Due Process — Research Misconduct

I. University's Research Misconduct Policy

Any compromise of the ethical standards required for conducting academic research cannot be condoned. Breaches in ethical standards must be dealt with promptly and fairly by all parties to preserve the integrity of the research community. This policy establishes a process for maintaining the integrity of University research and conforming to the expectations of extramural sponsors or regulators, as well as describing the University's procedures for handling allegations of research misconduct.

II. Entities Affected

Every unit at the University involved in research is affected by this policy.

III. Definitions

A. Complainant

"Complainant" means the individual or individuals who have made the allegations of research misconduct.

B. Fabrication

"Fabrication" means making up data or results and recording or reporting them.

C. Falsification

"Falsification" means manipulating research materials, equipment or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

D. Intentionally

"Intentionally" means to act with the aim of carrying out the act.

E. Knowingly

"Knowingly" means to act with awareness of the act.

F. Plagiarism

"Plagiarism" means the appropriation of another person's ideas, processes, results, creative work or words without giving appropriate credit.

G. Preponderance of the evidence

"Preponderance of the evidence" means proof by evidence that, compared with evidence opposing it, leads to the conclusion that the fact at issue is more likely true than not.

H. Recklessly

"Recklessly" means to propose, perform or review research or report research results with indifference to a known risk of fabrication, falsification or plagiarism.

I. Research

"Research" means a systematic investigation, study or experiment designed to develop or contribute to generalizable knowledge. The term encompasses basic and applied research such as bench work, human subjects research, community research, other work and product development and creative work in the humanities and fine arts. The term also includes collaborative work with a manufacturer, a distributor or a sponsor of the research, and includes work which may lead to tangible or intangible inventions, discoveries, patents or ideas necessary for development, utilization or processes associated with the activity. The term includes any such research or creative activity conducted by University personnel under the auspices of the University or conducted in situations in which University positions or titles are utilized in resultant publications, presentations, performances or other forms of intellectual property, irrespective of whether such research is funded by grant, contract, cooperative agreement, gift or general funds of the Commonwealth.

J. Research misconduct

"Research misconduct" means fabrication, falsification or plagiarism in proposing, performing or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion. It does not include disputes between inventors or owners of intellectual property nor authorship or collaboration disputes. In cases of allegations involving activities submitted to or supported by a federal agency, the definition and procedures for research misconduct specified in the agency's regulations will apply.

K. Respondent

"Respondent" means the individual or individuals about whom the allegations of research misconduct have been made.

L. Senior Administrator

"Senior Administrator" means the senior person for the area in which the alleged incident(s)/misconduct occurred, e.g., the dean of the college or school, or the director of a research institute or center if the institute or center is not within a specific college.

IV. Potential Research Misconduct

To preserve the integrity of reviews of potential misconduct, the process involves multiple steps: (a) assessment; (b) inquiry; (c) investigation; and where applicable and requested, (d) appeal.

This process begins with an allegation, which must first be assessed to determine whether it may potentially meet the definition of research misconduct.

If the definition is met, there must be an inquiry into the allegation to determine whether there are enough facts suggesting that research misconduct may have occurred to warrant an investigation.

If an investigation is warranted, a formal examination and evaluation of all relevant facts will determine if the allegation of misconduct is valid.

If the allegation is valid, the process must conclude with an adjudication procedure.

If research misconduct is found, respondents are afforded the opportunity to appeal the finding and any associated sanction for the violation.

To ensure the process is thorough, competent and fair in response to allegations of research misconduct, precautions are taken to ensure individuals responsible for carrying out any part of the research misconduct proceeding do not have unresolved personal, professional or financial conflicts of interest with the complainant, respondent or witnesses. This includes, without limitation, individuals confirming in writing that they have no real or perceived conflict of interest.

A high-level process flow chart of the process associated with this policy, absent an appeal, is included as an appendix to this policy, but in the event of any discrepancies between the content of that appendix and the main body of this policy, the main body of the policy controls.

V. Confidentiality

All parties involved in the assessment, inquiry, investigation and appeal process must maintain the confidentiality of respondent(s), complainant(s) and research subject(s) identifiable from research records or evidence and information to the extent possible.

Disclosure of such confidential information may only be to those who need to know to the extent consistent with a competent, objective, fair and thorough process and as allowed by law, including applicable federal and state freedom of information and privacy laws.

This obligation also requires maintaining confidentiality within the University; confidential information may not be shared with internal University parties not involved with the assessment, inquiry, investigation or appeal unless authorized in writing by the University's Vice President for Research (VPR), Office of Research Integrity (ORI) and General Counsel.

VI. Reporting Alleged Research Misconduct

Concerns about potential research misconduct must be communicated immediately to the senior administrator of the area in which the alleged incident(s)/misconduct occurred. Concerns may also be reported to ORI, which will refer them to the appropriate senior administrator.

