Faculty Senate Policy Committee
Meeting Agenda, Scholes Hall Suite 327, September 23, 2015, 3:30 pm –5:00 pm

Updates

1. Meeting with Ethics Committee
2. Meeting with Faculty Senate President
3. Meeting with Director of Policy Office

Action Items

Consent Agenda Topics:

A88 "Creation and Reorganization of UNM Academic Units" pg. 1
C200 "Sabbatical Leave" pg. 6
E60 "Sponsored Research" pg. 13
Key pre-meeting preparation: Review policy drafts which contain changes approved at June Policy Committee meeting.
Desired outcome: Approve proposed policies to go to Faculty Senate for approval.

Agenda Topics

1. Committee Leadership: Election of Co Chair

2. E40 "Research Misconduct" Review changes proposed by HSC. Richard Larson, Vice Chancellor for Research, will be present to answer questions. pg. 18
Key pre-meeting preparation: Review attached draft which highlights proposed changes.
Desired outcome: Discussion and recommendations for next step.

3. C07 "Faculty Disciplinary Policy" pg. 83

a) Discuss Carol Parker's proposed changes.
Key pre-meeting preparation: Review information provided by Carol Parker.
Desired outcome: Discussion and recommendations for next step.

b) The Office of University Secretary (OUS) has been assigned responsibility for conducting peer hearings pertaining to the C07 Faculty Disciplinary Policy, and C07 does not contain procedures for conducting such hearings. OUS has developed proposed procedures, and the Office of University Counsel has reviewed proposed procedures.
Key pre-meeting preparation: Review attached draft of C07, which highlights changes proposed by OUS. Review policy draft with Kimberly Bell's recommendations, concerns, and/or questions.
Desired outcome: Discussion and recommendations for next step.

4. A53 "Development and Approval of Faculty Policies" Proposing changes to Procedures (1) to include requirements for faculty member wishing to request a change to a current policy or requesting a new policy. These procedures are designed to ensure the Policy Committee gets all the information it needs to process the request, and that the requestor is informed of what action the Committee has taken. pg. 93
Key pre-meeting preparation: Review attached draft which highlights proposed changes.
Desired outcome: Discussion and recommendations for next step.

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A88: Creation and Reorganization of UNM Academic Units

~~Policy and Procedures for New Units and Interdisciplinary Reorganization of Academic and Research Units at the University of New Mexico.~~

Approved By: Faculty Senate
Last Updated: **Draft** 7/12/15
Responsible Faculty Committee: Operations Committee
Office Responsible for Administration: Provost and HSC Chancellor

Revisions to the Policy Rationale, Policy Statement, and Applicability sections of this document must be approved by the full Faculty Senate.

POLICY RATIONALE

From time to time it is necessary for the University of New Mexico (UNM) to consider proposals for the creation of new academic units, or for major restructuring of existing academic units, especially units involving ~~both research and~~ teaching functions and those crossing disciplinary lines. Occasionally the proposed unit would become a branch of the University. This Policy document provides policies and procedures for consideration of such actions pertaining to UNM academic units ~~program~~. ~~In general, a proposal for such major changes should follow the guidelines below. However,~~ The specific procedures for consideration and approval will be established through discussions between the proposers of any changes and representatives of the Provost's Office or HSC Chancellor and the Faculty Senate Operations Committee.

~~While there are well-established procedures for approving the creation of new courses, new programs, and both minor and major changes in existing courses, there exists no formal system of review by both the faculty and administration of proposals for creation of new units. This policy and the associated procedures attempt to lay out guidelines for such major changes and additions.~~

POLICY STATEMENT

~~If it is proposed to create~~ The creation of a new academic unit located on or off the UNM Albuquerque campus, including new branches or education centers, or to make changes in an existing academic unit require approval of at least the 1) UNM Faculty Senate, acting on the advice of appropriate faculty committees as determined by the President of the Faculty Senate, and 2) appropriate administrative officers, as determined by the President or the Provost or HSC Chancellor. If approval of the proposal by the Board of Regents is required (See Regents' Policy 5.1), all actions of the Faculty Senate and the administrative officers relative to the proposal shall be transmitted to the Board of Regents.

Approval of the proposed action must be ~~sought and~~ obtained prior to initiating operation of a new academic unit, or making permanent major changes in existing academic units. In no case is this to be construed as prohibiting an existing academic unit from experimenting with temporary major changes prior to seeking approval of these on a continuing basis. However, it is expected that even in the case of experimental changes, stakeholders, such as affected faculty, staff, and students will be informed in advance and their input sought and considered by the appropriate dean, director, or other administrator proposing the changes, prior to initiation of the experiment.

All proposals to create or re-organize academic units shall follow the policies and procedures described herein and any applicable procedures, standards or guidelines established by the Faculty Senate Operations Committee in consultation with representatives of the Provost or the HSC Chancellor and relevant academic unit heads (e.g., dean's, directors, chairs).

APPLICABILITY

All academic units (excluding research centers and institutes, which are covered in Policy A91) including those within the Health Sciences Center and Branch Campuses.

Revisions to the remaining sections of this document may be amended with the approval of the Faculty Senate Policy Committee and Operations Committee in consultation with the responsible Faculty Senate Committee listed in Policy Heading.

DEFINITIONS

Major changes. Merger of two or more academic units, ~~or division~~ or dissolution of an academic unit. This policy is not meant to apply to organizational changes within an integral academic unit with no implications outside that unit.

Academic unit. ~~Designates a~~ Degree granting program, department, ~~division, center, institute,~~ branch, school, or college. ~~In this context, the structural program is of interest.~~ NOTE: Research centers and institutes are covered by Policy A91 "Creation, Review, Reorganization, and Termination of UNM Research Centers and Institutes"

WHO SHOULD READ THIS POLICY

- Academic deans or other executives, department chairs, directors, and managers
- Administrative staff responsible for academic units.

