DATE: April 6, 2017  
TO: KU Faculty, Staff, and Students  
FROM: University Senate President Joe Harrington  
RE: Notification of Proposed Amendments to University Senate Rules and Regulations  
Article IX (Research Misconduct)

The proposed amendments to USRR Article IX (available at https://governance.ku.edu/sites/governance.ku.edu/files/docs/USRRArticleIX20170413.pdf and attached as well) will be discussed at the University Senate meeting on April 13, 2017, and voted on at the meeting on April 27, 2017. (A vote may be taken on April 13, 2017 if two-thirds of the members present approve voting on the amendments). Both meetings will be held in Room 203 Green Hall (Law School) at 3:15 p.m. The meetings are open to members of the University community.

Interested persons may submit written comments on the proposed amendments to the Office of University Governance (email: govern@ku.edu) by noon on Thursday, April 13, 2017. Please note that proposed changes to the University Senate Rules & Regulations are required to be sent to all faculty, staff, and students, but no action is required on your part unless you wish to submit a written comment. (Since changes to USRR Article IX would replace the existing Article IX altogether, edits are not shown in strikeouts or bold and highlighted text as is usually the case with amendments sent to the University community for consideration).

Please contact me (jharring@ku.edu) if you have any questions about this amendment.

Proposal for New USRR Article IX
Approved by SenEx April 4, 2017

Rationale

A primary activity for FRPR this academic year has been review of the existing Guidelines for Dealing with Allegations of Scholarly Misconduct, USRR Article IX, and drafting of a revised policy. The draft of FRPR’s recommended changes to the existing Scholarly Misconduct Policy is now titled “Guidelines for Dealing with Allegations of Research Misconduct” to better parallel federal requirements. FRPR recommends this be adopted to replace the existing USRR Article IX.

The federal Public Health Service (PHS) policy which represents the majority of federal research funds for KU, was selected to form the basis for initial discussion within FRPR. FRPR realized that the issues with the current USRR Article IX were broader than envisioned in the initial charge.
FRPR worked closely with the Research Integrity Officer (Jim Tracy, Vice Chancellor for Research) to ensure that the new policy meets federal regulations; has a timeline which is expedient yet allows for thorough peer review while being achievable; and protects the institution as well as the rights of individual faculty (whether they be complainant, respondent or members of the various committees). FRPR strived to conform to requirements of Federal Policy, followed guidance from the Department of Health and Human Services (DHHS) Office of Research Integrity regarding effective practices, and consulted policies from peer AAU institutions. The content is separated into policies, provisions, definitions, procedures, and administrative actions and sanctions. It is the intention of our intention that this better clarifies appropriate guidelines for each stage of the process, from allegation, to assessment, to inquiry, to investigation, to administrative action, and to potential appeal of any sanction.

A few items of note include:

1) Removing USRR 9.2.3.1 which calls for attempted mediation between complainant and respondent is inconsistent with both the letter and spirit of Federal policy. It might well apply to other disagreements between scholars, but not in cases of alleged research misconduct. Such language places the institution at risk.
2) Changing the existing USRR 9.3.4.2 which calls for a “hearing” of the Investigation Committee. There are no hearings at the institution level of a research misconduct proceeding. Indeed, neither the inquiry nor investigation are “legal proceedings” but only involve interviews of the principals and witnesses. This is consistent with the recommended language clarifying the roles of committee members and representatives of the Office of the General Counsel as well.
3) Enabling additional processes (written, oral, electronic…) for making an allegation of research misconduct, as required by federal policy.
4) Clarifying the roles of complainant and respondent, and notably removing the complainant from an apparent prosecutorial role.
5) Clarifying reporting requirements to the complainant, and correcting the excessive release of supporting information to external complainants in the current policy.
6) Clarifying the required three phases of assessment, inquiry and investigation.
7) Changing timelines, and increasing flexibility in committee memberships to facilitate timely reviews.
8) Adding a definitions section.
9) Adding language for a statute of limitation.
10) Modifying processes to ensure confidentiality, most notably adding the use of written confidentiality agreements.
11) Ensuring notifications and reporting are compliant with federal requirements.
SECTION 9.0. STATEMENT OF POLICY

9.0.1 Objectivity, integrity, and truthfulness are hallmarks of scholarly research and are essential for ensuring creative progress and public trust. The University of Kansas is committed to fostering an environment that promotes the responsible conduct of research, research training, and related activities, and to dealing effectively with alleged instances of misconduct in scholarly research. This Policy implements that commitment and is intended to fulfill the University’s responsibilities as a recipient of Federal Government research funds.

9.0.2 Each person engaged in scholarly research under the auspices of the University is expected to adhere to the highest professional standards of intellectual honesty and integrity in proposing, performing, and reviewing research, in reporting research results, and in the public exhibition, display, or performance of creative work.

9.0.3 The purpose of this Policy and the accompanying guidance and procedures is to ensure the thorough, impartial, and timely handling of alleged instances of misconduct in scholarly research, while protecting the rights and reputations of individuals – those who report alleged misconduct and those against whom an allegation of misconduct is made.