Allegations of misconduct must be submitted in writing or by oral statement or other communication to the appropriate senior administrator or ORI. ORI or the senior administrator will share any allegations they receive with each other so that it is documented at each University office. If the complainant, or an informant acting on behalf of the complainant, declines to make a written allegation, but the verbal communication of the allegation is reported sufficiently to create a written allegation, that written allegation will be created by the recipient (ORI or the senior administrator), forwarded to the senior administrator/ORI and copied to the VPR and University legal counsel, for an assessment.

VII. Absence of the Respondent

Should the respondent leave the University before the case is resolved, the senior administrator and others charged with tasks under this policy must continue the examination of the allegation as delineated in this policy when possible given the prospect of a limited ability to engage with the respondent or other constraints caused by the departure. The University will cooperate with other institutions and under their research misconduct policies to resolve such questions to the extent possible under state and federal law.

VIII. Interim Administrative Action

At any stage in the process of assessment, inquiry, investigation, formal findings and disposition and any appeal, the University may take interim administrative action to protect the welfare of human or animal research subjects, prevent the inappropriate use of funds or remove the respondent from supervisory roles and/or endowments.

Federal agencies to which the University is required to report will be notified if the University 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.

IX. Extramural Assurance and Reporting Requirements

If required by an external funding agency or other sponsor, the VPR will submit written assurance that the institution is following the agency's or sponsor's requirements for handling allegations of misconduct.

If the research which is the subject of the misconduct allegation is supported by an extramural funding agency or other sponsor, the VPR must ensure compliance with the applicable party's reporting requirements. ORI and the General Counsel will keep the VPR informed of any developments which must be reported to the agency.

X. Time Limitation

Because of the difficulties of investigating old claims and of potential perception of unfairness to the respondent, allegations regarding research data exceeding six (6) years after publication or submission of the final report on a project for which data was collected will not be pursued unless circumstances indicate that the alleged conduct was not reasonably discoverable earlier. Exceptions to the six (6) year limitation are as follows:

1. Continuation of Renewal of Incident

Any subsequent use by the respondent, by continuation or renewal of any incident of alleged research misconduct that occurred before the six (6) year limitation, through the citation, republication or other use of the portion(s) of the research record that is the subject of the allegation of misconduct for the potential benefit of the respondent.

2. Possible Substantial Adverse Effect on the Health or Safety of the Public

If the appropriate funding agency or other sponsor or the University, in consultation with the funding agency or other sponsor, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety

of the public.

XI. Assessment and Inquiry (also known as the University's "Investigation" under *Administrative Regulation — Due Process*)

A. Allegation Assessment

Upon receiving a written allegation of research misconduct, the senior administrator must promptly assess the allegation to determine whether the matter should proceed to the inquiry stage. The respondent need not be notified of the assessment unless it is necessary for the purpose of this stage of the evaluation. ORI and the General Counsel will provide advice to the senior administrator and the VPR on procedures and other matters pertaining to the assessment. The senior administrator will provide a written response to the VPR indicating the outcome of their assessment.

B. Inquiry Initiation

The senior administrator will initiate an inquiry if, after consultation with legal counsel, ORI and the VPR, (a) the alleged conduct may fall within the definition of research misconduct, and (b) the allegation is determined to be sufficiently credible and specific such that there is adequate information or potential evidence that an inquiry into potential research misconduct may be identified and documented.

If the senior administrator determines that an inquiry should not proceed, the VPR, after consultation with General Counsel and ORI, may accept that determination, request that additional assessment be conducted or determine that an inquiry should nonetheless proceed, and the VPR will notify the senior administrator of any such acceptance, request or determination.

Once an inquiry is determined to proceed, records from the respondent and from other individuals such as co-authors, collaborators or others (e.g., lab members of, and others who work with, the respondents, complainants, etc.) will be sequestered by the General Counsel with the support of relevant staff (e.g., Information Technology Services) as deemed appropriate at that time by the General Counsel and ORI given the nature of the allegations. Additional research records and evidence discovered during the inquiry proceeding may be sequestered, except where 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 copies are substantially equivalent to the evidentiary value of the instruments.

A high-level statement of the approach taken on sequestration is included as an appendix to this policy, but the specific steps taken and at what point in time will depend on the specific misconduct allegations, the parties involved and the items required to be gathered and reviewed in order to preserve information which may be

necessary for the inquiry stage or in a later investigation stage.

ORI and the General Counsel will provide advice to the senior administrator and the VPR on procedures and other matters pertaining to the inquiry.