RELATED DOCUMENTS

Faculty Handbook:

Policy A91 "Creation, Review, Reorganization, and Termination of UNM Research Centers and Institutes"

UNM Board of Regents' Policy Manual:

Policy 5.1 "The Faculty's Role in the University's Academic Mission"

CONTACTS

Direct any questions about this policy to the Office of the Provost or the HSC Chancellor.

PROCEDURES

~~Those proposing creation of interdisciplinary research centers or institutes should prepare a proposal according to guidelines prepared by the Research Policy Committee. Copies of these guidelines may be obtained from the chair of that committee, or from the Associate Provost for Research~~. **Note: This is covered by Policy A91.**

~~The following is an outline of guidelines for preparing proposals for creating or making major changes in units, either on the UNM campus or entire branches or education centers at remote locations. It is recognized that a situation may arise for which these guidelines are not complete. In such a case, the proposer should seek advice from the Provost's Office and the President of the Faculty Senate.~~

Creation or Reorganization of an Academic Unit. Those proposing new or revised academic units, other than ~~interdisciplinary~~ research centers or institutes (see **A91** for these units), must prepare a proposal ~~(according to the attached guidelines)~~ and submit it for approval by the Faculty Senate and Provost or HSC Chancellor. The proposal should include the following:

A. Identification of the proposed academic unit or major changes, including all aspects such as instruction, research, and service.

B. ~~Summarize the~~ Reasons why the proposed changes are desirable, or necessary. For example, the proposed change may be responsive to state or national needs, existing or anticipated opportunities, or requirements of regulatory bodies such as accreditation agencies.

C. ~~What are~~ The advantages to UNM if the proposal is ~~approved and~~ implemented, including ~~to~~ effects on current or future students, faculty, and staff at UNM.

D. ~~Does the proposed new or revise unit pose~~ Any actual or potential conflicts with the programs or services of existing academic units at UNM, branches of UNM, or other institutions or organizations within the State of New Mexico. ~~On the other hand~~ Does ~~it~~ the proposed academic unit or change offer a potential for enhancement of, or cooperation with, the programs or services of other academic units or organizations?

E. ~~Provide an overall~~ A summary of the anticipated costs or changes in costs, and the human and physical resources, including space and equipment needed during the first ~~three to~~ five years of operation of the proposed new or revised academic unit.

F. ~~Describe the~~ Existing organizational structure related to ~~your~~ the proposal, and the anticipated structure when the revision or new academic unit has evolved to anticipated form. Include a description of:

- Administrative structure, including the line of responsibility within the organization and the path(s) through which the unit will report.
- Faculty positions, including rank and responsibilities, and
- Staff positions, including grades and responsibilities..

G. ~~Describe~~ Description of the instructional programs the academic unit will offer, if any. What degree programs will the unit offer, or support at the undergraduate or graduate levels? What courses at the lower division, upper division, and graduate levels will the unit offer in support of either its own or other degree programs? Identify both existing and new courses. Briefly explain the need for the new courses. If any of these courses overlap or are intended to replace existing course offerings at UNM, explain how potential duplication and conflict with the units offering those courses would be resolved.

H. ~~Describe~~ Description of the unit's proposed research programs. What research programs will be conducted by the unit alone or in cooperation with other units? In case(s) of cooperative programs, what other units will be involved, what will be their role, and what will be the relationship between these units and yours? What degree programs will these research programs support, and in what manner will they be supported? What non-state funding sources are anticipated for the research programs? What funding from the University or State of New Mexico will be required?

I. ~~Describe~~ Description of the academic unit's service activities. What services will the unit provide to other units in or associated with the University? Are these services currently offered by any other unit in the university associated with it, or contracted by it? If so, do you plan to supplement what exists or to replace it? How would potential conflicts with the other units be resolved? What services will the unit provide to organizations outside the university? Are there units, either public or private, already offering these services? If so, justify the need for you to provide them via the proposed unit.

J. ~~Discuss~~ Discussion of the plans for the academic unit for the next three to five years, including what needs, opportunities, or demands will the academic unit satisfy that are not currently being adequately met. How will the unit's functions and size change during this period? For example, will they remain static, grow, or diminish? How will faculty, staff, and administrators be acquired to support this unit?

K. ~~Provide~~ A detailed budget ~~information~~ summary for the first ~~three to~~ five years of operation of the proposed academic unit. For operating costs, include at least personnel, space upkeep or rental, utilities, contracted services, and equipment maintenance and replacement. For one-time costs, include at least space, furniture, utilities connections, and equipment.

HISTORY

October 11, 1994—Approved by Faculty Senate

DRAFT HISTORY

March 5, 2015—Revised draft to incorporate 3/4/15 recommendations of the Policy Committee.
February 19, 2015—Revised to mirror A91 on Research Centers
October 12, 2014—Revised to address concerns raised during preliminary review.
April 10, 2014 – Revised wording with FSRPC Chair's approval
April 1, 2014—Revised after meeting with W. Gerstle, Chair of Research Policy Committee.

March 12, 2014—Reformatted for review by HSC Council and Center and Institute Directors.
March 5, 2014—Chair of FSRPC presented draft to Faculty Senate Policy Committee (FSPC) for review.
September 25, 2013--Draft developed by the Faculty Senate Research Policy Committee (FSRPC).

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C200: Sabbatical Leave

Approved By: Faculty Senate may also require Regent approval—check history
Last Updated: Draft 7/12/15
Responsible Faculty Committee: Policy Committee
Office Responsible for Administration: Provost and Chancellor for Health Sciences

Revisions to the Policy Rationale, Policy Statement, and Applicability sections of this document must be approved by the full Faculty Senate.