SECTION 9.1. GENERAL PROVISIONS

9.1.1 Scope and Jurisdiction
This Policy applies to all forms of scholarly research conducted by a University member under the auspices of the University of Kansas, regardless of the source of financial support. When an allegation of research misconduct relates to activities funded by a Federal agency, this Policy is intended to fulfill the University's requirements under the Federal Policy on Research Misconduct promulgated by the Office of Science and Technology Policy (Federal Register 65: 26260, December 6, 2000) and rules issued subsequently by the sponsoring agency (e.g., National Institutes of Health, National Science Foundation, National Endowment for the Humanities). Pursuant to Federal Policy, a finding or settlement by a Federal agency in a research misconduct case shall not affect the University's findings, administrative actions, or sanctions based on application of this Policy.

9.1.2 Research Misconduct
9.1.2.1 Research misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

(a) Fabrication is making up data or results and recording or reporting them.
(b) Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
(c) Plagiarism is the appropriation of another person’s ideas, processes, results, or words without giving appropriate credit.
(d) Research misconduct does not include honest error or differences of opinion.

9.1.2.2 The following do not fall within the definition of research misconduct: (a) misuse of University funds, including funds from any external research sponsor; (b) disputes about collaborations, authorship, or inventorship; (c) violations of institutional procedures or federal regulations for the protection of human or animal research subjects; or (d) violations of state or federal occupational health and safety laws or regulations.

9.1.2.3 Research misconduct does not include academic misconduct in the preparation, use, or submission of work or materials in courses offered for academic credit, which is governed by the procedures of University Senate Rules and Regulations (USRR) Article II, Section 6. In the event that misconduct relates to work that has both research and course-related elements, this Policy shall be used.

9.1.3 Finding of Research Misconduct
A finding of research misconduct requires that:
(a) There be a significant departure from accepted practices of the relevant research community; and
(b) The misconduct was committed intentionally, knowingly, or recklessly; and
(c) The allegation be proven by a preponderance of the evidence

9.1.4 Evidentiary Standards
(a) Standard of proof. A finding of research misconduct must be proved by a preponderance of the evidence.
(b) Burden of proof:
(1) The University has the burden of proof for making a finding of research misconduct.
(2) If the respondent elects to raise an affirmative defense, then the respondent has the burden of proving, by a preponderance of the evidence, any and all affirmative defenses raised. In determining whether the University has carried the burden of proof imposed by this Policy, the Deciding Official shall give due consideration to admissible, credible evidence of honest error or difference of opinion presented by the respondent.
(3) The respondent has the burden of going forward with and proving, by a preponderance of the evidence, any mitigating factors that are relevant to a decision to impose administrative actions or sanctions by the University following a research misconduct proceeding.

9.1.5 Responsibility to Report Misconduct
9.1.5.1 University members are obligated to report observed, suspected, or apparent research misconduct to the Research Integrity Officer.

9.1.5.2 At any time, a University member may have confidential discussions and consultations about concerns of possible misconduct with the Research Integrity Officer and will be counseled about appropriate procedures for reporting allegations.

9.1.5.3 If an individual is unsure whether a suspected incident falls within the definition of research misconduct, he or she may meet with or contact the Research Integrity Officer to discuss the suspected research misconduct informally and confidentially, which may include discussing it hypothetically. If the circumstances described by the individual do not meet the definition of research misconduct, the Research Integrity Officer will refer the individual or allegation to the appropriate University official.

9.1.6 Cooperation with Research Misconduct Proceedings
University members are expected to cooperate with the Research Integrity Officer and other University officials in the review of allegations and the conduct of inquiries and investigations.
Nothing herein will be interpreted in such a way to infringe on a University member’s right to invoke the protection of the Fifth Amendment to the U.S. Constitution with regard to self-incrimination.

9.1.7 Statute of Limitation
Because of the difficulty of investigating old claims, allegations based on conduct that occurred more than six years prior to the date the allegation is made will not be pursued, unless circumstances indicate that the alleged misconduct could not have reasonably been discovered earlier. Exceptions to the six-year limitation include:

(a) Subsequent use exception. The respondent continues or renews any incident of alleged research misconduct that occurred before the six-year limitation through the citation, republication or other use for the potential benefit of the respondent of the research record that is alleged to have been falsified, fabricated or plagiarized.

(b) Public health or safety exception. If the funding agency, or the University in consultation with the funding agency, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public.

9.1.8 Prompt Resolution
9.1.8.1 All proceedings should be conducted expeditiously and adhere to the timelines set out in this Policy. However, these timelines are not absolute. The Research Integrity Officer may for good cause extend a timeline or make such other changes to these procedures to ensure that the proceeding can be conducted adequately and completely, provided that the change does not infringe upon a respondent’s rights or impair the ability to defend. Extending the timeline for a research misconduct investigation where federal funding is involved requires written approval by the cognizant federal agency.

9.1.8.2 Failure to complete an inquiry, investigation, or other process within these time frames shall not constitute ground for dismissal of an allegation of research misconduct. Any undue delay may be considered by the Deciding Official when reviewing findings and recommendations.

9.1.9 Ensuring a Fair Research Misconduct Proceeding
The Research Integrity Officer shall take all reasonable efforts to ensure an impartial and unbiased research misconduct proceeding to the maximum extent practical. Individuals who serve on either inquiry or investigation committees shall have appropriate scientific or scholarly expertise and shall not have unresolved personal, professional, or financial conflicts of interest with a respondent, complainant, or witness in a research misconduct proceeding.

