experience or expertise useful to the Inquiry. When a student is the Respondent, at least one student shall be a member of the Inquiry Panel. The Inquiry Panel shall select one of its members to act as its chairperson.
- b. Charge.** The Responsible Administrator, with the assistance of the RIO, shall draft a Charge to the Inquiry Panel based upon the Preliminary Assessment referral. The Responsible Administrator shall submit that Charge and a copy of the Preliminary Assessment referral to the Inquiry Panel and the Respondent at the beginning of the Inquiry.
- c. Briefing.** Before the Inquiry begins, the RIO and an attorney from the Office of the General Counsel shall brief the Responsible Administrator and the Inquiry Panel on these Procedures, other relevant University regulations, and legal and procedural issues that the Inquiry Panel and the Responsible Administrator are likely to encounter in conducting the Inquiry.
- d. Standard for Determination.** The Inquiry Panel shall conduct the Inquiry to determine whether an Investigation is warranted. A member of an Inquiry Panel shall determine that an Investigation is warranted if, in her or his judgment, an Investigative Committee

could reasonably conclude that Misconduct occurred. To so determine, the member of the Inquiry Panel must find that the Respondent's alleged conduct could constitute Misconduct and that there is credible Evidence to support further review of the Allegation, but must also find that there is sufficient credible Evidence and credible Evidence of such merit that an Investigative Committee could reasonably conclude, in accordance with the criteria in Section VIII(e) below, that Misconduct occurred.

- e. **Purpose and Nature of Inquiry.** Like the Preliminary Assessment, the Inquiry is a preliminary process. Its purpose is to cull out an insufficiently substantiated, erroneous, or Bad Faith Allegation before the Respondent is subjected to an Investigation. Although it is expected that the Inquiry will be more comprehensive than the Preliminary Assessment, the members of the Inquiry Panel, like the RIO, are not obligated to conduct any interviews or hearings on the Allegation or to engage in an exhaustive review of all Evidence relevant to the Allegation. When a majority of the members of the Inquiry Panel concludes that an Allegation warrants an Investigation, the Inquiry Panel shall proceed to draft the Inquiry report.
- f. **Assistance for Panel.** The RIO shall secure for the Inquiry Panel such special scientific or technical assistance as it requests to evaluate an Allegation.
- g. **RIO and Responsible Administrator.** Neither the RIO nor the Responsible Administrator shall participate in the deliberations of the Inquiry Panel or vote on whether an Investigation is warranted. The Inquiry Panel may request the assistance of the RIO during its deliberations and in the preparation of the Inquiry report, but shall not seek the RIO's opinion as to whether an Investigation is warranted.
- h. **Timing.** The Inquiry shall be completed within 60 days of its inception unless circumstances warrant a longer period, in which event the Responsible Administrator shall notify the RIO and the Respondent of the reason for the delay and the date on which the Responsible Administrator expects that the Inquiry will be completed. The RIO shall decide whether the delay is warranted. If the RIO determines that it is, the RIO shall so notify the Respondent. If the RIO finds the delay unwarranted, the RIO shall work with the Responsible Administrator, the Respondent, and the Inquiry Panel to expedite completion of the Inquiry, but the Inquiry shall continue until its completion if, despite their diligent efforts, it cannot be finished in 60 days. The RIO shall make the Responsible

Administrator's report about the delay part of the Misconduct Proceeding Records.

i. Inquiry Report.

- (1) Content. The Inquiry Panel shall prepare an Inquiry report with the following information:
 - (A) the name and position of the Respondent if the Respondent is an employee of the University, or the name and degree program of the Respondent if the Respondent is a student at the University;
 - (B) the nature of the alleged Misconduct and how it does or does not fit within the definition of Misconduct;
 - (C) a description of the Evidence it reviewed and the sufficiency, credibility, and merit of that Evidence;
 - (D) summaries of any interviews it conducted; and
 - (E) a determination of whether an Investigation is warranted.
- (2) Deviation from Practice. If the alleged Misconduct involves a serious deviation from commonly accepted practices, Evidence of such practices and an analysis of the Allegation in light of such practices shall be included in the Inquiry report.
- (3) Investigation Warranted. If the Inquiry Panel determines that an Investigation is warranted, the Inquiry report may be summary in nature, provided that the Inquiry Panel sets forth the Evidence that supports its determination in sufficient detail for the Respondent and an Investigative Committee to understand the basis for the Inquiry Panel's decision.
- (4) Investigation Not Warranted. If the Inquiry Panel determines that an Investigation is not warranted, the Inquiry report shall be more comprehensive and shall include a detailed statement of why the Respondent's alleged conduct would not, under the definition in these Procedures, constitute Misconduct, or why the available Evidence is insufficient, or lacks sufficient credibility or merit, to warrant an Investigation.