POLICY RATIONALE

The University of New Mexico (UNM) prizes an inclusive view of scholarship with the recognition that knowledge is acquired and advanced through research, synthesis, practice, and teaching. A sabbatical is an important tool in developing academic scholarship and is time for concentrated professional development. A sabbatical is a privilege granted by UNM to faculty for the advancement of the University, subject to the availability of resources. UNM faculty and the Board of Regents approve the principle of sabbatical leave. ~~The main purpose of sabbatical leave is to encourage professional growth and increased competence among faculty members by subsidizing significant research, creative work, or some other program of study that is judged to be of equivalent value.~~

POLICY STATEMENT

The faculty member will use the sabbatical assignment in a manner that will enhance his or her scholarly ~~and/or teaching~~ competence and potential for service to UNM. Given this philosophy, sabbatical leaves may be granted to further any of the following objectives: research and publication, teaching improvement (including the creation of teaching materials such as new textbooks, software, multimedia materials, or case books), intensive public service clearly related to the applicant's expertise and integration and interpretation of existing knowledge into larger interdisciplinary frameworks.

Eligibility

Sabbatical leave is available ~~under the following four options (see footnote #2 below)~~ to any faculty member with tenure or to any faculty member in the last year of the probationary period for whom a favorable decision has been reached with regard to tenure. ~~The plan provides~~ There are several options of sabbatical leave discussed below. Faculty members who qualify have the right to apply for sabbatical leave; however, sabbatical leave will not be granted automatically upon the expiration of the necessary period of service. Rather, the faculty member shall present, as part of the application, evidence of recent sound research, creative activity, or other academic achievement, including publications, to support the program of work which is planned for the sabbatical period. Also, this program shall give reasonable promise of

accomplishing the major purpose of the leave as cited in the Policy Rationale section above. ~~Sabbatical leave will not be granted to subsidize graduate work or work on advanced degrees.~~

Options

Sabbatical leave is available under the following four options. These options should be discussed with the departmental chairperson, and the application for sabbatical leave should indicate the option desired.

a) After any period of at least three years of full-time service (or equivalent part-time service) at the UNM, the faculty member may apply for one semester at 2/3 salary for that semester.

b) After any period of at least six years of full-time service (or equivalent part-time service) at UNM without a sabbatical, a faculty member may apply for:

i) one semester at no reduction in annual salary,
ii) one full academic year at 2/3 salary, or
iii) semester II of one year and semester I of the following year, at 2/3 salary for each semester of leave.

A faculty member receiving a reduced salary during his or her sabbatical period may supplement his or her salary from grants, fellowships, employment, or grants-in-aid or other sources of external funding. ~~provided that the total stipend for the period does not exceed the regular academic salary. These external sources may also be used to cover special expenses such as travel, secretarial assistance, tuition, research, or publication.~~ I & G funds cannot be used to supplement salary. Any such additional compensation is to be explained on the application form and may not unduly interfere with the objectives of the sabbatical.

A faculty member on sabbatical leave is treated the same as any other faculty member for compensation purposes, and may not be penalized on matters of salary consideration.

Faculty Obligation

Sabbatical leaves will be approved only with the clear expectation ~~understanding~~ that the faculty member will at the completion of the sabbatical return to the UNM for a period of service not less than ~~at least~~ ~~as long~~ equal to ~~as~~ the duration of the leave. ~~If the employee does not return, the case will be reviewed by the Provost **for determination of appropriate action.** The employee may be required to refund all compensation received from UNM during the sabbatical. If the faculty member terminates his or her connection with the University within one year after the expiration of the sabbatical, the individual shall refund the sabbatical remuneration to UNM on a prorated basis, except in exceptional circumstances, including permanent disability or death, wherein neither the individual nor the heirs shall be obligated to refund any part of the amount paid while on sabbatical.~~

~~4. One semester leaves ordinarily shall be taken in Semester II when loads and enrollments are lighter.~~

Restrictions

1. Time toward each new sabbatical begins immediately after return to ~~full-time~~ service regardless of the semester of return.

2. Sabbatical leave is counted toward retirement. While a person is on sabbatical leave, UNM will continue to pay its share toward retirement, group insurance, and social security benefits.

3. Upon returning to UNM, every faculty member granted a sabbatical leave shall submit promptly to the ~~Deputy~~ Provost/Executive Vice President for Academic Affairs or the Chancellor for Health Sciences, with copies to department chairperson and dean, a full report of the research, creative work, publications, or other results of the period of leave. The report submitted shall be placed in the faculty member's personnel file.

4. If the applicant believes that his or her sabbatical proposal has not been considered properly according to the provisions of this Policy, the applicant may appeal in accordance with the procedures listed in Item 8 below.

APPLICABILITY

All academic UNM units, including the Health Sciences Center and Branch Campuses

DEFINITIONS

Full-time Service: Service time equivalent to that of a faculty member employed on a contract designated as 1.0 full-time equivalent (FTE). For example, a faculty member whose contract is designated 0.5 FTE would have to multiply his or her service by a factor of two to meet the full-time service requirements listed in this policy.

Revisions to the remaining sections of this document may be amended with the approval of the Faculty Senate Policy Committee and Operations Committee.

WHO SHOULD READ THIS POLICY

- Board of Regents
- Professors and academic staff
- Academic deans and other executives, department chairs, directors, and managers

RELATED DOCUMENTS

Section B: "Policy on Academic Freedom and Tenure"
Policy C130 "Outside Employment"
Policy C250 "Lecturer Academic Leave"
Policy C280 "Leave Without Pay"
Faculty Contracts Sabbatical Leave Form

CONTACTS

Direct any questions about this policy to your chair or dean.