9.1.10 Revisiting an Allegation
Where an inquiry or investigation results in a finding that no research misconduct has occurred, the University will not initiate a new inquiry or investigation into an allegation of research misconduct where the allegation is made against the same person and is based on material facts, which were reviewed and found not to constitute research misconduct during the prior research misconduct proceeding, unless new material evidence is presented by a different complainant, or unless the respondent requests another proceeding.

9.1.11 Triage and Precedence
9.1.11.1 The Research Integrity Officer, with assistance of the Office of the General Counsel and others as required, will determine if an allegation impacts multiple regulatory areas (e.g., human or animal research subjects, financial conflict of interest, misuse of funds, etc.). Review of the allegation of research misconduct shall precede all other University proceedings that relate to or arise out of alleged misconduct unless:

(a) The safety of research subjects is at risk;
(b) Public health issues are at stake; or
(c) A criminal investigation is being conducted

9.1.11.2 Research misconduct involving one or more collaborating sites will be handled through coordination of the Research Integrity Officers at the involved institutions.
9.1.12 Confidentiality
The Research Integrity Officer shall:
(a) Limit disclosure of the identity of complainants and respondents to those who have a need to know consistent with a thorough, competent, objective, and fair research misconduct proceeding and as allowed by law; and
(b) Except as otherwise prescribed by law, limit the disclosure of any records or evidence from which human research subjects might be identified to those who have a need to know in order to carry out a research misconduct proceeding.
(c) Use written confidentiality agreements to ensure that those receiving information do not make any further disclosure of such information. Specific language in this confidential agreement shall be developed and maintained in collaboration with the Research Integrity Officer, the Office of the General Counsel, and the Faculty Senate Executive Committee.
(d) Disclose the identity of respondents and complainants to federal agencies with regulatory oversight of research misconduct proceedings involving federally-funded research.

9.1.13 Safeguards for Complainants, Witness, and Committee Members
9.1.13.1 No member of the University community shall retaliate in any manner against complainants, witnesses, or committee members. University members should immediately report alleged or apparent retaliation to the Research Integrity Official, who shall review the allegation of retaliation, and if warranted, make all reasonable and practical efforts to redress any retaliation that has already occurred and to prevent any further retaliation.

9.1.13.2 The Research Integrity Officer and other University officials shall make all reasonable and practical efforts to protect or restore the position and reputation of any complainant, witness or committee member, and to counter potential or actual retaliation against them.

9.1.14 Safeguards for Respondents
Throughout a research misconduct proceeding, the Research Integrity Officer shall ensure that respondents receive a copy of this Policy and the accompanying guidance and procedures, and of all the notices and opportunities provided for in this Policy.

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

9.1.15 Separation of a Respondent from the University
9.1.15.1 The termination of the respondent’s employment or other relationship with the University, before or after an allegation of possible research misconduct has been reported, will not preclude or terminate the proceedings.
9.1.15.2 If the respondent, without admitting to the misconduct, elects to resign his or her position prior to the initiation of an inquiry, but after an allegation has been reported, or during an inquiry or investigation, the research misconduct proceeding will continue to conclusion with whatever evidence is available. If the respondent elects to invoke the privilege of remaining silent and refuses to participate in the research misconduct proceeding after resignation, the inquiry or investigation committee will use its best efforts to reach a conclusion concerning the allegation, noting in its report the respondent’s failure to cooperate and its effect on the review of the evidence.

9.1.16 Destruction or Absence of Research Records
The destruction, absence of, or respondent’s failure to provide research records adequately documenting the questioned research is evidence of research misconduct where the University establishes by a preponderance of the evidence that the respondent intentionally, knowingly, or recklessly had research records and destroyed them, had the opportunity to maintain the records but did not do so, or maintained the records and failed to produce them in a timely manner, and that the respondent’s conduct constitutes a significant departure from accepted practices of the relevant research community.

9.1.17 Conflict of Interest
If a conflict of interest is alleged by a party at any point in the assessment, inquiry, or investigation phase of the case, the Research Integrity Officer will review the allegation and determine whether a conflict exists. A conflict exists, if an individual has any relevant unresolved, personal, professional, or financial conflict with the complainant, respondent, or witnesses in the case, and there is a basis to believe that the individual could not conduct themselves in a thorough, competent, and fair manner. The Research Integrity Officer’s decision regarding the existence of a conflict shall be final.

9.1.18 Custody and Retention of Research Misconduct Proceeding Records
The Research Integrity Officer shall be responsible for assuring that all records and documents relevant to research misconduct proceedings are retained in a secure manner for seven (7) years after completion of the University’s proceedings, or of any research misconduct proceeding conducted by a federal cognizant agency, whichever is later.

9.1.19 Right of Consultation
At any stage of a research misconduct proceeding, the respondent may consult with appropriate student, faculty, or professional advisory groups. The respondent may consult with private legal counsel, and may be accompanied and advised by counsel or another advisor at any interview or meeting under this Policy. The advisor may not present the case, give evidence, respond on behalf of the respondent, or otherwise participate in the internal research misconduct proceeding. If external federal oversight
reviews or hearings occur, the respondent maintains the right to be represented by legal counsel.

9.1.20 Proceedings at Federal Request
If a federal agency requests that the University undertake an inquiry, investigation, or other federally-mandated proceeding, then the Research Integrity Officer shall initiate such proceeding.

