

appropriate administrative and clerical assistance to facilitate a prompt and thorough investigation and the preparation of an appropriate report.

3. Individuals selected to serve on the Investigation Committee or to provide professional assistance to the Committee will be expected to disclose to the Provost any factors, including but not limited to unresolved personal, professional, or financial conflicts of interest, which would prevent them from serving fairly, objectively, and without bias, or which reasonably would give the appearance of a lack of fairness, lack of objectivity, or the presence of bias. Every member of the Committee must complete and submit to the RIO a conflict of interest disclosure form attesting to the satisfaction of this requirement before commencing work on the Committee. All persons who participate in the Investigation as committee members, administrative or clerical staff, witnesses, or in any other capacity shall maintain the confidentiality of the Investigation and of all information obtained in the course of the Investigation, except as may be necessary in conjunction with the conduct of the investigation, including subsequent related reports or proceedings, and reports to officers of the University.

4. The Investigation must begin within 30 days of the Provost's decision that an investigation is warranted.

## **B. Committee Charge**

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

- (a) describes the Allegations and related issues identified during the Inquiry and identifies the Respondent;
- (b) defines Research Misconduct;
- (c) informs the Committee of the general procedures pursuant to which the Investigation should be conducted;
- (d) informs the Committee that it must evaluate the evidence and testimony to determine whether, based on a preponderance of the evidence, Research Misconduct occurred and, if so, the type and extent of it and who was responsible;
- (e) informs the Committee that in order to determine that the Respondent committed research misconduct it must find that a preponderance of the evidence establishes that: (i) research misconduct, as defined in University Policy, occurred (Respondent has the burden of proving by a preponderance of the evidence any affirmative defenses raised, including honest error or a difference of opinion); (ii) the Research Misconduct is a significant departure from accepted practices of the relevant research community; and (iii) the Respondent committed the Research Misconduct intentionally, knowingly, or recklessly;
- (f) informs the Committee that it must prepare a written investigation report that meets the requirements of University Policy and any applicable federal regulations or sponsor guidelines; and
- (g) sets the time for completion of the investigation.

A copy of the charge will be provided to the Respondent.

### **C. Investigation Process**

1. The investigation normally will include examination by members of the Committee, or staff assisting the Committee, of all relevant documentation, including but not necessarily limited to relevant research data and proposals, publications, and correspondence. The Investigation Committee should keep general minutes of its meetings and must:

- (a) use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research records and evidence relevant to reaching a decision on the merits of each allegation;
- (b) take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical;
- (c) provide the Respondent with reasonable opportunity to present evidence, testify, and present witnesses with relevant information to the Committee. The Committee will interview the Respondent and other available persons who have been reasonably identified by the Respondent as having information regarding any relevant aspects of the investigation;
- (d) interview the Complainant and other available persons, including those who have been reasonably identified by the Complainant or others as having information regarding any relevant aspects of the investigation. The Respondent may listen contemporaneously to any interviews conducted by the Investigation Committee and submit any relevant questions to be asked of any witness by the Committee. For the protection of the witness, the Committee may require the Respondent to listen to or observe the interview from another room.
- (e) allow any person who appears as a witness before the Investigation Committee to be accompanied by counsel or a representative of his or her choice; however, the chair of the Committee may limit the participation of counsel or representative to advising the witness;
- (f) record or transcribe each interview, provide either the recording or transcript to the interviewee for review and correction and thereafter provide the Respondent with the recording or transcript as soon as practicable; and
- (g) pursue diligently all significant issues and leads discovered that are determined to be relevant to the investigation, including evidence of any additional instances of possible research misconduct, and continue the investigation to completion.

2. The Committee shall use its best efforts to complete the Investigation within 120 days of its commencement, including conducting the investigation, preparing the report of findings, providing the draft report for comment and sending the final report to any federal agency if required. If the RIO determines that the investigation will not be

completed within this 120-day period, he/she will request an extension of time from the appropriate federal agency setting forth the reasons for the delay. If extension is approved, the record of the investigation should include documentation of the reasons for exceeding the 120-day period.