C. Notifying the Respondent

If an inquiry proceeds, the senior administrator must inform the respondent in writing that an inquiry has been initiated and present a written statement of the allegations to them as soon as possible. This statement must include information on the nature of the allegations and the focus of the inquiry and will inform the respondent of the opportunity for them to provide comments and other relevant information to the inquiry committee. This statement will also inform them:

- of their right to be represented by an attorney at their own cost in preparing and/or giving their response in this and all subsequent phases of the matter;
- that under no circumstances will the respondent be permitted to attempt to discover the identity of the complainant; and
- that there can be no actions that are, or could be perceived as, retaliatory against a complainant or a perceived complainant or any inquiry committee members or witnesses.

To the extent that the senior administrator, General Counsel or ORI perceive that any of the respondent's co-authors, collaborators or others may be involved with the research which is at issue in the allegations, those individuals may also be informed about the inquiry and their records sequestered as appropriate at any point during the proceedings.

D. Inquiry Committee

In consultation with the VPR, ORI and legal counsel, the senior administrator will appoint a minimum of two (2) tenured faculty members who have appropriate scientific or scholarly expertise on the issues in question to the inquiry committee. Precautions against real or perceived conflicts of interest must be taken when selecting individuals to conduct the inquiry. This will include, without limitation, asking that the proposed committee members confirm in writing that they have no real or perceived conflict of interest in evaluating research of the respondent or in evaluating the allegations of the complainant, if the complainant is not anonymous. The senior administrator, or the VPR if the senior administrator fails to do so, will identify one (1) member as chair of the committee.

E. Inquiry Process

In the inquiry stage, the inquiry committee must gather and review factual information to determine if an investigation is warranted. The inquiry is designed to separate allegations deserving further investigation from unsubstantiated or frivolous allegations. It is not for the inquiry committee to take up the question of the severity of the potential misconduct, weigh it and make a final finding of fact or recommendation for sanction. An inquiry does not require a full review of all the evidence related to the allegation, but rather, only so much as is needed to remove unsubstantiated or frivolous allegations from further consideration. In conducting the inquiry, the committee will consult with the respondent and provide them with the opportunity to respond to the allegations, and the committee will consult with such others as appropriate and relevant to the committee's charge. Once sufficient information is obtained to decide whether an investigation is warranted, and the inquiry report is submitted to the senior administrator, the inquiry process is concluded. The inquiry committee must complete the inquiry, including completing a report that is submitted to the senior administrator, within 90 calendar days of the delivery of the notice of the start of the inquiry phase to the respondent or the formation of the final committee, whichever happens last. Any extension of the inquiry beyond the 90 calendar days requires a request for an extension, which includes an explanation for the delay, to be submitted to the senior administrator and approved by the VPR.

F. Inquiry Report

The inquiry committee must submit a written report summarizing the findings of the inquiry to the senior administrator. The inquiry report must contain the name and position of the respondent, a description of the allegations of research misconduct, a copy of the institutional policies and procedures on research misconduct, a description of analyses conducted, transcripts of any interviews that were transcribed, a timeline and procedural history, an inventory of sequestered research records, any institutional actions implemented, the basis for recommending that the allegations warrant or do not warrant an investigation and, if applicable, grant numbers, grant applications, contracts and publications. Before the final version of the report is submitted to the senior administrator, the respondent must be given the opportunity to comment on a draft version of the report that is complete except for, if any, a response by the committee to any respondent comments, and those respondent comments will become part of the final record which is submitted to the senior administrator. Any respondent comments must be submitted in writing within 10 calendar days of the date on which the respondent receives the draft report.

If the respondent intends to share the draft inquiry report with anyone besides their legal counsel for any purpose, they shall only be permitted to do so for the purposes of collecting expert opinions or advice and only after they have first sought (and having copied that request to the VPR and associated ORI and University General

Counsel contacts) and obtained permission to do so, not to be unreasonably withheld, from the senior administrator. The VPR, either directly or via direction to ORI or legal counsel, as they deem appropriate, may share the relevant parts of the final inquiry report and respondent's response with the complainant, and the VPR and the senior administrator may consider any comments provided by the complainant. The senior administrator, VPR, legal counsel and ORI will review the report, the respondent's comments, and if applicable, any complainant comments. The senior administrator, after consultation with the VPR, will determine whether the findings from the inquiry justify an investigation and communicate this to the VPR. However, the VPR may disagree with the determination that an investigation is, or is not, justified and override the senior administrator's decision. The inquiry report, comments from the respondent, any complainant comments, the determination by the senior administrator and concurrence or disagreement of the VPR as to whether an investigation should proceed will constitute the final inquiry determination. The final inquiry determination must be completed within 10 calendar days of receipt of the final report of the committee, which includes the comments from the respondent and, where applicable, the complainant. If required, the VPR will inform the agency or other sponsor sponsoring the research of the findings of the inquiry. A copy of the final inquiry determination will be provided if requested by the agency or other sponsor.