9.1.21 Interim Administrative Actions and Notification of Federal Agency
9.1.21.1 Throughout the research misconduct proceeding, the Research Integrity Officer will review the situation to determine if there is an immediate threat of harm to public health or safety, federal funds or equipment, or the integrity of federally-supported research. In the event of such a threat, the Research Integrity Officer will, in consultation with other University officials and the federal agency, take appropriate interim action to protect against any such threat. Interim action might include, but not be limited to, additional monitoring of research activities and the handling of federal funds and equipment, reassignment of personnel, or the responsibility for the handling of federal funds and equipment, additional review of research data and results, or delaying publication of research results.

9.1.21.2 The Research Integrity Officer shall, at any time during a research misconduct proceeding, notify the cognizant Federal agency if there is reason to believe that any of the following conditions exist:
   (a) Health or safety of the public is at risk, including an immediate need to protect human or animal research subjects;
   (b) Federal resources or interests are threatened;
   (c) Research activities should be suspended;
   (d) There is a reasonable indication of possible violations of civil or criminal law;
   (e) Federal action is required to protect the interests of those involved in the research misconduct proceeding;
   (f) The research misconduct proceeding may be made public prematurely and federal action may be necessary to safeguard evidence and protect the rights of those involved; or
   (g) The research community or public should be informed.

SECTION 9.2 DEFINITIONS

9.2.1 Allegation means a disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement or other communication to the Research Integrity Officer or a Federal agency in the case of federally-funded research.

9.2.2 Allegation assessment means a preliminary administrative review by the Research Integrity Officer to determine whether an allegation falls within the definition of
research misconduct and whether it is sufficiently credible and specific to warrant an inquiry.

9.2.3 Complainant means a person who in good faith makes an allegation of research misconduct. After making an allegation, a complainant shall have no further role in any research misconduct proceeding that may follow, except to cooperate as a witness when appropriate.

9.2.4 Days means calendar days.

9.2.5 Deciding Official means the University official who receives the final report of a research misconduct investigation and determines the appropriate institutional response including imposition of institutional sanctions. The Deciding Official shall have no direct involvement in any research misconduct proceeding other than to be kept informed of the existence of and progress of those proceedings. The Provost and Executive Vice Chancellor serves as the Deciding Official for the Lawrence and Edwards campuses. In the event the Provost has a conflict of interest in a particular case, the Chancellor shall appoint another individual to act as the Deciding Official.

9.2.6 Evidence means any document, tangible item, or testimony offered or obtained during a research misconduct proceeding that tends to prove or disprove the existence of an alleged fact.

9.2.7 Good faith as applied to a complainant or witness means having a belief in the truth of one’s allegation or testimony that a reasonable person in the complainant’s or witness’s position could have based on the information known to the complainant or witness at the time. An allegation or cooperation with a research misconduct proceeding is not in good faith if it is made with knowing or reckless disregard for information that would negate the allegation or testimony. Good faith as applied to a committee member means cooperating with the research misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping the University meets its responsibilities for responding to an allegation of research misconduct. A committee member does not act in good faith if his/her acts or omissions on the committee are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the research misconduct proceeding.

9.2.8 Inquiry means preliminary gathering of information and initial fact-finding to determine whether or not an allegation warrants an investigation.

9.2.9 Investigation means the formal development of a factual record and the examination of that record leading to a decision not to make a finding of research misconduct or to a recommendation for a finding of research misconduct which may include a recommendation for other appropriate actions, including administrative actions and institutional sanctions.
9.2.10 **Notice** means a written communication served in person, sent by mail or its equivalent, to the last known street address, facsimile number, or email address of the addressee.

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

9.2.12 **Research** means a diligent and systematic process of inquiry in order to discover, interpret or revise facts, events, behaviors, or theories, or to make practical applications of the same. For the purpose of this regulation, “research” shall be broadly construed to include all research and scholarly activities at the University, ranging from “basic, applied and demonstration research in all fields of science, engineering, and mathematics” to scholarship in the humanities, social sciences and artistic expression.

9.2.13 **Research Integrity Officer** mean the institutional official who has primary responsibility for implementing this Policy, for ensuring compliance with federal regulations and other sponsor requirements, as appropriate, and for directing a case from receipt of an allegation through the final disposition of the research misconduct proceedings. The Vice Chancellor for Research serves as the Research Integrity Officer for the Lawrence and Edwards campuses, except that an Associate Vice Chancellor for Research will serve instead, if the Vice Chancellor has a conflict of interest in a particular case. The roles and responsibilities of the Research Integrity Officer are more fully described in the accompanying guidance document: “Roles and Responsibilities of the Research Integrity Officer.”

9.2.14 **Research misconduct proceeding** means any actions related to alleged research misconduct taken under this Policy, including but not limited to, allegation assessments, inquiries, investigations, federal agency oversight reviews, hearings, and administrative appeals.