- (5) Draft Report; Comments. The RIO shall send the Respondent a copy of the draft Inquiry report. The Respondent may return comments on the draft Inquiry report to the RIO within seven days of receipt of the draft Inquiry report. If the Respondent comments on the draft Inquiry report, the Inquiry Panel shall consider such comments and make any changes in the Inquiry report it deems appropriate in light of such comments. The Respondent's comments shall be included as an appendix to the final Inquiry report.

- (6) VPRGS Opinion on Final Draft Report.
 - (A) After making any changes it deems appropriate in the draft Inquiry report in light of the Respondent's comments, the Inquiry Panel shall prepare a final draft of the Inquiry report. The RIO shall send the VPRGS a copy of the final draft of the Inquiry report, attaching any RIO comments regarding procedural questions and concerns. Within 14 days after delivery of the final draft Inquiry report to the VPRGS, the VPRGS may submit an opinion to the RIO, the Responsible Administrator, and the Inquiry Panel on either or both of the following grounds:
 - (i) If the VPRGS, with advice from the Office of the General Counsel, finds that the final draft Inquiry report reflects procedural error by the Inquiry Panel in conducting the Inquiry, the VPRGS shall so inform the RIO and shall identify and explain the Inquiry Panel's procedural error. The Inquiry Panel shall either correct the error before completing the Inquiry and the Inquiry report or shall notify the VPRGS in, or concurrently with the issuance of, the final Inquiry report that it does not believe a material procedural error occurred.

 - (ii) If the VPRGS finds that the Inquiry Panel's determination, as set forth in the final draft Inquiry report, is substantively wrong because the Evidence does not support the Inquiry Panel's determination, the VPRGS shall so inform the RIO and shall identify and explain the reason the VPRGS believes the Inquiry Panel's determination to be in error. The Inquiry Panel shall reconsider its decision in

light of the opinion by the VPRGS. If the Inquiry Panel changes its determination in light of the opinion by the VPRGS, it shall submit a new draft of the Inquiry report to the Respondent for further comment. If the Inquiry Panel does not change its determination in light of the opinion by the VPRGS, the Inquiry Panel shall respond to the VPRGS in completing the Inquiry report and make any changes in the Inquiry report that it deems appropriate in light of the opinion by the VPRGS.

- (B) The opinion by the VPRGS shall be included as an appendix to the final Inquiry report.
- (7) Distribution of Final Report. The RIO shall send the VPRGS and the Respondent a copy of the final Inquiry report.

j. Determination regarding Investigation.

- (1) Panel Initiation of Investigation. If a majority of the members of the Inquiry Panel determine that an Allegation warrants an Investigation, the Responsible Administrator shall initiate an Investigation.
- (2) VPRGS Override - Initiation of Investigation. If a majority of the members of the Inquiry Panel determine that an Investigation is not warranted, the VPRGS may, within 14 days of receiving the final Inquiry report, issue a decision to the Responsible Administrator and the Respondent overruling the Inquiry Panel for stated cause and instructing the Responsible Administrator to initiate an Investigation immediately. Upon receiving the decision of the VPRGS, the Responsible Administrator shall initiate an Investigation.
- (3) No Investigation. If a majority of the members of the Inquiry Panel determine that an Investigation is not warranted and the VPRGS does not overrule the determination of the Inquiry Panel, the determination of the Inquiry Panel will conclude the University's review of that Allegation, except as provided in Section XI below.
- (4) Dissent. Any member of the Inquiry Panel who does not agree with the determination of the majority of the Inquiry Panel may file a dissent to the Inquiry report.