PROCEDURES AND GUIDELINES

1. As a general rule, the regular faculty members of the department concerned will be expected to absorb the teaching load of the individual on leave, and the departmental chairperson (or the dean in non-departmentalized colleges) shall present with each recommendation for sabbatical a statement of the planning in this regard. A department may, for example, decide to alternate courses or to cancel certain offerings. Further, it is expected that the department shall prepare its program over a period of years so that essential courses need not be neglected because of the temporary absence of a member of the faculty.

2. To avoid adverse effects on the educational objectives of individual departments, the administration finds it necessary to place a practicable limit on the number of sabbatical leaves granted in any one department for any one semester or academic year. Sabbatical leaves will be granted according to the following criteria:

a) Normally the number of concurrent sabbatical leaves in any one department* shall not exceed one-seventh (1/7) of the tenured members of the department (rounded to the next higher whole number) or one-tenth (1/10) of the budgeted FTE faculty members (rounded to the next higher whole number), whichever is larger.

b) The number of concurrent sabbatical leaves in any department* may be held below the maximum permitted in paragraph 3(a) if in the judgment of the chairperson, dean, and Provost/Executive Vice President for Academic Affairs or the Chancellor for Health Sciences such restriction is necessary in order that the program or the department* not be adversely affected. The sabbatical leave request for any qualified faculty member may not be denied more than twice for this reason.

c) The number of concurrent sabbatical leaves in any department* may exceed the normal maximum only if in the judgment of the Provost/Executive Vice President for Academic Affairs or the Chancellor for Health Sciences extraordinary circumstances warrant it.

d) Recognizing that small departments* often are penalized by their inability to absorb the academic loads of faculty on leave, the administration will establish a mechanism to permit appointment of temporary or part-time faculty in departments* with seven or fewer faculty FTE at such times as members of the departments* may be granted sabbatical leave.

~~3. Other conditions having been fulfilled, it is general practice that requests for leave be considered on the basis of length of service~~.

3. Approval of Application: Primary responsibility for determining the merit of a proposed program from the point of view of the validity of the program and the probable value of the program to the faculty member and to UNM lies in the department and should be accomplished by the chair or a departmental committee appointed for the purpose who may

make a recommendation to the chair. The chair ~~departmental chairperson~~ shall forward to the dean ~~the departmental evaluation together with the chair's~~ his or her recommendation along with the committee evaluation if applicable and a statement as to how the teaching obligations of the department will be achieved in the event the proposal is approved. The dean with the advice of a college-wide faculty committee shall then evaluate the proposal both on its merits and on its effect on the operation of the college.

4. With the department chair's permission sabbatical applications may be submitted 18 months (or three semesters) in advance of the proposed sabbatical leave in order to provide applicants with sufficient time to make academic and personal arrangements, such as fellowship support, obtain visiting faculty status at a host institution, and enable family members to accompany the applicant. In such cases approval would occur 12 months prior to the start of the sabbatical. However, they must be submitted no later than the deadlines listed in the following sections. School of Medicine (SOM) faculty may submit sabbatical applications at any time as long as they are submitted at least four months in advance of the anticipated sabbatical start date.

4. (a) For non-HSC nine-month faculty, the dean shall send the departmental and college recommendations to the Provost/Executive Vice President so that the original and one copy of the proposal together with all recommendations shall reach that office by February 1 for a leave commencing in Semester I of that year and by October 1 for a leave commencing in Semester II of the following year. ~~The Provost~~ The Director of Faculty Contracts and Services shall verify that the applicant is eligible for the proposed leave and that provisions of this Policy have been properly followed. The Provost/Executive Vice President for Academic Affairs shall ~~forward all materials to the President with an evaluation of the proposed leave from a University-wide point of view. The President~~ make~~s~~ the final decision.

4. (b) For non-HSC twelve-month faculty, the dean shall send the departmental and college recommendations to the Provost/Executive Vice President so that the original and one copy of the proposal together with all recommendations shall reach that office at least four months in advance of the anticipated sabbatical date. ~~by February 1 for a leave commencing in Semester I of that year and by October 1 for a leave commencing in Semester II of the following year.~~ ~~The Provost~~ The Director of Faculty Contracts and Services shall verify that the applicant is eligible for the proposed leave and that provisions of this Policy have been properly followed. The Provost/Executive Vice President for Academic Affairs shall ~~forward all materials to the President with an evaluation of the proposed leave from a University-wide point of view. The President~~ make~~s~~ the final decision.

4. (c) ~~(b)~~ In the HSC, the dean shall send the departmental and college recommendations to the Vice Chancellor for Academic Affairs (VCAA) so that the original and one copy of the proposal together with all recommendations shall reach that office at least two months prior to the proposed start of the leave. The VCAA shall verify that the applicant is eligible for the proposed leave and that provisions of this Policy have been properly followed, and forward all materials to the Chancellor for Health Sciences, who shall ~~forward them to the President with an evaluation of the~~

~~proposed leave from a University-wide point of view. The President~~ makes the final decision.

5. If a faculty member on sabbatical finds it necessary to alter substantially the work plan or objectives of the sabbatical project, he or she must inform the chair or dean in writing as soon as possible of the reasons for the proposed change and secure their written approval for the revised plan.

6. If an applicant withdraws his or her application after it has been approved, every effort will be made in department planning to approve the sabbatical for the following year. However, such approval cannot be guaranteed, and the period of the delay does not count towards the next sabbatical.

7. Other conditions having been fulfilled, it is general practice that requests for leave be considered on the basis of the quality of the sabbatical plan to be decided by the chair or an evaluation committee appointed by the chair.