XII. Investigation (also known as the University's "Hearing" under *Administrative Regulation — Due Process*)

A. Investigation Initiation

If findings from the inquiry provide sufficient basis for an investigation, the VPR will initiate an investigation no later than 30 calendar days after receipt of the final inquiry determination. The VPR will notify the applicable federal regulatory or funding agency or the sponsor (if required), if any, that an investigation is warranted within 30 calendar days of initiation of the investigation and provide those parties, where required, a copy of the inquiry report that includes the respondent's and complainant's comments, if any. The VPR may also notify other non-federal funding agencies, if any, that an investigation is warranted, within a reasonable time or in accordance with the agency's policies.

B. Notifying the Respondent

The VPR must inform, in writing, the respondent (and any involved collaborators as appropriate) that an investigation will be conducted and present them with a statement of the allegations. This statement must include information on the nature of the allegations and the focus of the investigation and inform the respondent of the opportunity to provide comments and other relevant information to the investigative committee.

This statement must also inform the respondent of their right to be represented by an attorney, at their own cost, in preparing and/or giving their response in this and all subsequent phases of the investigation. The statement must also indicate there can be no actions that are, or could be perceived as, retaliatory against a complainant, perceived complainant or any investigation committee members or witnesses. The University must give the respondent written notice of any new allegations of research misconduct that were not addressed during the inquiry or the initial investigation notice within a reasonable amount of time of deciding to pursue those additional allegations.

C. Investigative Committee

In consultation with ORI and the General Counsel, the VPR will appoint an investigative committee to conduct a formal examination and evaluation of all relevant facts to determine whether research misconduct has taken place. The investigative committee must include at least three (3) tenured faculty members. Other subject matter experts may be consulted during the investigation to provide necessary knowledge.

Precautions against real or perceived conflicts of interest must be taken in appointing the investigative committee. This will include, without limitation, asking that the proposed committee members confirm in writing that they have no real or perceived conflict of interest in evaluating research of the respondent or in evaluating the allegations of the complainant, if the complainant is not anonymous. The VPR will identify one (1) member as chair of the committee. The respondent must be given the opportunity to comment in writing on any perceived conflict of interest in the membership of the investigative committee.

The VPR will inform the senior administrative officer of the organizational unit of each respondent and of any other organizational unit in which the alleged misconduct may have occurred that an investigation is under way, and in so doing indicate that the matter is otherwise confidential.

D. Investigative Process

The investigative committee must conduct a formal examination and evaluation of all relevant facts to determine if the allegations of misconduct are valid. The investigative committee will also determine whether there are additional instances of possible research misconduct that would justify broadening the scope beyond the initial allegations, including but not limited to other research during the six-year lookback or associated period of review.

The investigative committee will consult ORI and the General Counsel on procedures

and other matters pertaining to the investigation. The investigative committee may call witnesses, sequester and examine research data (both published and unpublished) and other evidence and seek expert assistance both inside and outside the University to aid in the investigation. Additional research records and evidence discovered during the investigation proceeding may be sequestered, except where 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 copies are substantially equivalent to the evidentiary value of the instruments.

The investigative committee must have a transcript of any interviews prepared, and a copy must be provided to the interviewed party for comment. The investigative committee will keep the VPR, legal counsel and ORI apprised of the investigation. The investigation process, starting from the date the University decides that an investigation is warranted, including, where applicable, transmitting the institutional record including the final investigation report and decision by University to the Federal Office of Research Integrity, must be concluded within 180 days. The investigative committee must complete its investigation, including submission of the final investigation report, no later than 120 calendar days after delivery of the notice of the start of the investigation phase to the respondent or the formation of the final investigative committee. If the investigative committee is unable to complete its part of the investigation process in time, a request for extension which includes an explanation for the delay will be submitted to and approved by the VPR and federal agency, if applicable.

E. Finding of Research Misconduct

A finding of research misconduct by the investigative committee and the University (not to be considered at the assessment or inquiry stages) requires that the events constitute research misconduct (fabrication, falsification or plagiarism in proposing, performing, or reviewing research, or in reporting research results but not including honest error or differences of opinion in the conduct of research or disputes between inventors or owners of intellectual property nor authorship or collaboration disputes, all as further described by the definitions in above), and that:

- There is a significant departure from accepted practices of the relevant research community;

- The misconduct is committed intentionally (to act with the aim of carrying out the act), knowingly (to act with awareness of the act) or recklessly (to propose, perform or review research, or report research results, with indifference to a known risk of fabrication, falsification or plagiarism); and

- The allegation is proven by a preponderance of evidence (proof by evidence that, compared with evidence opposing it, leads to the conclusion that the fact at issue is more likely true than not).

All three (3) elements are required for a finding of research misconduct.