- k. **Bad Faith.** If a majority of the members of the Inquiry Panel concludes that the Complainant acted in Bad Faith in making the Allegation, or that the Complainant or any witness acted in Bad Faith during the Inquiry, the Inquiry Panel shall refer the matter for administrative review and appropriate action, as set forth in Section XII(a)(1) below.
- l. **Notification.** Promptly after completion of the Inquiry, the RIO shall notify the Complainant of its outcome and provide the Complainant with a brief summary of the Inquiry report and, if one was issued, the opinion of the VPRGS.

VIII. Investigation

- a. **Committee.** The Responsible Administrator shall initiate an Investigation within 30 days of the Inquiry Panel's determination, or the decision of the VPRGS, that an Investigation is warranted. The Responsible Administrator shall appoint an Investigative Committee of not less than three members, chosen for their pertinent expertise. While Investigative Committees will usually be composed of University faculty, they may also include persons other than University faculty when the Responsible Administrator determines that such persons have experience or expertise useful to the Investigation. When a student is the Respondent, at least one student shall be a member of the Investigative Committee. The Investigative Committee shall select one of its members to act as its chairperson.
- b. **Notifications.**
 - (1) **Notification - Internal.** The RIO shall notify the Provost, the VPRGS, and the General Counsel of the initiation of the Investigation.
 - (2) **Notification - Funding Source.** When the alleged Misconduct involves Research or Creative Activity supported by an external (non-University) funder, the RIO shall also notify the source of the funding of the Investigation before the start of the Investigation. Such notification shall include the name of the Respondent, the general nature of the Allegation, and the relevant grant application, grant number, or other identification for the support.
- c. **Charge.** The Responsible Administrator, with the assistance of the RIO, shall draft a Charge to the Investigative Committee based on the Inquiry report and, if one was issued, the decision of the

VPRGS. The Responsible Administrator shall submit a copy of that Charge, the Preliminary Assessment referral, the Inquiry report, and, if one was issued, the overruling decision of the VPRGS to the Investigative Committee and the Respondent at the beginning of the Investigation.

- d. **Briefing.** Before the Investigation begins, an attorney from the Office of the General Counsel and the RIO shall brief the Responsible Administrator and the Investigative Committee on these Procedures, other relevant University regulations, and legal and procedural issues that the Investigative Committee and the Responsible Administrator are likely to encounter in conducting the Investigation.

- e. **Standard for Determination.** The Investigative Committee shall determine if Misconduct occurred, if the Respondent was responsible for it, and the extent, gravity, and actual and potential consequences of the Misconduct. To conclude that Misconduct occurred, a majority of the members of the Investigative Committee must find:
 - (1) a significant departure from accepted practices of the relevant research community; and
 - (2) that the Misconduct was committed intentionally, knowingly, or recklessly; and
 - (3) that the Allegation was proven by a Preponderance of the Evidence.

- f. **Evidence Review.** The Investigative Committee shall examine all Evidence that it deems pertinent to the Allegation. At its discretion, the Investigative Committee may also inspect laboratories and examine laboratory specimens, materials, procedures, and methods.

The Respondent will be provided copies of, or supervised access to, all Evidence made available to the Investigative Committee.

- g. **Testimony.**
 - (1) Interviews or Hearing. When possible, the Investigative Committee shall conduct interviews or a hearing with the Complainant, the Respondent, and other persons, if any, who have material information regarding the Allegation.