8. Appeal: If at any stage of the approval process, the applicant believes that his or her proposal has not been considered properly according to the provisions of this Policy, that matters of academic freedom are involved, that improper considerations have entered into a negative decision, or that other demonstrable conditions prevented a fair and impartial evaluation, he or she may appeal to the Committee on Academic Freedom and Tenure for a review of the matter. ~~If the applicant succeeds in making a prima facie case in the opinion of the Committee at one of its meetings, a five-member panel shall be designated to conduct a formal hearing on the matter on the basis of the grounds enumerated above and following the provisions of Section 6.2 of the Policy on Academic Freedom and Tenure. The panel shall deliver its findings together with its recommendation to the Provost/Executive Vice President for Academic Affairs or the Chancellor for Health Sciences for forwarding to the President.~~

9. See item 2 under **Policy C280** "Leave Without Pay" for combination of sabbatical and leave without pay.

10. Those faculty members who receive all or part of their salaries directly from agencies outside of UNM will be granted sabbatical privilege with salary guaranteed only to the extent of UNM funding of the previous year, or 2/3 of that amount as appropriate; full funding is possible only when funds are available within the UNM budget.

11. When a faculty member is employed on a continuing basis on a 12-month contract, sabbatical leave options can be translated from "semester" to "6-month period" and from "academic year" to "12-month period." Faculty members on 12-month contracts may not accrue annual leave while on sabbatical leave.

*****programs, colleges or non-departmentalized schools

HISTORY

Amended:
May 14, 2004– Approved by the UNM Faculty

Amended:

April 3, 2004– Approved by the UNM Faculty

Amended:
May 18, 1975– Approved by the UNM Board of Regents
May 10, 1978– Approved by the UNM Faculty

Amended:
February 1, 1975– Approved by the UNM Board of Regents
April 8, 1975– Approved by the UNM Faculty

Effective:
March 14, 1974– Approved by the UNM Board of Regents
March 12, 1974– Approved by the UNM Faculty

DRAFT HISTORY

July 12, 2015—Draft revise to reflect Committee changes in response to campus comments.
February 4, 2015—Draft revised to clarify section 4 regarding early application.
November 20, 2014—Draft revised to incorporate proposed change received from a faculty member prior to submission of previously Committee approved draft was sent to Operations.
October 12, 2014—Draft revised to incorporate recommendations from Policy Committee at its September meeting.
August 8, 2014—Reformatted draft prepared to incorporated recommendations by Charlie Cunningham (FSPC Primary) with previous Committee recommendations.
March 5, 2014-- Charlie Cunningham (FSPC Primary) submitted recommendations in preliminary policy draft.
October 23, 2012—Analysis of other institutions prepared by OUS submitted to Committee with questions, issues, and concerns for Committee consideration.
October 22, 2012—Revised Draft prepared incorporating Committee recommendations.
September 18, 2012—Draft in new policy format developed for Committee discussion.

COMMENTS TO: handbook@unm.edu	FACULTY HANDBOOK HOME	TABLE OF CONTENTS	TABLE OF POLICIES	UNM HOME

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E60: Sponsored Research

Approved By: Faculty Senate
Last Updated: **Draft 7/12/15**
Responsible Faculty Committee: Research Policy Committee
Office Responsible for Administration: Vice President for Research and HSC Vice Chancellor for Research

Revisions to the Policy Rationale, Policy Statement, and Applicability sections of this document must be approved by the full Faculty Senate.

POLICY RATIONALE

It is the policy of the University of New Mexico (UNM) to encourage faculty members to participate in research sponsored by outside agencies when such research is consistent with the basic aims of UNM in regard to the education of students, the extension of knowledge, and the broadening of man's horizon in the sciences, engineering, arts, and humanities. ~~In order~~ To ensure the most effective ~~operation~~ administration of UNM's sponsored research, this policy document provides policies and procedures for the submission of proposals, approval of research contracts and grants, budgeting of facilities and administrative (F&A) expenditures, and reporting of actual F&A expenditures.

POLICY STATEMENT

1. The Vice President for Research (VPR) has been designated by the President as UNM's reviewing, certifying, and negotiation coordinating officer for all main-campus and branch-campus research proposals submitted to outside agencies, ~~except for those emanating from units under the administrative authority of the Director of the Medical center.~~ The Senior Executive Officer for Finance & Administration (SEOFA), Health Sciences Center (HSC) has been designated by the President as UNM's reviewing, certifying, and negotiation coordinating officer for all HSC research proposals submitted to outside agencies. The VPR and SEOFA HSC have also been designated the approval authority for any modifications to awards, in response to research proposals.

Final authority for accepting and signing research contracts and grants is vested in the President of UNM, and has been delegated as indicated in **UAP Policy 2010**, "Contracts Signature Authority and Review," University Administrative Policies and Procedures Manual.

2. On an annual basis the Vice President for Research shall consult with the Research Council of the UNM Faculty Senate~~, and other interested parties~~ to discuss research priorities of, and adjustments to the F&A distribution algorithm for main-campus and branch-campus sponsored

research. These discussions shall reflect input articulated to the Faculty Senate by its various committees and individual faculty members involved in sponsored research.

Similarly, on an annual basis, the Vice Chancellor for Research (VCR) shall consult with the HSC Council of the Faculty Senate and other HSC research committees concerning research priorities of, and adjustments to, the F&A distribution for HSC-sponsored research.

~~3. A person whose salary is paid in full by UNM may not engage in sponsored research for extra remuneration during the regular academic year. In rare instances and when deemed by the administration to be in the best interests of UNM and the individual involved, exceptions to this rule may be made. Such exceptions require written approval of the chairperson, the dean, and the Executive Vice President for Academic Affairs/Provost for main-campus and branch-campus sponsored research, and the HSC Chancellor for HSC-sponsored research.~~

APPLICABILITY

All academic and research UNM units, including the Health Sciences Center and Branch Campuses.