F. Investigation Report

1. Content and Respondent Comments on Draft Report

The draft report, pending comment by the respondent, must describe the nature of the allegations of research misconduct, including: specific allegations considered in the investigation; an inventory of sequestered materials and how sequestration was conducted; transcripts of all interviews; any scientific or forensic analyses conducted, if applicable; any grant numbers, grant applications, contracts or publications; whether there was research misconduct and, if so, whether it was falsification, fabrication or plagiarism and if it was intentional, knowing or made in reckless disregard; and whether any publications need correction or retractions.

The finality of any conclusions/findings as present in the draft report will be held in abeyance pending the receipt and consideration of the respondent's comments on the draft report. The respondent will be afforded the opportunity to comment upon the draft report and have such comments included in the formal record of the investigation.

If the respondent intends to share the draft investigation report with anyone besides their legal counsel for any purpose, they shall only be permitted to do so for the purposes of collecting expert opinions or advice and only after they have first obtained permission to do so from the VPR, which shall not be unreasonably withheld. The VPR's permission may be conditioned upon, among other bases, confidentiality limitations imposed upon the University, but such permission shall not be unreasonably withheld. Any comments by the respondent on the report must be submitted in writing within 30 calendar days of the date on which the respondent received the draft report.

2. Submission of Final Report and Respondent Comments

At the completion of the investigation, the investigative committee must submit a final report including its findings, comments from the respondent and recommended institutional actions in writing to the Provost and VPR, as well as a copy to the respondent, the General Counsel and ORI.

3. Optional Interaction with Complainant

The VPR may provide the complainant with those portions of the report and the respondent's responses that address the complainant's allegations, as appropriate. The complainant's written comments, if any, must be provided within 30 days of the date on which they receive the information, and, if so received, those comments must be included in the formal record.

4. Institutional Decision; Provision and Submission of Institutional Decisions; and/or Investigational Record to Sponsoring Parties and Applicable Agencies

Based on the preponderance of the evidence, the VPR, in consultation with the Provost, will make the decision of whether to accept the investigation report, its findings and the recommended institutional actions or to make other determinations or take other steps.

The VPR will provide a copy of the final institutional investigation record (including documentation of the assessment; the inquiry report and all records considered or relied on during the inquiry; the investigation report and all records considered or relied on during the investigation; all transcripts; decisions by the VPR and Provost; an index listing all the research records and evidence that the institution compiled during the research misconduct proceeding; and a general description of the records that were sequestered but not considered or relied on), the determinations of the University, any records concerning an appeal of the findings and determinations of the University and its resulting imposed actions and sanctions to sponsoring agencies or other sponsors required by law or contract to receive it, as well as any other sponsoring agency upon request, if any. In addition, pending or completed administrative actions against the respondent must be submitted to applicable federal agencies.

Where it is required to transmit its institutional record to the Federal Office of Research Integrity, if the University has not yet done so prior to an appeal instituted as described in this policy, the University will wait until the appeal is concluded to transmit its institutional record to that office, and when the appeal is concluded, the VPR will ensure that the complete record of the appeal is included in the institutional record consistent with federal regulations.

XIII. Documentation

At the conclusion of an allegation assessment, inquiry, investigation and any appeal of an investigation decision or resulting sanction, the VPR, senior administrator, Provost and any inquiry and investigative committee members must forward all documentation pertaining to the allegation assessment, inquiry, investigation or appeal to ORI, and ORI must maintain that documentation for seven (7) years. University General Counsel must also maintain any documentation it has gathered,

received or created for seven (7) years. ORI (in consultation with the General Counsel, where appropriate) will be responsible for providing the documentation to the VPR and General Counsel and, as may be required, to appropriate federal agencies or other parties. The General Counsel must maintain any documentation it has gathered, received or created in accordance with University record retention requirements and applicable law.

XIV. Restoring Reputation

A. No Inquiry Findings of Research Misconduct

If the findings of an inquiry fail to confirm an instance of misconduct, all participants in the inquiry, including the VPR and ORI, will be informed in writing of this by the senior administrator.

B. No Investigation Findings of Research Misconduct

If the findings of an investigation fail to confirm an instance of misconduct, all participants in the investigation will be informed of this in writing by ORI, with assistance from General Counsel, if appropriate.

C. Protecting and Restoring Reputation of Respondent Where No Findings Are Made

The senior administrator and the VPR must undertake all practical and reasonable efforts to protect and restore the reputation of the respondent against whom no finding of research misconduct has been made, if requested by the individual(s) and as appropriate.

D. Protecting and Restoring Reputation of Complainant

The senior administrator and the VPR must undertake all practical and reasonable efforts to protect and restore the position and reputation of the complainant who, in good faith, made an allegation of research misconduct, if requested by the individual(s) and as appropriate.

XV. Formal Findings, Actions Following the Investigation and Disposition

A. Determinations Made by the VPR in Cooperation with Provost and Senior Administrator

If the findings of the investigation substantiate the allegations of research misconduct, the VPR, in consultation with the Provost and the senior administrator,

will determine which institutional actions or sanctions under the purview of each office are appropriate.

