

1. Introduction and Applicability

The reputation of the University of New England (UNE or University) and its scholarly and academic endeavors require that all members of its community maintain the highest ethical standards in their professional activities. In recognition of this need, UNE has adopted the following policy to respond to allegations of Research Misconduct and to inform members of the community of the appropriate channels for bringing such matters to the attention of the University¹. This policy applies to any person who, at the time of the alleged Research Misconduct, was employed by, was agent of, or was affiliated by agreement with UNE, including faculty, staff and students.

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

2. Definitions²

- a. *Complainant*. The individual, department or entity who in good faith makes an allegation of Research Misconduct.
- b. *Inquiry* means preliminary information-gathering and preliminary fact-finding consistent with Section 3 of this policy and applicable provisions of 42 CFR §§ 93.307-309.
- c. *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.
- d. *Research Misconduct* is defined as knowing, intentional or reckless fabrication, falsification, or plagiarism in the conduct of scholarly activity. Research Misconduct does not include honest error or differences of opinion.
 - i. *Fabrication* is making-up data or results and recording or reporting them.
 - ii. *Falsification* is manipulating research results, equipment, or processes, or

¹ This policy is based upon the federal regulations governing research misconduct governing Public Health Service (“PHS”)-supported activities and will be interpreted and applied so as to be in compliance with those regulations. UNE has also determined that this policy will be applied as the minimum standard to **all** allegations of research misconduct, regardless of the funding source(s) or whether the scholarly activity is funded.

Institutional response to research misconduct allegations in areas not PHS-supported will follow the same general principles except for the actual involvement of PHS. In the event another research sponsor has additional requirements to those covered by this policy, all research funded by that source will be subject to those additional requirements.

² Definitions are based on the Federal Policy on Research Misconduct, 42 C.F.R. Part 93.

changing or omitting data or results such that information is not accurately represented in the research record.

- iii. *Plagiarism* is the appropriation of another person's ideas, processes, results, data or words without giving appropriate credit.
- e. *Research Record* is the record of data or results of scholarly activity and includes, but is not limited to, research proposals, laboratory records (both physical and electronic), progress reports, abstracts, theses, oral presentations, internal reports, and materials submitted for publication or published in any form.
- f. *Respondent* means the person against whom an allegation of Research Misconduct is directed or who is the subject of a Research Misconduct Proceeding.
- g. *Scholarly Activity* includes, but is not limited to, writing research proposals, undertaking research activities, and reporting or presenting research results. Scholarly activity includes all basic, applied, and demonstration research in all fields of study. Scholarly activity also includes reviewing the research of others for publishers, funding agencies or any other purpose.

3. Preliminary Reporting and Inquiry

- a. Allegations of Research Misconduct shall be made to the UNE Research Integrity Officer (RIO) and/or his or her designated deputy RIO. Such reports will preferably be made in writing. However, **any** form of communication will be considered acceptable under this policy. The RIO will inform the Associate Provost for Research & Scholarship (APRS), the Provost and the Human Resources department of any allegations. Allegations of Research Misconduct committed by the RIO or deputy RIO should be submitted directly to the Provost.³
- b. Within five (5) business days of receiving an allegation of Research Misconduct, the RIO or deputy RIO will conduct an informal investigation to determine whether the behavior alleged meets the definition of Research Misconduct above and is sufficiently credible and specific so that potential evidence of such Research Misconduct may be identified, in which case an Inquiry will be conducted.⁴ The APRS and Provost will be notified of the result of the informal investigation prior to the determination to conduct an Inquiry or Investigation. To initiate the Inquiry process, the RIO or deputy RIO shall forward a copy of the allegation to the Respondent along with a copy of this policy. The RIO or deputy RIO shall, at the same time, inform Respondent's department head or other immediate supervisor of the nature of the claims alleged and immediately arrange to take all appropriate actions to obtain and secure all

³ When allegations are raised against the RIO or deputy RIO, the Provost shall perform the role of the RIO or deputy RIO as defined in this policy.

⁴ When the RIO or deputy RIO is the subject of an allegation, the Provost shall consult with the Chair of the University Faculty Assembly and, if the Provost decides that further inquiry is warranted, it shall be conducted by the Chair of the University Faculty Assembly.