Revisions to the remaining sections of this document may be amended with the approval of the Faculty Senate Research Policy Committee, Policy Committee, and Operations Committee.

DEFINITIONS

Facilities and Administrative (F&A) Expenditures. F&A expenditures reflect costs associated with providing and maintaining the infrastructure that supports the research enterprise (buildings and their maintenance, libraries, etc.) and which cannot easily be identified with a specific project. F&A expenditures are calculated using rates determined in conjunction with auditors from the applicable federal agency. The rate is calculated and charged as a percentage of modified total direct costs (MTDC).

Sponsored Research: Sponsored research shall be construed to include sponsored research, service, and training projects, and other categories of awards for all except basic capital construction and maintenance projects.

WHO SHOULD READ THIS POLICY

- Faculty and staff conducting sponsored research
- Members of the Faculty Senate and the Research Policy Committee
- Academic deans or other executives, department chairs, directors, and managers
- Administrative staff responsible for sponsored research management.

RELATED DOCUMENTS

UNM Regents' Policy Manual, **Policy** 5.9 "Sponsored Research**"**
Faculty Handbook, **Policy E70** "Intellectual Property"

University Administrative Policies and Procedures Manual

Policy 2010 "Contracts Signature Authority and Review,"

Policy **2425** "Recovery of Facilities and Administrative Costs"

Office of the Vice President for Research, "Proposal Development and Award Guide"

CONTACTS

Direct any questions about this policy to Office of the Vice President for Research or the HSC Office of the Vice Chancellor for Research.

PROCEDURES

1. Faculty shall follow procedures for proposal preparation and submission as outlined, from time to time, in the procedures promulgated by the Office of the VPR, for main-campus and branch-campus sponsored research, and the VCR-HSC for HSC sponsored research.

1a. Faculty Research Support Services (FRSS) ~~Office of Research Administration~~, under the direction of the VPR, provides assistance to non-HSC faculty and staff by:

- Finding funding sources matching research interests and project development.
- Developing and preparing proposals (including budget).
- Navigating UNM's proposal process.
- Planning, coordinating, and supporting large and complex proposal efforts requiring numerous partnerships and multidisciplinary collaborations.
- ~~maintaining a grantsmanship library with information on federal and state agencies and private foundations, helping locate sources of potential funding, advising on general proposal format and University administrative procedures, and by reviewing the work plan, commitments and budget.~~

~~The Office of Research Administration~~ FRSS also acts as liaison between the sponsor agency and the faculty when requested to do so.

1b. The Office of the VCR- HSC provides services similar to those described in 1a above to HSC faculty and staff.

2. The office of the VPR ~~also has been designated the prior approval authority for the University. In this capacity, the office will coordinate closely with the principal investigators and appropriate members of the Contract and Grant Accounting Office. The office will ensure that~~ will coordinate closely with the main-campus and branch-campus principal investigators and appropriate members of the Contract and Grant Accounting Office to ensure that the prior approval function, of modifying grant and contract budgets in force, is in accordance with the regulations of the sponsoring agencies or foundations. Similarly the office of the VCR-HSC will coordinate closely with the principal investigators and appropriate members of the HSC sponsored research management teams to ensure that the prior approval function, of modifying grant and contracts budgets in force, is in accordance with the regulations of the sponsoring agencies or foundations. ~~4. Any modifications to an award, received in response to a research proposal, also will be processed in accordance with the foregoing procedure.~~

~~9. The item for indirect costs included in research agreements shall always be credited to the general fund of the University to be allocated for the continuing support of research at the University~~. 3. In consultation with the Provost, the OVPR, and the Faculty Senate Research Council, a formula (or algorithm) for the distribution of the main campus and branch campus F&A funds to units and centers, shall be developed by the OVPR and posted on the OVPR's website on an annual basis for main-campus sponsored research. The annual budget shall also be posted on the OVPR's website

Similarly, in consultation with the OVCR-HSC and the Faculty Senate HSC Council, a formula (or algorithm) for the distribution of the HSC F&A funds to units, centers, and institutes, ~~and~~ shall be developed by the OVCR, approved by the Chancellor, and posted on the OVCR's website on an annual basis for HSC sponsored research. The annual budget shall also be posted on the OVCR's website.

4. Actual F&A distributions for main campus sponsored research, for each fiscal year shall be documented and posted on OVPR's website no later than three months after the end of the fiscal year. Similarly, actual F&A distributions website no later than three months after the end of the fiscal year.

5. During the regular academic year when the contract or grant calls for released time from regular UNM duties, the basic nine-month salary from the instructional budget will be reduced proportionally. The released time will be compensated from contract or grant funds at the basic salary rate.

~~11. This policy, in whole or in any part, is subject to review and change at any time. See also Research Support and Graduate, Research, and Teaching Assistantships; Research Associates.~~

NOTE: The following detailed procedures shown in the current form of Policy E60 are being deleted with the policy instructing faculty to follow procedures promulgated by the Office of the VPR, for main-campus and branch-campus sponsored research, and the VCR-HSC for HSC sponsored research

~~a. The proposal in draft form is to be submitted to the Vice President for Research by the principal investigator, accompanied by a Proposal Data Sheet (forms are available in the Office of Research Administration) approved by the department chairperson or unit director and dean, and indicating:~~

~~(1) that complete coordination has been effected to ensure that any other University unit or units affected by or interested in the proposal are formally advised of the proposal and that formal acknowledgment or concurrence has been received from the affected units;~~

~~(2) that full consideration has been given to both the physical and financial aspects of space requirements;~~

~~(3) that full costs of computer support required by the proposed effort have been included in the proposal budget;~~