The VPR's decision will be provided to the respondent in writing, and it is considered final, except as may be adjusted pursuant to an appeal and such other University regulations which may apply.

B. Possible Institutional Actions and Sanctions

Appropriate institutional actions and sanctions taken concerning or against those faculty, staff, postdoctoral scholars, graduate students, undergraduate students and visiting scholars found to have been involved in research misconduct, as consistent with the University's *Governing Regulations*, *Administrative Regulations* and staff and student policy manuals, include, but are not limited to, the following:

- Verbal warning;
- Special monitoring of future work;
- Formal reprimand which is filed in the employee's personnel file;
- Termination of grant support;
- Termination of fellowship support;
- Adjustment of research space allocation;
- Adjustment of salary;
- Mandated actions to redress the consequences of the misconduct;
- Withdrawal of specific privileges;
- Removal from a special position of privilege or prestige (such as a titled professorship or an endowed chair);
- Mandated restitution of funds that were used to perform the research in which the misconduct occurred;
- Partial or total suspension from duties for a specified time with or without concomitant loss of pay; or
- Separation of employment (staff employees), termination of faculty appointment (faculty employees) or student expulsion.

To the extent required to impose any action or sanction, any proceedings required by *Governing Regulations*, *Administrative Regulations*, all other administrative policies or the *Student Codes* will be conducted as appropriate.

C. Communication of Investigation Outcome to Internal or External Parties

The outcome of the investigation may be communicated to internal or external parties to the University, such as:

- Sponsoring or funding agencies and other entities;
- Appropriate legal and governmental authorities;
- Co-authors, co-investigators and collaborators;
- Editors of journals in which research misconduct occurred, was reflected or erroneous findings were published or officials in charge of conferences at which research misconduct occurred, was reflected or erroneous findings were presented;
- Professional licensing boards;
- Editors of journals or other publications, other institutions and sponsoring agencies and funding sources with which the individual has been affiliated in the past; or
- Professional societies.

D. Enforcement of Institutional Actions

The senior administrator is responsible for ensuring that the appropriate institutional actions are enforced.

XVI. Notification to Federal Office of Research Integrity in Event of Closure Due to Respondent Admission or a Settlement

The VPR or their delegate will notify the Federal Office of Research Integrity in advance if the University plans to close a research misconduct proceeding at the assessment, inquiry, investigation or appeal stage on the basis that the respondent has admitted to committing research misconduct or a settlement with the respondent has been reached.

XVII. Appeals

A. Applicability of Appellate Procedures

These appellate procedures apply when there has been a formal finding of research misconduct under this policy.

B. Appointment of Appeals Board

The VPR will appoint three (3) individuals to serve on the appeals board. Members will serve one (1)-year terms and may be reappointed for up to two (2) additional terms. The VPR will ensure that all appeals board members are trained for their service.

In the event an appeals board member cannot serve on a particular appeal for any reason, the VPR will appoint a replacement for that appeal only.

C. Appeal Procedure Responsibility

The VPR will have responsibility for receiving the notice of appeal, promptly notifying the Federal Office of Research Integrity of the respondent submitting the notice of appeal, receiving the briefs (as described below) and sharing them to the appeals board, scheduling oral argument if the appeals board wishes and distributing decisions.

D. Who May Appeal

Any respondent who has been found responsible of research misconduct through a VPR-accepted investigation report may appeal either the finding of responsibility, the sanction imposed or both.

The University may not appeal a finding of no responsibility.

E. Grounds for Appeal

A respondent may appeal on any ground including, but not limited to, procedural irregularity, erroneous factual conclusions, incorrect legal conclusions, violations of constitutional rights or the discovery of new evidence not available during the investigative stage.

F. The Notice of Appeal

A respondent may appeal by filing a notice of appeal with the VPR within seven (7) business days of the decision determining the sanction. The notice should simply state the respondent wishes to appeal either the finding of research misconduct or other responsibility, the sanction imposed or both. A failure to file the notice of appeal

in a timely manner will cause the finding and any resulting sanctions to be considered final.

G. Conflicts of Interest and Recusal for Service on Underlying Inquiry or Investigation Committee

Any member of the appeals board who has served on the inquiry or investigation committee from which the finding of research misconduct or imposition of sanction resulted and that is appealed by the respective respondent will recuse themselves by notifying the VPR. Any member of the appeals board who has a conflict of interest must immediately recuse themselves by notifying the VPR. Conflicts of interest include, but are not limited to, personal knowledge of the facts and circumstances of the allegations or having a familial, personal, faculty/student or professional relationship with the respondent.

If the University or the respondent believes an appeals board member has a conflict of interest, the party may file a formal request for recusal.

In the event an appeals board member recuses for any reason, the VPR will appoint a replacement.