- (2) Transcript. The RIO shall arrange for the preparation of a transcript of each witness's interview or hearing testimony and shall send the transcript to the witness for comment or correction. The witness shall have seven days after his or her receipt of the transcript to deliver comments on, and corrections of any errors in, the transcript to the RIO. Both the transcript and any such comments and corrections shall be made part of the Misconduct Proceeding Records. The RIO shall give the Respondent a copy of the corrected transcript of any interview or hearing testimony.
- h. Assistance for Committee.** If the Investigative Committee decides that it needs special scientific or technical expertise to evaluate an Allegation, it shall so advise the RIO, who shall secure for the Investigative Committee the assistance that it requests.
- i. RIO and Responsible Administrator.** Neither the RIO nor the Responsible Administrator shall participate in the deliberations of the Investigative Committee or vote on whether Misconduct occurred. The Investigative Committee may request the assistance of the RIO during its deliberations and in the preparation of the Investigation report, but shall not seek the RIO's opinion as to whether Misconduct occurred.
- j. Timing.** The Responsible Administrator and Investigative Committee shall use their best efforts to complete the Investigation within 120 days of its inception.
- (1) Extension. If the Investigation cannot be completed in that period, the Responsible Administrator may request an extension from the RIO, in which event the Responsible Administrator shall notify the RIO and the Respondent of the reason for the delay and the date on which the Responsible Administrator expects that the Investigation will be completed. The Responsible Administrator's report about the delay shall be included in the Misconduct Proceeding Records. If the alleged Misconduct involves Research or Creative Activity supported by a federal funding source, the RIO shall notify it of the delay; request an extension; explain why the extension is necessary; and provide a progress report of the Investigative Committee's activities to date and an estimate of the completion date of the Investigation.
- (2) Notice of Stay. If the Investigation is stayed and the alleged Misconduct involves Research or Creative Activity supported by a federal funding source, the RIO shall promptly inform it

of the date and expected duration of the stay, and of the reason for staying the Investigation.

k. Investigation Report.

- (1) Content. The Investigative Committee shall prepare a written Investigation report. It shall include:
 - (A) the name and position of the Respondent if the Respondent is an employee of the University or the name and degree program of the Respondent if the Respondent is a student at the University;
 - (B) the relevant application or grant number, if the alleged Misconduct involves sponsored Research or Creative Activity;
 - (C) a description of the Allegation and the name, if known and not held in confidence, of the Complainant;
 - (D) a summary of the Evidence reviewed, including, without being limited to, an account of how and from whom it was obtained;
 - (E) a transcript of each interview or hearing conducted during the Investigation;
 - (F) for each separate Allegation, an analysis of any explanation offered by the Respondent and the Evidence in support thereof;
 - (G) an analysis of each separate Allegation pursuant to the standards set forth in Section VIII(e) above;
 - (H) in an Allegation of serious deviation from accepted practices, a description of the Evidence regarding the accepted practices in the discipline and an analysis of the Allegation in light of such practices;
 - (I) a copy of these Procedures and any other University policies and procedures relevant to the Investigation.
- (2) Misconduct Finding. If the Investigative Committee finds that Misconduct occurred, the Investigation report must include:
 - (A) the Investigative Committee's determination that:

- (i) there was a significant departure from accepted practices of the relevant research community; and
 - (ii) the Misconduct was committed intentionally, knowingly, or recklessly; and
 - (iii) the Allegation was proven by a Preponderance of the Evidence; and
 - (B) a determination whether any part of the Research Record needs correction or retraction as a result of the finding of Misconduct, and, if so, an explanation of that correction or retraction.
- (3) No Misconduct Found. If the Investigative Committee does not find that Misconduct occurred, it shall explain the reasons for its decision in the Investigation report, with specific reference to the pertinent criteria set forth in Section VIII(e) above.
- (4) Draft Report; Comments. The RIO shall send the Respondent a copy of the draft Investigation report. The Respondent may return comments on the draft Investigation report to the RIO within 30 days of receipt of the draft Investigation report. If the Respondent comments on the draft Investigation report, the Investigative Committee shall consider such comments and make any changes in the Investigation report it deems appropriate in light of such comments. The Respondent's comments shall be included as an appendix to the final Investigation report.
- (5) VPRGS Opinion on Final Draft Report.
 - (A) After making any changes it deems appropriate in the draft Investigation report in light of the Respondent's comments, the Investigative Committee shall prepare a final draft of the Investigation report. The RIO shall send the VPRGS a copy of the final draft of the Investigation report, attaching any RIO comments regarding procedural questions and concerns. Within 14 days after delivery of the final draft Investigation report to the VPRGS, the VPRGS may submit an opinion to the RIO, the Responsible Administrator, and the Investigative Committee on either or both of the following two grounds:

- (i) If the VPRGS, with advice from the Office of the General Counsel, finds that the final draft Investigation report reflects procedural error by the Investigative Committee in conducting the Investigation, the VPRGS shall so inform the RIO and shall identify and explain the Investigative Committee's procedural error. The Investigative Committee shall either correct the error before completing the Investigation and the Investigation report or shall notify the VPRGS in, or concurrently with the issuance of, the final Investigation report that it does not believe a material procedural error occurred.
 - (ii) If the VPRGS finds that the Investigative Committee's determination, as set forth in the final draft Investigation report, is substantively wrong because the Evidence does not support the Investigative Committee's determination, then the VPRGS shall so inform the RIO and shall identify and explain the reason the VPRGS believes the Investigative Committee's determination to be in error. The Investigative Committee shall reconsider its decision in light of the opinion by the VPRGS. If the Investigative Committee changes its determination in light of the opinion by the VPRGS, it shall submit a new draft of the Investigation report to the Respondent for further comment. If it does not change its determination in light of the opinion by the VPRGS, the Investigative Committee shall respond to the opinion by the VPRGS in completing the Investigation report and make any changes in the Investigation report that it deems appropriate in light of the opinion by the VPRGS.
- (B) The opinion by the VPRGS shall be included as an appendix to the final Investigation report.
- (6) Dissent. Any member of the Investigative Committee who does not agree with the determination of the majority of the

Investigative Committee may file a dissent to the Investigation report.

- I. Bad Faith.** If a majority of the members of the Investigative Committee concludes that the Complainant acted in Bad Faith in making the Allegation, or that the Complainant or any witness acted in Bad Faith during any Misconduct Proceeding, the Investigative Committee shall refer the matter for administrative review and appropriate action as set forth in Section XII(a)(1) below.

- m. Final Report; VPRGS Overrule.**

 - (1) Copy to VPRGS. The RIO shall send the VPRGS a copy of the final Investigation report.
 - (2) Overrule; New Investigation. If the VPRGS believes the Investigative Committee's determination is wrong, the VPRGS may, within 14 days of receiving the final Investigation report, issue a written decision to the Responsible Administrator overruling the Investigative Committee for stated cause and instructing the Responsible Administrator to impanel another Investigative Committee immediately.
 - (3) Second Investigative Committee. If a second Investigative Committee is impaneled, it shall conduct a new Investigation. Subject to the Respondent's right to appeal pursuant to Section IX below, the second Investigative Committee's determination shall be binding.

- n. Distribution of Final Report; Comments.** The RIO shall send a copy of the final Investigation report to the Respondent. The Respondent may deliver comments on the Investigation report to the RIO within 14 days of the delivery of the final Investigation report to the Respondent. The RIO shall include any such comments in the Misconduct Proceeding Records.

- o. Notifications.**

 - (1) Complainant. Promptly after completion of the Investigation, the RIO shall notify the Complainant of its outcome and provide the Complainant with a brief summary of the Investigation report, including those portions of the Investigation report that address the Complainant's role and testimony, if any, in the Investigation.

- (2) **Federal Support.** When the alleged Misconduct involves Research or Creative Activity supported by a federal funding source, the RIO shall submit the Investigation report to it. It may accept the Investigation report, ask for clarification or additional information, which shall be provided by the RIO, or commence its own independent investigation.
- (3) **Other Funding Source.** When the Alleged Misconduct involves Research or Creative Activity supported by a non-federal funding source, the RIO shall notify it of the outcome of the Investigation promptly after the completion of the Investigation and provide it with a brief summary of the Investigation report and such other information, if any, as it may request in response to the RIO's notification.

IX. Appeal

- a. **Right.** A Respondent who has applied for or received support from a federal funding source for the Research or Creative Activity in relation to which the Misconduct occurred has the right under certain circumstances to appeal a finding of Misconduct by an Investigative Committee to that federal funding source. In addition, all Respondents who are found to have committed Misconduct have the right to an internal University appeal. During appellate proceedings no sanction will be imposed and no disciplinary proceeding will be commenced as a consequence of the finding of Misconduct.
- b. **External Appeal Record.** If the Respondent appeals a finding of Misconduct by an Investigative Committee to a federal funding source, the RIO shall attempt to obtain copies of all documents filed in that appeal.
- c. **Procedure.**
 - (1) **Internal Appeal.** The Respondent may appeal a finding of Misconduct to the RIO within 30 days of the date of the finding. The appeal must be in writing and must set forth the reasons (whether substantive or procedural) the Respondent believes the finding of Misconduct is wrong. The RIO will submit the appeal to the President for decision.
 - (2) **Review and Recommendation.** The President may appoint a University faculty member or administrator who does not have a Conflict of Interest and who has not previously been involved in the review of the Allegation under these

Procedures to review the Misconduct Proceeding Records and the appeal and make recommendations to the President.