Research Records and evidence needed to conduct the Research Misconduct Inquiry.

Respondent shall have an opportunity to respond in writing to the RIO or deputy RIO to any allegations raised. Responses must be received by the RIO or deputy RIO within ten (10) business days, but upon reasonable request, the RIO or deputy RIO may choose to grant additional time.

- c. After Respondent has been notified and has had an opportunity to respond, the RIO or deputy RIO, in consultation with the department head or program director and, if the RIO or deputy RIO deems appropriate, the APRS, Provost, the Institutional Compliance Officer, and/or such other persons as the RIO or deputy RIO decides would be helpful to the Inquiry process (the "Inquiry Committee"), shall determine whether an Investigation is warranted. As part of the Inquiry, the RIO or deputy RIO and/or other members of the Inquiry Committee will undertake an initial review of the evidence and may interview Respondent, Complainant and other relevant witnesses, all on an individual basis. Pursuant to 42 CFR 93.310(g), such interviews shall preferably be audio or video recorded and transcribed, or alternatively may be solely transcribed. Transcripts of each interview shall be provided to each person interviewed for the purpose of correction⁵; and the RIO shall include the transcript and any corrections in the record of the investigation.
- d. The RIO or deputy RIO his/her designee from the Inquiry Committee shall prepare a written report detailing the results of the Inquiry. Respondent shall be provided a copy of the draft report and provided an opportunity to respond or comment within ten (10) business days. Any written response or comment will be included in the final Inquiry report.⁶
- e. The RIO or deputy RIO, in consultation with the Inquiry Committee, shall determine from this Inquiry whether an Investigation is warranted. An Investigation is warranted when the information developed during the Inquiry supports a reasonable basis for concluding that the allegation falls within the definition of Research Misconduct under this policy and preliminary information-gathering and preliminary fact-finding from the Inquiry indicates that the allegation may have substance. During the Inquiry, the identities of all parties involved will be held in confidence to the maximum extent that an effective Inquiry allows.
- f. The entire Inquiry process must be completed within sixty calendar days of the appointment of the Inquiry Committee unless the RIO or deputy RIO determines, for good cause shown and documented on the record, that circumstances warrant a longer period.

⁵ Interviews will either be audio recorded, video recorded, or manually transcribed in writing by an individual selected by the RIO or deputy RIO. Transcripts will be prepared from audio or video recordings or prepared by the individual taking notes. The method of recording (or manual transcription) shall be mutually agreed upon by the interviewee and the RIO or deputy RIO, but shall be one of these approved methods.

⁶ Inquiry reports involving PHS-supported research must comply with Federal Regulations. See 42 C.F.R. § 93.309.

- g. The RIO or deputy RIO shall, at any appropriate time and when required by law, notify federal authorities of allegations of Research Misconduct in federally supported research.⁷
- h. At any time prior to beginning an Investigation, the RIO or deputy RIO may meet with the parties involved and seek to informally resolve the issues raised by the allegation. If the parties cannot agree on a settlement of the issues, the RIO or deputy RIO shall proceed with an Investigation.⁸
- i. Institutional members may not retaliate in any way against complainants, witnesses, or committee members. Institutional members should immediately report any alleged or apparent retaliation against complainants, witnesses or committee members to the RIO, who shall review the matter and, as necessary, make all reasonable and practical efforts to counter any potential or actual retaliation and protect and restore the position and reputation of the person against whom retaliation is directed.
- j. The University shall take no action against Respondent as a result of Research Misconduct allegations pending the conclusion of the Inquiry or Investigation, unless it is determined, in consultation with Human Resources, that the presence of that person on campus, in class or in the research setting poses an immediate threat of physical or psychological harm to others. A suspension on this basis shall not result in a reduction of salary while an Inquiry or Investigation is pending. During the course of the Inquiry and Investigation, the Respondent remains subject to all other University policies and procedures.