H. Appeal Record

Upon receipt of a notice of appeal, the VPR will prepare the appeal record. The appeal record consists of the following:

- The final institutional research misconduct proceedings record (including documentation of the assessment, the inquiry report and all records considered or relied on during the inquiry; the investigation report and all records considered or relied on during the investigation; all transcripts; decisions by the VPR, senior administrator and Provost; if not included, collectively, with the inquiry and investigation reports, an index listing all the research records and evidence that the University compiled during the research misconduct proceeding; and a general description of the records that were sequestered but not considered or relied on).

- The VPR's written formal findings and imposed sanctions.

Upon completion of the appeal record, the VPR will certify the record is complete and will send a copy to the appealing respondent and appeals board.

I. Briefs

For the purposes of this policy, a brief is a written document presented by the

applicable party designed to persuade the appeals board to agree to the position of the party submitting the document. In the case of an appealing respondent, the content can include the basis for why the finding of research misconduct or other responsibility, the sanction imposed or both should be reversed or reversed and remanded (sent back for further consideration).

1. Respondent's Brief

The respondent's brief is due 14 business days after the VPR certifies the record is complete.

Excepting exhibits, the respondent's brief must not exceed 25 pages, double-spaced, with 12-point type**.** The respondent's brief will be provided to (a) the VPR for a response by the University and (b) the appeals board.

2. University's Brief

The University's brief is due 14 business days after receipt of the respondent's brief.

Excepting exhibits, the University's brief must not exceed 25 pages, double-spaced, with 12-point type.

3. Reply Brief of the Respondent

The respondent may file a reply brief within seven (7) business days after the University's brief.

Excepting exhibits, the reply brief must not exceed 10 pages, double-spaced, with 12-point type.

4. Modification to Deadline and Page Limits

Upon request of any party, the appeals board may extend the time for filing a brief and/or the page limits.

J. Decision by the Appeals Board

After reviewing all briefs and the appeal record, the appeals board will make a written decision. The decision must be supported by a majority of the appeals board. The appeals board's written decision will be provided to the respondent, the VPR, ORI, the General Counsel and any counsel for the respondent.

The VPR, with the assistance of ORI, will provide the appeals board's written decision to the Federal Office of Research Integrity and any applicable other sponsoring

parties or agencies to whom such a decision is required to be disclosed in accordance with applicable law and contracts.

1. Standard of Review

In reviewing the decision of the VPR, findings of fact are considered correct unless determined to be clearly erroneous, and conclusions of law are reviewed without deference to VPR (i.e., de novo).

2. Decision Concerning Responsibility

With respect to the issue of responsibility, the appeals board may affirm, reverse or reverse and remand for further proceedings.

3. Decision Concerning Sanction

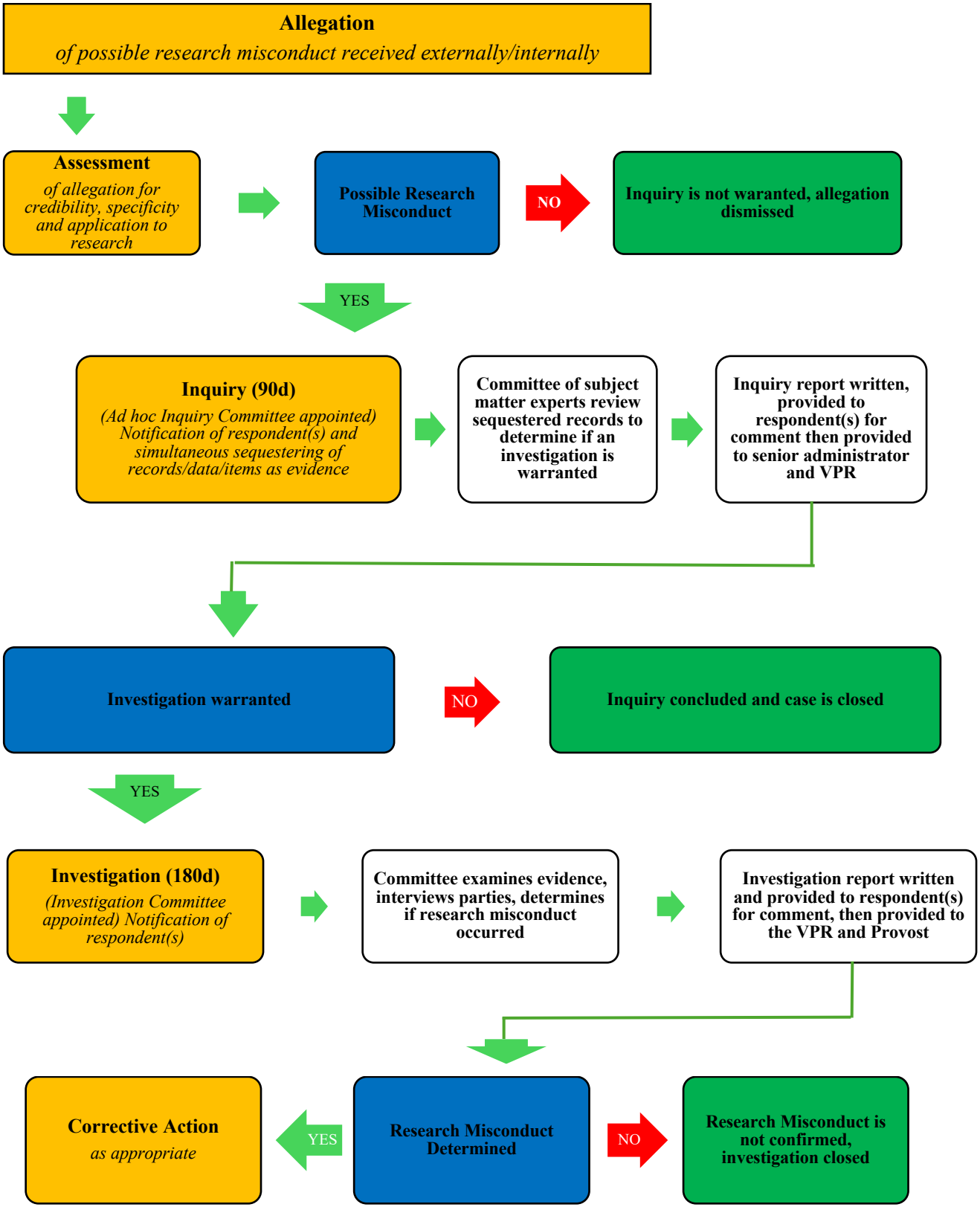
As to the sanction, the appeals board may affirm or impose a lesser sanction. The appeals board may not increase the sanction.