- (3) Request for Additional Information. The President, or the President's designee, may request further information about the Misconduct Proceedings in writing from the RIO. A copy of such information shall be provided to the Respondent.
 - (4) Basis for Decision. The President's decision on the appeal shall be based on the Misconduct Proceeding Records, as clarified or supplemented by the RIO in response to any request for further information about the Misconduct Proceedings, and the Respondent's appeal.
- d. **New Evidence.** If the RIO or the Responsible Administrator learns of previously unavailable material Evidence relevant to the finding of Misconduct during the appeal, the RIO shall inform the President and the Respondent of the new Evidence. If the President concurs that the new Evidence could materially affect the finding of Misconduct, the President shall remand the finding of Misconduct to the Investigative Committee that made the finding for its consideration of the new Evidence. The Investigative Committee shall notify the President within 14 days that it finds the new Evidence immaterial to its prior finding or that it wishes to reopen the matter. The President may extend this period for good cause by notice to the Respondent and the RIO.
- e. **Decision.** The President shall issue a decision and rationale affirming or reversing the finding of Misconduct within 30 days after the submission of the appeal to the RIO. The President may extend this period for good cause by notice to the Respondent and the RIO.

X. Final Resolution and Outcome

- a. **Exoneration.** If the Preliminary Assessment results in a determination that an Inquiry is not warranted, or if the Inquiry Panel decides that an Investigation is not warranted, or if an Investigative Committee does not find that Misconduct has occurred, or if a finding of Misconduct is reversed on appeal, the Responsible Administrator and the RIO shall make diligent efforts, if requested by the Respondent, to restore the Respondent's reputation. These efforts shall be undertaken in consultation with the Respondent, provided that they shall: (1) be reasonable and practicable under the circumstances and proportionate to the

damage to the Respondent's reputation as a result of the Allegation; (2) be consistent with applicable federal funding source expectations, if the Research or Creative Activity which was the subject of the Allegation was supported by that federal funding source; and (3) not affect the University's ability to take action against the Respondent for Unacceptable Research Practices which come to the University's attention as a result of the review of the Allegation under these Procedures.

b. Misconduct Found.

- (1) Actions. When there is a final nonappealable decision that Misconduct has occurred:
 - (A) the Responsible Administrator, after consultation with the VPRGS and the Provost, shall take appropriate actions in response to the finding of Misconduct. Such actions may include:
 - (i) the imposition of sanctions within the authority of the Responsible Administrator and initiating University disciplinary proceedings appropriate to the finding of Misconduct pursuant to applicable University policies, procedures, and contracts, or
 - (ii) referring the finding of Misconduct to another administrator who has authority to impose sanctions and initiate disciplinary proceedings; and
 - (B) the RIO, after consultation with the Office of the General Counsel and the VPRGS, shall attempt to correct, and/or seek retraction of, any part of the Research Record materially affected by the Misconduct. The Respondent will not interfere with the RIO's efforts in these regards.
- (2) Disciplinary Action. The University views Misconduct as grounds for disciplinary action pursuant to applicable University policies, procedures, and contracts, including procedures for challenging or grieving disciplinary action.
- (3) Degree Revocation. Misconduct which materially affects the original scholarly or creative work included in a master's or doctoral thesis submitted in fulfillment of degree

requirements at the University constitutes grounds for the revocation of that degree.