9.2.15 **Research record** means any type of records or materials that document the proposing, performing, reviewing or reporting of research. A research record includes, but is not limited to, grant, contract, or other sponsored project applications, whether funded or unfunded; narrative progress and final reports to sponsors; abstracts, theses and dissertations, oral presentations, internal reports, journal articles; records and correspondence relating to financial records, purchasing records, scope of work, budgets and service records; and other reports; laboratory notebooks; notes; correspondence; video records; photographs; X-ray films; slides; biological materials; computer files and printouts; manuscripts and publications; equipment use logs; laboratory procurement records; human and animal research protocols; animal facility records; animal medical records; human subject consent forms; human medical records; and patient research files.
9.2.16 **Respondent** means the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

9.2.17 **University member** means a person who is employed by, is an agent of, or is affiliated by contract or agreement with the University. University members may include, but are not limited to, officials, tenured and untenured faculty, teaching and support staff, researchers, research coordinators, clinical technicians, postdoctoral and other trainees, students, volunteers, affiliates, agents, and contractors, subcontractors, and subawardees and their employees.

SECTION 9.3 GUIDANCE AND PROCEDURES FOR ALLEGATIONS, ASSESSMENT AND INQUIRY

9.3.0 Need for Uniform Procedures
9.3.0.1 Dealing with an instance of alleged research misconduct is one of the most serious, difficult, and stressful situations encountered in the scholarly community. For the complainant, who feels compelled to call attention to observed or suspected research misconduct by a trainee, mentor, or close colleague, it is a time of high anxiety and uncertainty. For the respondent, being accused of research misconduct is one of the most stressful events a scholar can face. Often overlooked is the emotional impact of research misconduct proceedings on others involved in the case – those who act as witnesses and those who serve on inquiry or investigation committees. Indeed, the stakes are high for everyone. The mishandling of an allegation of research misconduct, particularly early in the process, can have devastating consequences on the careers and reputations of those involved and on the ultimate outcome of the case.

9.3.0.2 Consequently, the procedures outlined here are designed to ensure a timely, thorough, competent, objective, and fair handling of research misconduct allegations by the University. They emphasize early involvement and centralized responsibility of the Research Integrity Officer for conducting and monitoring the proceedings and for preserving the maximum level of confidentiality allowed by law.

9.3.0.3 Responding to an allegation of research misconduct may consist of several phases, including: (1) receipt and assessment of an allegation; (2) an inquiry; (3) an investigation; (4) required reporting to sponsoring agencies, where applicable; and (5) adjudication. The Federal Policy on Research Misconduct requires that the phases be separated organizationally. The Research Integrity Officer has lead responsibility for the University’s response from receipt of the allegation through completion of an investigation and reporting. The Deciding Official receives the final investigation report and is responsible for determining and implementing any University administrative actions or sanctions.

9.3.1 Making an Allegation of Research Misconduct
An allegation of research misconduct may be filed by anyone, regardless of whether the person making the allegation is or is not a University member. The disclosure may be made by written or oral statement, or any other means of communication. Any number of University officials, such as a research supervisor, department chair, dean or center director may receive an allegation. To ensure consistency of handling allegations of research misconduct, anyone who receives an allegation should immediately inform the Research Integrity Officer, who will assume responsibility for assessment of the allegation. An allegation involving federal funding may be filed directly with the Federal agency sponsoring the research, which transmits it to the Research Integrity Officer.

9.3.2 Allegation Assessment
9.3.2.1 Upon receiving a good faith allegation of research misconduct, the Research Integrity Officer will immediately commence an assessment of the allegation to determine (a) whether it falls under the definition of research misconduct; and (b) whether it is sufficiently credible and specific so that potential evidence of research misconduct may be identified. An inquiry must be conducted if both criteria are met. The Research Integrity Officer will note whether the research in question was supported in whole or in part by federal funds.

9.3.2.2 In conducting the assessment, the Research Integrity Officer need not interview individuals nor gather data beyond any that may have been submitted with the allegation, except as deemed necessary to reasonably determine whether the allegation is sufficiently credible and specific. The Research Integrity Officer may consult with Office of General Counsel and others as necessary.

9.3.2.3 The allegation assessment period should be brief, and should be completed within fourteen (14) days after the Research Integrity Officer receives the allegation, if practical.

9.3.2.4 The Research Integrity Officer will prepare an assessment report for the record that describes the specific allegation(s), the date received, the source, a description of evidence gathered and reviewed, the reasons for the decision whether or not an inquiry is warranted, and, in the case where an inquiry is warranted, the substantive issues of the case for consideration by the inquiry panel.

9.3.3 Notifications
9.3.3.1 As soon as practical after the allegation assessment has been completed, but before beginning an inquiry, the Research Integrity Officer must make a good faith effort to notify the respondent in writing of the allegation and whether or not an inquiry is warranted. If an inquiry is not warranted, the Research Integrity Officer shall close the case and take steps to remove any reference to the allegation from the respondent’s record. If an inquiry is warranted, the respondent will be provided with details of the allegation, a copy of this Policy, and the relevant Federal policy in the case of federally-funded research.
9.3.3.2 The Research Integrity Officer will also notify the complainant, if known, and the Deciding Official of the decision whether or not an inquiry is warranted.

9.3.4 Sequestration of Research Records
As soon as possible, but no later than when the respondent is notified of the allegation, the Research Integrity Officer shall take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding. The records and evidence shall be inventories and sequestered in a secure manner. Where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies have evidentiary value substantially equivalent to that of the instruments themselves.

9.3.5 Appointment of the Inquiry Committee
The Research Integrity Officer, in consultation with other University officials as necessary, will appoint an Inquiry Committee, consisting of two or more persons with appropriate background and expertise related to the area of scholarship and the allegation, who do not have conflicts of interest with the known principals in the case, to conduct the inquiry. Inquiry Committee members will certify that they do not have a conflict of interest and will sign a confidentiality agreement.