3. The ultimate burden of proof for a finding of research misconduct is on the University, and such a finding must be proved by a preponderance of the evidence. However, the Respondent has the burden of proving, by a preponderance of the evidence, any and all affirmative defenses raised or any mitigating factors relating to possible sanctions. The destruction, absence of, or Respondent's failure to provide research records adequately documenting the questioned research may constitute evidence of research misconduct if done intentionally, knowingly, or recklessly and if the Respondent's conduct constitutes a significant departure from accepted practices of the research community.

#### **D. The Investigation Report**

- a. The Investigation Committee will prepare a draft written report that (a) describes the nature of the allegation of research misconduct, including identification of the Respondent; (b) describes and documents the source of funding for the research, if any, including grant or contract numbers, grant or contract applications, grants or contracts, and publications listing such support; (c) describes the specific allegations of research misconduct considered in the Investigation; (d) includes a description of the general procedures under which the Inquiry was conducted, including reference to University Policy and this Procedure as well as any federal regulations governing the conduct of the Inquiry; (e) identifies and summarizes the research records and evidence reviewed and identifies any evidence taken into custody but not reviewed; (f) includes a statement of findings for each allegation of research misconduct identified during the investigation; and (g) recommends institutional actions, as appropriate.
- b. Each statement of findings should (a) identify whether the research misconduct was falsification, fabrication, or plagiarism, and whether it was committed intentionally, knowingly, or recklessly; (b) summarize the facts and the analysis that support the conclusion and consider the merits of any reasonable explanation by the Respondent, including any effort by Respondent to establish by a preponderance of the evidence that he or she did not engage in research misconduct because of honest error or a difference of opinion; (c) identify the specific funding support; (d) identify whether any publications need correction or retraction; (e) identify the person(s) responsible for the misconduct; and (f) list any current support or known applications or proposals for support that the Respondent has pending with any federal agencies.
- c. The record of the Investigation should include the recording or transcript of all witness interviews.

- d. Prior to the submission of its report, the Investigation Committee, through the RIO, will provide the Respondent with a copy of the draft investigation report and a copy of, or supervised access to, the evidence on which the report is based, including copies of any documents and materials. Respondent must also receive any witness statements, recordings or transcripts produced during the investigation, if not previously provided to the Respondent pursuant to Section III. C(1)(f).
- e. The Respondent will be asked to provide any comments on the report to the RIO and committee chair within thirty (30) calendar days. The RIO will determine, on a case-by-case basis, whether the report or relevant portions thereof should also be provided to the Complainant for comment within thirty (30) days. The Committee will decide whether, in view of any comments received, any revisions to the report are warranted and will then provide the final report to the RIO.
- f. The RIO will provide the final report as well as any comments submitted by the Respondent to the Provost.

#### **IV. Decisions and Required Notifications**

- A.** The Provost will decide: (1) whether to accept the Investigation Report, its findings, and the recommended institutional actions; and (2) if applicable, the appropriate institutional actions in response to the accepted findings of Research Misconduct. If this determination varies from the findings of the Investigation Committee, the Provost will, as part of his/her written determination, explain in detail the basis for rendering a decision different from the findings of the Investigation Committee. Alternatively, the Provost may return the report to the Investigation Committee with a request for further fact-finding or analysis. The Provost will provide written notification of his/her final decision to the Respondent.
- B.** If the Provost determines that Research Misconduct is not substantiated by the findings, the matter will be closed, the Associate Vice President for Grants, Research, and Programs or his or her designee will notify in writing any applicable regulatory agency and/or research sponsor and, if the Allegation involves sponsored research, the Chair of the Board of the CSUB Auxiliary for Sponsored Programs Administration, and all records of the proceedings will be treated as confidential pursuant to Section V (F) of University Policy, to respect the rights and protect the reputations of all parties involved.
- C.** If the Provost determines that Research Misconduct is substantiated by the findings, he/she will determine the nature and severity of any sanction, which may include:
  - (1) withdrawal or correction of all pending or published abstracts and papers emanating from the research where research misconduct was found;
  - (2) removal of the responsible person from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, or initiation of steps leading to possible termination of employment;

## CSUB Procedure for the Disposition of Allegations of Research Misconduct

- (3) restitution of funds to the grantor agency as appropriate; or
- (4) any other action appropriate to the research misconduct.