- (4) **Government Sanctions.** In addition to sanctions imposed by the University, certain federal funding sources may impose sanctions of their own, if the Misconduct involved Research or Creative Activities which they supported.
 - (5) **Serious Deviation.** The University may take action, including disciplinary action, in response to a finding of Misconduct based on a serious deviation from accepted practices even if an Allegation against the same Respondent based on Fabrication, Falsification, or Plagiarism has not been sustained and the University has an obligation under Section X(a)(2) above with respect to the unsustained Allegation.
- c. New Evidence.** If, following a final nonappealable decision that Misconduct has occurred, the Respondent learns of previously unavailable material Evidence relevant to the determination of Misconduct, the Respondent shall send that Evidence to the RIO with an explanation of its origin and importance. The RIO shall submit the new Evidence to the Investigative Committee that conducted the Investigation of the Misconduct. The Investigative Committee shall promptly consider the new Evidence and notify the President of its impact on its finding of Misconduct and on its Investigative report. The President may also consult the VPRGS about the impact of the new Evidence. Based on the new Evidence and the information from the Investigative Committee and the VPRGS, the President may reverse or affirm the previous finding of Misconduct, or remand the matter to the Investigative Committee to conduct a new Investigation in light of the new Evidence. The President shall issue that decision with stated rationale within 30 days of receiving the notice from the Investigative Committee, but may extend this period for good cause by notice to the Respondent and the RIO.
- d. Termination.** If the VPRGS terminates the review of any Allegation under Section IV(g)(2), Section IV(g)(4), or Section V(e), an explanation for such termination shall be included in the Misconduct Proceeding Records.

XI. Unacceptable and Questionable Research Practices

- a. Referral from Proceedings.** An Inquiry Panel may find that, while a Respondent's conduct does not warrant an Investigation, it nevertheless constitutes an Unacceptable Research Practice or

Questionable Research Practice. Similarly, an Investigative Committee may find that, while a Respondent's conduct does not constitute Misconduct, it nevertheless constitutes an Unacceptable Research Practice or a Questionable Research Practice. Any such finding shall be referred to the appropriate administrator for review. The administrator may deem further action appropriate, including, in the case of Unacceptable Research Practices, disciplinary action pursuant to applicable University policies, procedures, and contracts, including procedures for challenging or grieving disciplinary action.

- b. Discovery and Report.** Unacceptable Research Practices or Questionable Research Practices may also be discovered in circumstances other than a review of an Allegation under these Procedures. When that happens, the alleged Unacceptable Research Practice or Questionable Research Practice should be referred to the appropriate administrator for review and such further action, if any, as the administrator may deem appropriate, including, in the case of Unacceptable Research Practices, disciplinary action pursuant to applicable University policies, procedures, and contracts, including procedures for challenging or grieving disciplinary action.

XII. Bad Faith

- a. Complainant or Witness.**
 - (1) Referral for Action. If the RIO, an Inquiry Panel, or an Investigative Committee concludes that a Complainant or witness who is a University employee or student acted in Bad Faith in a Misconduct Proceeding, the matter shall be referred to the appropriate administrator for review. The administrator may deem further action appropriate, including disciplinary action.
 - (2) Discipline. The University views Bad Faith by a Complainant or witness who is a University employee or student as grounds for disciplinary action pursuant to applicable University policies, procedures, and contracts, including procedures for challenging or grieving disciplinary action.
- b. Panel and Committee Members, Responsible Administrator, RIO.**
 - (1) Investigation. If the VPRGS receives a complaint or report that an Inquiry Panel member, an Investigative Committee

member, or a Review Panel member, the Responsible Administrator, or the RIO did not act in Good Faith in carrying out any of his or her duties under these Procedures, the VPRGS will investigate the complaint or report, with advice from the Office of the General Counsel, and in cooperation with the RIO, if the complaint or report is not against or about the RIO.

- (2) VPRGS Action. If the VPRGS concludes that the individual against or about whom the complaint is made did not act in Good Faith in carrying out any of his or her duties under these Procedures, and that the failure so to act had a material adverse impact on any Misconduct Proceeding, the VPRGS shall:
 - (A) take such action as may be necessary to preserve the integrity of the review of the Allegation, including, without being limited to, replacing the affected individual, abrogating the Misconduct Proceeding so affected and any subsequent Misconduct Proceedings in which the same Allegation was reviewed, and initiating new Misconduct Proceedings to substitute for those abrogated; and
 - (B) refer the matter to the appropriate administrator for review and such action, if any, as the administrator may deem appropriate, including disciplinary action in instances of Bad Faith.
- (3) Discipline. The University views Bad Faith by a member of an Inquiry Panel, a member of an Investigative Committee, a member of a Review Panel, the Responsible Administrator, or the RIO as grounds for disciplinary action pursuant to applicable University policies, procedures, and contracts, including procedures for challenging or grieving disciplinary action.