9.3.6 Initial Meeting of the Inquiry Committee
The primary purpose of the initial meeting of the inquiry meeting is to inform the committee members of their rights and responsibilities and to advise them of proper procedure. The Research Integrity Officer will hold an initial meeting of the Inquiry Committee during which the committee will be provided with the following: (a) a copy of this Policy; (b) the allegation and any related issues identified during the allegation assessment; (c) the purpose of the inquiry; (d) the criteria for determining whether or not an investigation is warranted; (e) the responsibility to prepare a written Inquiry Report that meets the requirements of this Policy; (f) the requirement to keep all matters related to the research misconduct proceeding confidential; and (g) the timeline for completion of the inquiry. A representative of the Office of the General Counsel shall be present solely to advise on proper procedures.

9.3.7 Inquiry Phase
9.3.7.1 The purpose of an inquiry is to decide if an allegation warrants an investigation. An investigation is warranted if there is (a) a reasonable basis for concluding that the allegation falls within the definition of research misconduct; and (b) preliminary information gathering and fact-finding indicates that the allegation may have substance. As soon as the Inquiry Committee makes that determination, its task is done. An inquiry does not involve a full review of all evidence related to an allegation, nor shall it attempt to reach a conclusion as to whether research misconduct has been committed.
9.3.7.2 The Inquiry Committee shall request that the respondent provide a written response to the allegation of research misconduct within 14 days, but the committee may grant a reasonable extension of the deadline at its discretion. After receiving and reviewing the respondent’s written response to the allegation, or if the respondent does not respond in writing, the Inquiry Committee shall invite the respondent for a personal interview to discuss the details of the alleged misconduct. The interview may be conducted in person, by telephone or videoconference. This interview shall be fact-finding rather than adversarial. If the respondent declines to be interviewed, the Inquiry Committee shall continue its inquiry with the information available to it.

9.3.7.3 The Inquiry Committee, at its discretion, may interview the complainant and other individuals to obtain information pertinent to the inquiry. Any such interviews may be conducted in person, by telephone or videoconference, or through solicited responses to written questions, as appropriate. Any such interviews will be conducted in a manner designed to preserve the confidentiality of the inquiry process, including to the extent possible, the identity of the complainant and respondent. Witnesses will be asked to sign a confidentiality agreement. Interviews shall be recorded or transcribed. This interview shall be fact-finding rather than adversarial. The Inquiry Committee may examine relevant research records and materials it deems central to reaching a decision.

9.3.7.4 The Inquiry Committee shall immediately notify the Research Integrity Officer if, during the course of the inquiry, additional allegations of research misconduct are uncovered, or if additional respondents are identified. In either case, the Research Integrity Officer shall provide required notifications in writing.

9.3.8 Inquiry Report
The Inquiry Committee will prepare a written Inquiry Report that includes the following information: (a) the name and position of the respondent; (b) a description of the allegation of research misconduct; (c) any external research support, as applicable, including: sponsoring agency, grant numbers, grant applications, contracts, and publications listing that support; (d) a summary of the evidence reviewed; (e) a summary of any interviews conducted; (f) the basis for recommending or not recommending that the allegation warrant an investigation; (g) any comments on the report by the respondent; and (h) a statement that the inquiry was conducted in compliance with this Policy. Before submitting the final Inquiry Report to the Research Integrity Officer, the Inquiry Committee may submit the report to the Office of General Counsel for a review of legal sufficiency.

9.3.9 Respondent Opportunity to Comment
The respondent shall be provided with a copy of the draft Inquiry Report and shall have ten (10) days from receipt of the draft report to review and comment. Any comments received will be reviewed by the Inquiry Committee and attached to the final Inquiry Report. The Inquiry Committee may amend its draft report based on the respondent’s comments, as appropriate.
9.3.10 Time for Completion of Inquiry
The inquiry must be completed within 60 days of its initiation, unless circumstances clearly warrant a longer period. If the inquiry takes longer than 60 days, the Research Integrity Officer shall document in the inquiry record the reasons for exceeding the 60-day period.

9.3.11 Notifications
(a) To respondent. The Research Integrity Officer shall notify the respondent in writing whether the inquiry found that an investigation is warranted. The notice will include a copy of the Inquiry Report, a copy of this Policy, and a copy of the relevant federal agency regulation, as appropriate.

(b) To complainant. The Research Integrity Officer will notify the complainant who made the allegation whether the inquiry found that an investigation is warranted and a summary of the basis for that determination.

(c) To Federal agency, where appropriate. If the research in question has been supported in full or in part by federal funds, the Research Integrity Officer will notify within 30 days the cognizant Federal agency that an investigation is warranted and provide a copy of the Inquiry Report. The Research Integrity Officer shall cooperate with the Federal agency and will provide additional information, if requested.

(d) Special circumstances. The Research Integrity Officer shall notify the cognizant Federal agency if any special circumstances may exist as delineated at 42 CFR §93.318.

(e) To Deciding Official and other University officials. The Research Integrity Officer shall notify the Deciding Official whether the inquiry found that an investigation is warranted. In instances where the inquiry finds that in investigation is warranted, Deans and/or Center Directors and other University officials may be notified as required. A copy of the Inquiry Report will be provided.