~~(4) the anticipated duration of the project, with any possible extensions or ramifications;~~

~~(5) that the use of University funds, when included in the proposal, has been approved at all appropriate levels (as indicated in the Proposal Data Sheet), whether such funding relates to a division or sharing of salaries, the purchase of equipment, or other expenditures requiring University funds,~~

~~(6) the proposed total budget.~~

~~b. The proposal will be reviewed for proper form, for budget correctness, and to see that pertinent regulations of the University and the prospective sponsoring agency are met.~~

~~c. When the proposal is in final form, with the Proposal Data Sheet signed by the principal investigator and the chairperson or unit director, the Vice President for Research will administratively certify the proposal, on behalf of the University, by signing the cover sheet and will return the proposal to the initiator for official submittal to the prospective sponsoring agency.~~

~~d. Any proposal negotiations between the University and a prospective funding agency will be closely coordinated with the initiator or principal investigator by the Vice President for Research.~~

HISTORY

Effective:
Need to identify effective date of original policy.

DRAFT HISTORY

October 11, 2014—Draft revised to add reference to E90 "Intellectual Property"

August 18, 2014—Draft revised to incorporate HSC changes from Mike Schwantes.
August 6, 2014 – Draft revised to incorporate HSC changes J. Trotter presented at 6/4/14 FSPC meeting and changes proposed by Barbara West, Office of the VPR.
April 10, 2014—Draft revised with FSRPC Chair's approval
March 13, 2014—Draft reformatted to new format for review by HSC Council and Center and Institute Directors.
March 5, 2014—Chair of FSRPC presented draft to Faculty Senate Policy Committee (FSPC) for review.
September 25, 2013--Draft developed by the Faculty Senate Research Policy Committee (FSRPC).

COMMENTS TO: handbook@unm.edu	FACULTY HANDBOOK HOME	TABLE OF CONTENTS	TABLE OF POLICIES	UNM HOME

UNM | Faculty Handbook

E40: Research Misconduct

Approved By: Faculty Senate, Board of Regents
Last Updated: **Draft 9/9/15**
Responsible Faculty Committee: Research Policy Committee
Office Responsible for Administration: Vice President for Research and HSC Vice Chancellor for Research

Revisions to the Policy Rationale, Policy Statement, and Applicability sections of this document must be approved by the full Faculty Senate.

POLICY RATIONALE

Integrity, trust, and respect are important elements in an academic research environment. Investigators typically conduct research and explain findings and theories with painstaking diligence, precision, and responsibility. However, research misconduct threatens both to erode the public trust and to cast doubt on the credibility of all researchers. This policy and these procedures regarding research misconduct are intended to protect the integrity of the University of New Mexico's (UNM) research enterprise and not hinder the search for truth or interfere with the expansion of knowledge.

POLICY STATEMENT

Because UNM as well as the general public and government are affected by research misconduct, UNM faculty and administration have created a process to deal with research misconduct if it arises and to ensure the credibility and objectivity of research activities. In broad terms this process is designed to:

- Ensure that ethical standards for research at UNM are clearly stated and applied.
- Inquire into allegations of misconduct promptly and, where appropriate, initiate formal investigations and advise sponsors of action taken.
- Ensure that each investigation is properly documented to support findings and carefully conducted to protect any person whose reputation may be placed at risk during the process.
- Respect the principles of academic freedom.

Scope. This policy applies to allegations of research misconduct (as defined below), or in reporting research results involving:

- any individual who, at the time of the alleged research misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with UNM; including, but

not limited to, faculty, graduate/undergraduate students, staff, employees, contractors, visiting scholars, and any other member of UNM's academic community and

- one or more of the following:
  (1) Public Health Service (PHS) supported or non-PHS supported biomedical or behavioral research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information, (2) applications or proposals for PHS support or non-PHS supported biomedical or behavioral research, research training or activities related to that research or research training, or (3) plagiarism or research records produced in the course of research, research training or activities related or that research or research training. This includes any research proposed, performed, reviewed, or reported, or any research record generated from that research, regardless of whether an application or proposal resulted in a grant, contract, cooperative agreement, or any other form of support.

These policies and procedures do not apply to authorship or collaboration disputes and apply 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).

General Principles

1. Research misconduct cannot be tolerated and will be firmly dealt with when found to exist.

2. For purposes of resolving allegations of research misconduct, the process established by this policy shall apply to allegations of fabrication, falsification or plagiarism. All other allegations of research misconduct shall be resolved utilizing other applicable University policies and procedures.

3. All faculty and staff will report observed, suspected, or apparent research misconduct in accordance with Section 4.1 of this policy. Allegations may be made in writing, orally or anonymously and in all cases, must be sufficiently credible and specific. 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 Vice President for Research, Vice Chancellor or Research, or the HSC Research Integrity Office (RIO) to discuss the suspected research misconduct informally, which may include discussing it anonymously and/or hypothetically. A copy of this policy shall be made available to the complainant.

~~Charges of research misconduct shall be promptly reviewed and a copy of this policy shall be made available to the complainant. Allegations must be made in writing, and signed and dated by the complainant. If health or safety is involved, prompt remedial action shall be taken.~~

4. Every effort shall be made to protect the rights and the reputations of everyone involved, including the individual who in good faith alleges perceived misconduct as well as the alleged violator(s). A good faith allegation is made with the honest belief that research misconduct may have occurred. Persons making a good faith allegation shall be protected against retaliation. However, persons making allegations in bad faith will be subject to disciplinary action, up to and including termination or expulsion. An allegation is made in bad faith if the complainant

knows that it is false or makes the allegation with reckless disregard for or willful ignorance of facts that would disprove it.

5. All members of the University community are expected to cooperate with committees conducting inquiries or investigations.