XVIII. Appendices

A. Research Misconduct Process Flowchart (see reference in section IV above)

B. Sequestration Considerations (see reference in section XI.B. above)

Research Misconduct Process Flowchart (without appeal)



Sequestration Considerations

To adhere to federal regulations and University policy requirements, the specific sequestration practices utilized by the University in a given research misconduct matter are dependent on, at a minimum:

- The allegations;
- Respondents and associated individuals, units and entities involved who may have data or records;
- the various types and locations of data and records the University needs to sequester; and
- University Information Technology (IT) capabilities in concert with efforts of the General Counsel and the UK Office of Research Integrity (ORI).

The University is required to take a broad approach to sequestration when an inquiry begins, or it risks loss or alteration to data or records once the respondent(s) or others know that the review is to occur. The broad approach considers:

- The requirements of the federal regulations and the University policy that the University secure the data properly; and
- That the allegations could lead to an expanded set of issues throughout the inquiry and potential investigation stage where the University would need to consider many years of research activities and not only the original allegations.

While the approach is broad, the University is cognizant of the need to lessen the disruption to researchers as much as possible, but those impacted should expect some level of disruption in the event of sequestration due to a research misconduct inquiry.

Further, clarity of the timeline of when items that have been sequestered will be restored is not always possible at the start of a sequestration.

The University must consider data stored on University-controlled or provided servers or cloud-based systems, data on laptops, desktop computers and other storage devices, those connected to other machines (e.g., microscopes, etc.) and that which might be elsewhere (e.g., on a core lab microscope or connected computer, or perhaps stored with outside parties or on personal devices, etc.). The University must also consider sequestering physical data and records, such as any physical lab notebooks.

Where possible, ORI and the General Counsel seek to have IT create copies of data and/or take preservation actions behind the scenes without disruption of individuals. The University must first discern where data may be stored by applicable individuals (e.g., University servers, email, electronic lab notebooks, etc.) in order to direct IT to copy and preserve the data. Frequently, data and other information are stored locally on devices for which the University can only obtain a copy by borrowing the device for a period of time. When physical lab notebooks and other physical documents are sequestered, the University can allow supervised access to the materials when staff are reasonably able to do so.

The respondent and all others affected are provided with notice of the inquiry and the need to (a) preserve data and information and (b) work with ORI, the General Counsel and IT staff to identify relevant data and information. Throughout the inquiry and potential investigation stage, further action may be necessary to review data that anyone may have, which would require the University to take further steps to obtain the additional data.

Not all possible actions necessitating interaction with respondents, their co-authors, co-investigators, collaborators or others can be anticipated at the start of any stage of the review. The University endeavors to work with those individuals as best it can to address the requirements of a research misconduct matter.

Regarding inquiries made to respondents and others to produce information during the course of an inquiry or investigation, where possible and depending on the deadlines for the process imposed by federal regulations and the University policy, the University attempts to provide extensions of time and reasonable flexibility.