9.3.12 Documentation of Decision Not to Investigate
If based on the Inquiry Report an investigation is not warranted, the Research Integrity Officer shall secure and maintain for seven (7) years after the inquiry sufficiently detailed documentation of the inquiry to permit a later assessment by a Federal oversight authority of the reasons why an investigation was not conducted.

SECTION 9.4 GUIDANCE AND PROCEDURES FOR INVESTIGATION

9.4.1 Investigation Phase Initiation
The investigation must begin within 30 days after the decision has been made that an investigation is warranted.

9.4.2 Notifications
(a) To respondent. The Research Integrity Officer will notify the respondent in writing of the allegation(s) to be examined as soon as practical after determining that an investigation is warranted, but before the investigation begins. The respondent will also be given written notice of any new allegations of research misconduct within a reasonable amount of time of deciding to pursue allegations that were not addressed during the inquiry or in the initial notice of the investigation.

(b) To research sponsor. The Research Integrity Officer will notify the cognizant Federal agency or other research sponsor, as required, in writing of the decision to begin an investigation. The notification shall be made on or before the investigation begins and shall include a copy of the final Inquiry Report as described above.

9.4.3 Appointment of the Investigation Committee

9.4.3.1 The Research Integrity Officer, with input from other appropriate University officials and the Faculty Senate Executive Committee, shall name a committee consisting of at least three (3) voting members to conduct an impartial and unbiased investigation. Investigation Committee members shall have appropriate scientific or scholarly expertise and shall not have unresolved personal, professional, or financial conflicts of interest with those involved in the case. Members shall not have served on the Inquiry Committee in the case. A tenured faculty member, who is not from the unit in which the respondent holds a primary appointment, shall be appointed chair of the committee by the Research Integrity Officer.

9.4.3.2 The Director of Research Integrity, Office of the Vice Chancellor for Research, shall be a non-voting ex officio member of the Investigation Committee and will assist the committee and maintain the records of the proceedings. A representative of the Office of the General Counsel shall be present at all committee meetings to advise on proper procedure. If the respondent is a faculty member, the chair of the Committee on Faculty Rights, Privileges and Responsibilities (FRPR) or a representative of the chair, shall be a non-voting ex officio member of the committee to observe that faculty rights are not violated. If the respondent is not a faculty member, a non-voting member of the committee shall be selected by the University Senate Executive Committee from among the members of the Judicial Board having the same status (e.g., student or unclassified professional staff) as the respondent to observe that the respondent’s rights are not violated.

9.4.4 Charge to the Investigation Committee

9.4.4.1 The Research Integrity Officer shall set the initial scope of the investigation based upon the complaint and the Inquiry Report, including any comments from the respondent, in a written charge to the Investigation Committee. If during the investigation, new information comes to light that affects the scope of the investigation, the Research Integrity Officer shall determine whether the Investigation Committee should continue with its original charge or amend the scope of the investigation. The
respondent shall be promptly informed in writing, if there is a change in the scope of the investigation based on such new information.

9.4.4.2 The Research Integrity Officer shall define the subject matter of the investigation in a written charge that:

(a) Identifies the respondent;
(b) Describes the allegations and related issues identified during the inquiry;
(c) Instructs the Investigation Committee that it must conduct the investigation as prescribed in this Policy;
(d) Instructs the committee that it must interview each complainant, respondent, and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the respondent.
(e) Informs the committee that each interview must be recorded or transcribed, that a copy of the recording or transcript must be provided to the interviewee for correction, and that the recording or transcript must be included in the record of the investigation.
(f) Instructs the committee to pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of additional instances of possible research misconduct, and continue the investigation to completion.
(g) Informs the committee that in order to make a finding of research misconduct, it must find (1) that research misconduct, as defined in this Policy, occurred; (2) that the research misconduct represents a significant departure from accepted practices of the relevant research community; and (3) the respondent committed the research misconduct intentionally, knowingly, or recklessly; and (4) the allegation is proven by a preponderance of the evidence.
(h) Instructs the committee to prepare a written investigation report that meets the requirements of this Policy at the conclusion of the investigation proceeding.

9.4.4.3 If additional allegations of research misconduct related to the respondent are raised during the investigation, the Investigation Committee shall inform the Research Integrity Officer, who shall make the required notifications of the respondent and research sponsor. Such additional allegations may be addressed by the Investigation Committee without having to initiate a new inquiry.

9.4.4.4 The Investigation Committee may engage external individuals with appropriate expertise as consultants where warranted by the nature of the scholarly field or by the nature of the allegations. Any consultant must not have unresolved personal, professional, or financial conflicts with principals of the case and is subject to the same confidentiality requirements as committee members. Consultants are not members of the Investigation Committee and have no vote. They may not participate in the final committee deliberation or finding.
9.4.5 Investigation Report
The Investigation Committee shall deliver to the Research Integrity Official a written draft report of the investigation that:

(a) Describes the nature of the allegation of research misconduct;
(b) Describes and documents any federal research support, including any grant numbers, grant applications, contracts, and publications listing federal research support;
(c) Describes specific allegations of research misconduct considered in the investigation;
(d) Includes the University policy and procedures under which the investigation was conducted, unless those were provided previously to the agency;
(e) Identifies and summarizes the research records and evidence reviewed and identifies evidence taken into custody but not reviewed; and
(f) Provides a finding as to whether research misconduct did or did not occur, for each separate allegation of research misconduct identified during the investigation, and if so,
   (1) Identifies whether the research misconduct was falsification, fabrication, or plagiarism, and if it was intentional, knowing, or reckless disregard;
   (2) Summarizes the facts and the analysis which support the conclusion and consider the merits of any reasonable explanation by the respondent;
   (3) Identifies the specific federal research support;
   (4) Identifies whether any publications need correction or retraction;
   (5) Identifies the person(s) responsible for the misconduct; and
   (6) Lists any current support or known applications or proposals for support that the respondent has pending with other federal agencies.