4. Procedures for Formal Investigations

- a. If the RIO or deputy RIO determines that an Investigation is warranted, they will notify the APRS and Provost, and the Investigation shall begin within twenty-one (21) days of the conclusion of the Inquiry. Before the Investigation begins, the RIO or deputy RIO shall notify Respondent in writing that an Investigation is in order and shall forward to respondent a copy of the final Inquiry report. The final inquiry report must include the following information: (1) the name and position of the respondent; (2) a description of the allegations of research misconduct; (3) the PHS support, including, for example, grant numbers, grant applications, contracts and publications listing PHS support; (4) the basis for recommending or not

⁷ Regulations require institutions receiving grants under the Public Health Service to notify the Office of Research Integrity (“ORI”), a component of the Office of the Director of the National Institutes for Health (“NIH”), when an institution determines that a formal investigation is warranted (42 C.F.R. § 93.309) and certain specific conditions exist (see 42 C.F.R. § 93.318). If it is determined that an investigation is not warranted, the institution must maintain, for a period of at least seven (7) years, sufficiently detailed documentation of the inquiry to permit a later assessment of reasons supporting that determination (42 C.F.R. § 93.309(c)).

⁸ If PHS-supported research is at issue, the RIO or deputy RIO must notify the ORI, if UNE intends to close a case at the Inquiry, Investigation or appeal stage on the basis that Respondent has admitted guilt or a settlement with Respondent has been reached (42C.F.R. § 93.316).

recommending that the allegations warrant an investigation; (5) any comments on the draft report by the respondent or complainant.

- b. Throughout the research misconduct proceeding, the RIO will review the situation to determine if there is any threat of harm to public health, federal funds and equipment, or the integrity of the PHS supported research process. In the event of such a threat, the RIO will, in consultation with other institutional officials and ORI, take appropriate interim actions to protect against any such threat. Interim action might include additional monitoring of the research process and the handling of federal funds and equipment, reassignment of personnel or of the responsibility for the handling of federal funds and equipment, additional review of research data and results or delaying publication. The RIO shall, at any time during a research misconduct proceeding, notify ORI immediately if he/she has reason to believe that any of the following conditions exist:
- Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;
 - HHS resources or interests are threatened;
 - Research activities should be suspended;
 - There is a reasonable indication of possible violations of civil or criminal law;
 - Federal action is required to protect the interests of those involved in the research misconduct proceeding;
 - The research misconduct proceeding may be made public prematurely and HHS action may be necessary to safeguard evidence and protect the rights of those involved; or
 - The research community or public should be informed.
- c. All parties involved in an Investigation and any subsequent proceedings shall, to the extent possible, endeavor to maintain confidentiality regarding the allegations, and evidence and proceedings, and shall use care in balancing the need for disclosure and any privacy interests of persons involved. Except as otherwise prescribed by law, all parties should limit the disclosure of any records or evidence from which research subjects might be identified to those who need to know in order to carry out a research misconduct proceeding.
- d. The RIO or deputy RIO will request that the Chair of the University Faculty Assembly⁹ recommend a fact-finding committee of five (5) tenured faculty members¹⁰ who are unbiased¹¹ in the investigation (“the Committee”). Upon approval of the membership of the

⁹ If the respondent is the Chair of the University Faculty Assembly, the Vice-Chair of the University Faculty Assembly will perform the functions of the Chair of the University Faculty Assembly as outlined in this section

¹⁰ The Committee shall include individuals with appropriate expertise to evaluate the particular issues and evidence involved in the alleged misconduct.

¹¹ “Unbiased” in this context means person(s) “who do not have unresolved personal, professional or financial conflicts of interest with” respondent (42 C.F.R. § 93.310(b)).

committee by the RIO or deputy RIO, the Committee shall elect its own chair who shall be responsible for determining the manner in which witness interviews are handled by the Committee. The Committee shall have one hundred twenty (120) days from the date of beginning the formal investigation to complete it.