Notwithstanding the provisions of this section, sanctions that affect the Respondent's employment status will be carried out in accordance with those University policies applicable to the particular Respondent (i.e., University Handbook, Collective Bargaining Agreements). If the relevant University policy has provisions for an appeal process, and the process has the potential to reverse or modify the findings of research misconduct in the Investigation Report, such an appeal process must be completed within 120 days of its filing. If unable to complete the appeals within 120 days, and the related research was a PHS funded project, the Associate Vice President for Grants, Research, and Sponsored Programs must ask the Office of Research Integrity for extension in writing and provide explanation for the request.

- D. Allegations Not Made in Good Faith: If relevant, the Provost will determine whether the Complainant's allegations of research misconduct were made in good faith, or whether a witness or committee member acted in good faith. If the Provost determines that there was an absence of good faith, he/she will determine whether any administrative action should be taken against the person who failed to act in good faith.
- E. If required, the RIO will submit to the appropriate federal agency: (1) a copy of the final Investigation Report with relevant attachments; (2) a statement of whether the institution accepts the findings of the investigation report; (3) a statement of whether the institution found misconduct and, if so, who committed the misconduct; and (4) a description of any pending or completed administrative actions against the Respondent.
- F. The RIO will determine whether any other entities such as professional societies, professional licensing boards, editors of journals in which falsified reports may have been published, collaborators of the Respondent in the work, or other relevant parties should be notified of the outcome of the case.
- G. A complete record of the investigation will be kept in the Office of the RIO for a period of at least seven (7) years after the conclusion of the investigation.

### V. Premature Closure of Cases

- A. Generally, all inquiries and investigations will be carried through to completion, except as provided for in Section I.H, and all significant issues will be pursued diligently.
- B. The RIO will notify the federal agency and seek approval in advance if there are plans to close a case at the inquiry or investigation stage on the basis that the Respondent has admitted guilt, that a settlement with the Respondent has been reached, or for any other reason, except for closing of a case at the inquiry stage on the basis that an investigation is not warranted.
- C. The termination of the Respondent's institutional employment, by resignation or otherwise, before or after an allegation of possible research misconduct has been

reported, will not preclude or terminate the research misconduct proceeding or otherwise limit any of the institution's responsibilities to the relevant federal agency.

- D. If the Respondent, without admitting to the misconduct, elects to resign his or her position after the institution receives an allegation of research misconduct, the assessment of the allegation will proceed, as well as the inquiry and investigation, as appropriate based on the outcome of the preceding steps. If the Respondent refuses to participate in the process after resignation, the RIO and any inquiry or investigation committee will use its best efforts to reach a conclusion concerning the allegations, noting in the report the Respondent's failure to cooperate and its effect on the evidence.

## **VI. Institutional Responsibility to Participants in Research Misconduct Proceedings**

### **A. Protection of the Complainant, Witnesses, and Committee Members**

During the research misconduct proceeding and upon its completion, regardless of whether the institution or federal agency determines that research misconduct occurred, the RIO or the Provost, as appropriate, must undertake all reasonable and practical efforts to protect the position and reputation of, or to counter potential or actual retaliation against, any Complainant who made allegations of research misconduct in good faith and of any witnesses and committee members who cooperate in good faith with the research misconduct proceeding. The Provost and RIO will determine what steps, if any, are needed to restore their respective positions or reputations or to counter potential or actual retaliation against them and implement such steps.

### **B. Restoration of the Respondent's Reputation**

If Research Misconduct has not been substantiated, any necessary efforts will be made by the RIO or the Provost, as appropriate, to restore the reputations of individual(s) alleged to have engaged in misconduct. Such efforts may include notifying those individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in any forum in which the allegation of research misconduct was previously publicized, and expunging all reference to the research misconduct allegation from the Respondent's personnel file.

## **VII. References**

1. Research Misconduct policies of the City University of New York (2015) and Boston University (2012), and California State University, Fresno, were used as references in the formulation of this policy. This document contains extensive word-for-word excerpts from these two sources.
2. Federal government regulations: 42 CFR Part 93 (PHS: Public Health Services) and 45 CFR 689 (NSF: National Science Foundation).
3. Executive Order 890 of the California State University Office of the Chancellor (EO 890 §3.3.4 and §3.4.1).