(g) Includes and considers any comments made by the respondent on the draft investigation report.

9.4.6 Investigation Time Limits
All aspects of the investigation shall be completed within 120 days of beginning it, including conducting the investigation, preparing the report of findings, providing the draft report to the respondent for comment, and submission of the final report to the cognizant federal oversight agency, if appropriate. The Investigation Committee shall keep the Research Integrity Officer apprised about the progress of the investigation. If the committee is unable to complete the investigation within the 120-day period, the Research Integrity Officer shall contact the cognizant federal oversight agency and request an extension in writing. If no federal funding was involved in the research, the decision to extend the investigation period shall be left to the research integrity officer. In either case, the Research Integrity Officer shall document the reasons for the extension and will inform the respondent.

9.4.7 Maintain and Provide Records of the Investigation
The Research Integrity Officer shall maintain for a period of seven (7) years and provide to the cognizant federal agency, upon request, all relevant research records and records
of the University’s research misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

**9.4.8 Protecting Respondent Rights**

If at any time during the investigation, the faculty member or other representative who observed the investigation perceives violations of faculty, staff, or student rights have occurred, he or she shall immediately inform the Research Integrity Officer and the Faculty Senate Executive Committee (if the respondent is a faculty member) or University Senate Executive Committee (if the respondent is not a faculty member). Together the Research Integrity Officer and appropriate Senate Executive Committee shall cooperate to satisfactorily resolve matters before the Investigation Committee reaches its conclusions.

**SECTION 9.5 ADMINISTRATIVE ACTIONS AND SANCTIONS**

9.5.1 Within 14 days of receiving the final Investigation Report in which a finding of research misconduct has been made, the Research Integrity Officer will deliver the report to the Deciding Official along with any recommendations of the Investigation Committee for administrative actions or sanctions.

9.5.2 The Deciding Official shall make a written proposal for resolution of the case within 14 days, which shall be provided to the respondent, as well as the chair of the investigating committee.

9.5.3 The Deciding Official shall also provide a copy of the report of the Investigating committee and the proposal to resolve the case to the Faculty or University Senate Executive Committee, which may submit comments to the Deciding Official for consideration.

9.5.4 The Deciding Official shall follow University procedures as identified in the Faculty Code of Rights, Responsibilities and Conduct and the Faculty Senate Rules and Regulations in taking disciplinary action against the respondent.

9.5.5 The findings of research misconduct, as a final agency action of the University, are not subject to appeal within the University. The respondent may dispute the sanction imposed by filing a written appeal of the sanction imposed by the Deciding Official and based on the record on appeal with the Faculty Rights Board or Judicial Board, whichever has jurisdiction, on the ground that the sanction is substantially disproportionate to the severity of the research misconduct. The Faculty Rights Board or Judicial Board does not have the jurisdiction or authority to review the Investigating Committee’s finding that the respondent has committed research misconduct.

9.5.6 After considering the written arguments of respondent and Deciding Official and the record on appeal, if the Faculty Rights Board or Judicial Board determines that the
respondent has established by a preponderance of the evidence that the sanction is substantially disproportionate to the severity of the misconduct, it shall issue a written recommendation to the Chancellor explaining its decision and recommending that a lesser sanction be imposed. The Chancellor’s decision on the sanction is final, and no further administrative review is permitted within the University.

9.5.7 Final Notice to Federal Agency on University Findings and Actions
At the conclusion of the research misconduct process, the Research Integrity Officer shall notify the cognizant Federal agency with a written report that:

(a) Includes a copy of the final Investigation Report, all attachments, and any appeal of University disciplinary action;
(b) States whether the University found research misconduct, and if so, who committed the misconduct;
(c) States whether the University accepts the investigation’s findings;
(d) Describes any pending or completed administrative actions against the respondent;

9.5.8 Completing the Research Misconduct Process
9.5.8.1 The Research Integrity Officer shall ensure that the inquiry and investigation are carried through to completion and that all significant issues are diligently pursued. If federal funding is involved, the Research Integrity Officer shall notify the cognizant Federal agency if the University plans to close a case at the inquiry, investigation, or appeal stage on the basis that the respondent had admitted guilt, a settlement with the respondent has been reached, or for any other reason, except the closing of a case at the inquiry stage on the basis that an investigation is not warranted or a finding of no misconduct at the investigation stage.

9.5.8.2 After consultation, the cognizant Federal agency may conduct an oversight review of the University’s handling of the case and take appropriate action including:

(a) Approving or conditionally approving closing of the case;
(b) Directing the University to complete its process;
(c) Referring the matter for further investigation by the Federal agency; or
(d) Taking a compliance action.