- e. The Committee will be provided with the Inquiry report, Research Record, and all other necessary information about the allegation and empowered to review relevant documents and interview witnesses. The Committee shall review all relevant Research Records and documentation and interview respondent and complainant and any other available persons who have been identified as having relevant and material information regarding the Investigation. Respondent shall receive written notice, in advance, of all the planned fact-finding activities of the Committee. The Committee may seek assistance from UNE Counsel in conducting its Investigation and from the UNE or Federal ORI, if needed.
- f. The Committee will be expected to pursue all significant issues and leads developed during the Investigation, including evidence of additional instances of possible Research Misconduct. The Committee will give Respondent written notice of any new instances or allegations of Research Misconduct not addressed during the Inquiry or in the initial notice of Investigation within a reasonable amount of time of deciding to pursue such allegations.
- g. The Committee shall keep records of all its fact-finding proceedings and, pursuant to 42 CFR 93.310(g), shall arrange for a recording or transcript of each interview consistent with Section 3(c) above.
- h. Respondent may exercise the following rights during the Investigation of the Committee:
 - Respondent may choose to be represented by legal counsel that they secure. Respondents may consult with legal counsel or a non-lawyer personal adviser (who is not a principal or witness in the case) to seek advice. Respondent may bring an attorney adviser or non-lawyer personal advisor. Such an adviser may act as an observer only, and may not comment on the proceedings, propound questions, cross-examine interviewees, or raise objections of any sort. Respondent will be responsible for all costs associated with such advice or representation.
 - Respondent shall have the opportunity to present a defense to the Committee, to present witnesses for interview by the Committee, and to respond to all allegations of Research Misconduct. The Federal/State Court Rules of Evidence will not formally apply to this proceeding.
 - UNE will take reasonable steps to ensure an impartial and unbiased Investigation to the maximum extent practicable, including participation of persons with appropriate

scientific expertise who do not have unresolved personal, professional, or financial conflicts of interest with those involved with the Inquiry or Investigation. Respondent may challenge the composition of the Committee, if he or she believes that one or more of its members is not unbiased, has a conflict of interest, or should otherwise recuse himself or herself. The Committee, in consultation with the RIO or deputy RIO, shall determine whether bias or conflict of interest exists and shall request that the Chair replace a committee member when appropriate.

- Respondent has the right to appear at a preliminary conference with the Committee to set an interview schedule. The Committee shall endeavor to provide Respondent with a reasonable amount of time to prepare for the investigation consistent with the overall time constraints on the investigation process.
 - At the request of Respondent, the Committee shall use its authority to obtain documents and evidence and to interview witnesses who have information relevant to the defense of Respondent.
 - Respondent is entitled to a presumption of innocence and need not prove his or her innocence¹² to the Committee.
 - Respondent shall receive a copy of the draft Investigation report of the Committee and shall have an opportunity to provide a written response to such report. Respondent shall receive a copy of the final report at the time it is provided to the RIO or deputy RIO.
- i. Once the investigation is completed, the Committee will prepare a draft Investigation report¹³ that:
- Describes the nature of the allegation of research misconduct, including identification of the respondent;
 - Describes and documents the PHS support, including, for example, the numbers of any grants that are involved, grant applications, contracts, and publications listing PHS support;
 - Describes the specific allegations of research misconduct considered in the investigation;
 - Includes the institutional policies and procedures under which the investigation was conducted, unless those policies and procedures were provided to ORI previously;

¹² The respondent bears the burden of proving any affirmative defenses raised (e.g., honest error or difference of opinion) or mitigating factors. (See 42 C.F.R. § 93.106.)

¹³ If applicable, the investigation report shall comply with the requirements of 42 C.F.R. § 93.313.

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

Findings of Research Misconduct shall only be made if a majority of the members of the Committee agree that there has been a significant departure from accepted practices of the relevant research community, and such Research Misconduct findings are supported by a preponderance of evidence¹⁴. If the Committee determines Respondent has engaged in Research Misconduct, it may also recommend disciplinary actions (up to and including termination). This draft report should be prepared within fifteen (15) days of conclusion of the evidentiary phase of the investigation.