XIII. Protecting Participants in Misconduct Proceedings

- a. **Protection of Position and Reputation.** The University shall make diligent efforts to protect the position and reputation of each individual who has, in Good Faith, participated in a Misconduct Proceeding as a Complainant, witness, Review Panel member, Inquiry Panel member, Investigative Committee member, Counsel, Advisor, Responsible Administrator, or RIO, or who has otherwise cooperated in the review of an Allegation under these Procedures.

These efforts shall be: (1) reasonable and practical under the circumstances; (2) proportionate to the risk to the individual's position and reputation; and (3) consistent with applicable funder expectations, if the Research or Creative Activity which was the subject of the Allegation was supported by a federal funding source.

b. Retaliation.

- (1) Prohibition. University employees and students shall not engage in or threaten Retaliation.
- (2) Referral for Action. If the RIO receives a complaint or report of Retaliation or threatened Retaliation by a University employee or student, the RIO shall refer the matter to the appropriate administrator for review and such action, if any, as the administrator may deem appropriate, including disciplinary action.
- (3) Discipline. The University views Retaliation by a University employee or student as grounds for disciplinary action pursuant to applicable University policies, procedures, and contracts, including procedures for challenging or grieving disciplinary action.
- (4) Protection against Retaliation. The University shall make diligent efforts to provide protection against Retaliation by individuals who are not University employees or students. These efforts shall be reasonable and practical under the circumstances and, if the Research or Creative Activity which was the subject of the Allegation whose review led to the Retaliation was supported by a federal funding source, shall be consistent with applicable funder expectations.

XIV. Provisions for Changing these Procedures

Any member of the University community may recommend changes to these Procedures by writing to the UGC, which shall be the primary venue for governance consideration of these Procedures. The UGC shall forward any such recommended changes of which it approves to Academic Council as proposed amendments to these Procedures. If approved by Academic Council, the proposed amendments shall be forwarded to the President for transmission to the Board of Trustees. The Board of Trustees shall have final authority and control over these Procedures.

On an interim basis, the RIO shall, after consultation with the Provost, the VPRGS, and the Office of the General Counsel, modify these Procedures

to incorporate relevant requirements of new laws, regulations, executive orders, and other governmental requirements as such laws, regulations, orders, and requirements take effect. The RIO shall promptly report these changes to the President and to the chairperson of the Steering Committee of Academic Council.

Appendix

Appointment and Evaluation of the Research Integrity Officer

I. Appointment of the RIO

1. The RIO shall be appointed from the tenured faculty by the President after consultation with the UGC, and shall serve at the pleasure of the President.
2. The RIO shall report to the President and shall keep the Provost and the VPRGS informed about the progress of cases under these Procedures and about the educational and other activities of the RIO's office. The RIO shall also perform such other duties as are assigned the RIO under these Procedures.
3. Should the RIO recuse himself or herself from the RIO's duties under these Procedures with respect to a particular Allegation, the President shall appoint a replacement RIO for that Allegation after consultation with the Chairperson of the Academic and Research Policy Subcommittee of the UGC (or his or her designee).

II. Evaluation of the RIO

1. The RIO shall submit a report annually to the UGC and the VPRGS which shall set forth the number of cases handled by the RIO's office during the previous academic year and their outcomes, along with information on the educational and other activities of the RIO's office during that academic year.
2. The UGC shall evaluate the performance of the RIO biennially, pursuant to criteria established by the President, the Provost, and the VPRGS in consultation with the UGC.
3. The UGC shall submit the results of its biennial evaluation of the RIO to the President, the Provost, and the VPRGS.

III. Advisory Committee to RIO

The Academic and Research Policy Subcommittee of the UGC shall serve as an advisory resource for the RIO on issues relating to research misconduct and these Procedures.