- j. The Committee will provide Respondent with a copy of the draft Investigation report for comment as well as a copy of, or supervised access to, the evidence on which the report is based. Respondent shall have thirty (30) days to respond to the draft report. Respondent's comments will be considered and included in the final report for transmission to the RIO or deputy RIO.
- k. The final Investigation report must be in writing and submitted to the RIO or deputy RIO, APRS and Provost in a timely fashion such that the RIO or deputy RIO may review the report, determine whether to accept it as written, return it to the Committee for further deliberation or fact-finding, and allow for submission of the report to ORI¹⁵ or the appropriate sponsor no later than 120 days from the date the Investigation began if there is a finding of Research Misconduct. If this time period cannot be met and PHS-supported research is at issue, the RIO or deputy RIO must file a written request and explanation for an extension with the ORI. If the RIO or deputy RIO's determination differs from the Committee, he/she must provide a written explanation of the reasons therefore.

¹⁴ Preponderance of the evidence as applied to the Committee's and Respondent's (defenses) burdens of proof 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." (42 C.F.R. § 93.219.)

¹⁵ If PHS-supported research is involved, the contents of the final report must comply with federal regulations (42 C.F.R. § 93.313).

- i. If the RIO or deputy RIO concludes that Respondent has committed Research Misconduct, the RIO or deputy RIO, in consultation with the APRS, AVP of Human Resources, and the relevant dean, department head or program director, shall also determine the appropriate disciplinary action, up to and including termination. The RIO or deputy RIO shall promptly notify Respondent of this decision, which shall be final, subject to a limited right of appeal to the President, as described below.
- m. Should the procedure followed under this policy find no Research Misconduct by the Respondent, the party or parties who conducted the Inquiry or Investigation shall, as appropriate, undertake a good faith effort to protect or restore the reputation of the Respondent. Reasonable efforts will also be taken to protect the standing of the Complainant who raised the issue of possible Research Misconduct, unless the Inquiry or Investigation reveals that such Complainant acted in bad faith, in which case appropriate disciplinary actions may be taken.

5. Review of Disciplinary Actions by the Provost and President

- a. The Respondent may appeal the disciplinary action on grounds of process or procedure or bias only to the University Provost and President. Such appeal must be in writing, must state the reasons for appeal, and must be presented to the Provost and President within ten (10) business days of the date of Respondent's receipt of notice of such disciplinary action. Thereafter, the RIO or deputy RIO shall promptly transmit the final Investigation report. The President and Provost shall review the reasons for appeal, the final Investigation report, any changes thereto made by the RIO or deputy RIO (see ¶ 4(j)) and, if necessary, may seek additional submissions or information from Respondent or the RIO or deputy RIO. The President shall notify both Respondent and the RIO or deputy RIO of his or her decision, which shall be the final decision on the part of the institution, subject to review by the ORI where applicable.

6. Special Measures

- a. If the Committee concludes that Research Misconduct occurred and the RIO or deputy RIO determines that further action is required, the RIO or deputy RIO shall direct the department head or program director¹⁶ to notify the editors of publications to which abstracts and/or papers relevant to the research misconduct have been submitted, and request that the work be withdrawn prior to publication. If any relevant work has already been published, the department head or program director will request that a correction or retraction be published. The individual who was found to have committed Research Misconduct will ordinarily be responsible for preparing and presenting appropriate corrections and/or retractions.

¹⁶ For the purposes of this section, the RIO or deputy RIO will fulfill the responsibilities of the department head when the Research Misconduct was committed by a department head or program director.

7. Reporting and Records

- a. If the Research Misconduct occurred in the context of externally sponsored research, the RIO or deputy RIO shall instruct the APRS to convey the results of the investigation and any decision or further actions taken as a result of that Investigation to the sponsor of the research. This communication shall include a description of the procedure that was followed to investigate the allegation(s) and a summary of the views of the person(s) found to have engaged in Research Misconduct.
- b. The RIO or deputy RIO shall file reports on allegations and investigations of Research Misconduct as required by the Federal Office of Research Integrity, Office of Scientific Integrity, or other relevant agency.
- c. Upon completion of the matter, the RIO's office shall provide a summary report of all proceedings (including disciplinary action and appeal, if applicable) to the Respondent, their relevant dean, department head or program director, APRS, Human Resources, Provost and President.
- d. The RIO's office shall maintain, for a period of seven years, all records and documentation regarding allegations of Research Misconduct, including written allegations and responses to them, transcripts or recordings of hearings, reports of fact-finding committees, records of appeals and decisions of administrators and the Board of Trustees.