6. Confidentiality. Care will be exercised at all times to ensure confidentiality to the maximum extent possible and to protect the privacy of persons involved in the research under inquiry or investigation. The privacy of those who report misconduct in good faith will also be protected to the maximum extent possible. Files involved in an inquiry or investigation shall be kept secure and applicable state and federal law shall be followed regarding confidentiality of personnel records.

7. Conflict of Interest. If the Provost, the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate, has any actual or potential conflict of interest, the persons shall recuse themselves from the case. The President of the University shall appoint designates to act instead. When a case continues to the Inquiry and Investigation stages (Sections 5.3 and 6.3), if the President of the Faculty Senate has any actual or potential conflict of interest, the person shall recuse him/herself from the case and the Senate President-Elect shall appoint a designate to act instead. If any member of the Faculty Senate Operations Committee or the Chair of the Research Policy Committee has any actual or potential conflict of interest, the persons shall recuse themselves from the case. The Faculty Senate President, or designate as appropriate, shall appoint faculty members to act instead.

8. UNM will respond to each research misconduct allegation in a thorough, competent, objective, and fair manner.

9. UNM will ensure its deans, directors, chairs, and graduate advisors are reminded annually of the UNM's policies and procedures on Research Misconduct including division or department supplemental policies and procedures. UNM will also inform all faculty, students, and staff of the need and importance of research integrity and the importance of compliance with applicable policies and procedures.

APPLICABILITY

All academic and research UNM units, including the Health Sciences Center and Branch Campuses.

Revisions to the remaining sections of this document may be amended with the approval of the Faculty Senate Research Policy Committee, Policy Committee, and Operations Committee.

DEFINITIONS

Complainant means a person who makes an allegation of research misconduct. There can be more than one complainant in any inquiry or investigation.

Fabrication is making up data or results and recording or reporting them.

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.

NSF means the National Science Foundation. The NSF has adopted rules establishing standards for institutional responses to allegations of research misconduct.

ORI means the Office of Research Integrity, an office within the U.S. Department of Health and Human Services that is responsible for overseeing the implementation of PHS policies and procedures on research misconduct.

PHS means the Public Health Service, a component of the U.S. Department of Health and Human Services. The PHS has adopted rules establishing standards for institutional responses to allegations of research misconduct.

Plagiarism is the appropriation of another person's ideas, processes, results or words without giving appropriate credit.

Recklessly means that a person acts in such a manner that the individual consciously disregards a substantial and unjustifiable risk or grossly deviates from the standard of conduct that a reasonable individual would observe.

Research misconduct is defined as fabrication, falsification or plagiarism in proposing, conducting, reporting or reviewing sponsored or unsponsored research. The misconduct must have been committed intentionally, knowingly or recklessly. Research misconduct is further defined to include gross carelessness in conducting research amounting to wanton disregard of truth or objectivity, or failure to comply or at least attempt to comply with material and relevant aspects of valid statutory or regulatory requirements governing the research in question. Research misconduct is more than a simple instance of an error in judgment, a misinterpretation of experimental results, an oversight in attribution, a disagreement with recognized authorities, a failure in either inductive or deductive reasoning, an error in planning or carrying out experiments, or a calculation mistake.

Respondent means the person against whom an allegation of research misconduct is directed or the person who is the subject of the inquiry or investigation. There can be more than one respondent in any inquiry or investigation.

WHO SHOULD READ THIS POLICY

- Faculty, staff, and students conducting sponsored research
- Members of the Faculty Senate and the Research Policy Committee
- Academic deans or other executives, department chairs, directors, and managers
- Administrative staff responsible for sponsored research management.

RELATED DOCUMENTS

UNM Regents' Policy Manual

Policy 5.10 "Conflicts of Interest in Research"
Policy 5.13 "Research Fraud"
Policy 5.14 "Human Beings as Subjects in Research"
Policy 5.15 "Use of Animals in Education and Research"

Faculty Handbook

E90 "Human Beings as Subjects in Research"
E100 "Policy Concerning Use of Animals"
E110 "Conflicts of Interest in Research"

CONTACTS

Direct any questions about this policy to Office of the Vice President for Research or the HSC Office of the Vice Chancellor for Research.

PROCEDURES

1. Preliminary Assessment of Allegations

1.1 An initial report of alleged research misconduct shall be treated and brought in a confidential manner to the attention of the faculty member or other person (e.g., chairperson, supervisor, director, principal investigator) responsible for the researcher(s) whose actions are in question, or to the dean of the researcher's college, or to the Vice President ~~Provost~~ for Research (for allegations concerning a main campus researcher) or Vice Chancellor for Research ~~President for Health Sciences~~ (for allegations concerning a HSC researcher). The person receiving the initial report shall, in turn, make an immediate confidential report of the allegations to the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate.

1.2 An initial report of research misconduct might arise as part of an administrative review. Such a report will be acted upon in accordance with this policy. The report should be brought confidentially to the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate.

1.3 Upon receiving an allegation of research misconduct, the Vice President for Research or the Vice Chancellor for Research, or designee, shall conduct a preliminary assessment within seven (7) working days. The purpose of the preliminary assessment is to determine whether the allegation (1) is sufficiently credible and specific so that potential evidence of research misconduct may be identified, (2) whether the allegation falls within the definition of research misconduct and (3) whether it is within the jurisdictional criteria of this policy. An inquiry must be conducted if these criteria are met.

In conducting the preliminary assessment, the complainant, respondent, or other witnesses need not be interviewed and data need not be gathered beyond any that may have been submitted with the allegation, except as necessary to determine whether the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

~~Upon receipt of an initial report of alleged research misconduct, the Vice Provost for Research or Vice President for Health Sciences, or designee, shall conduct a preliminary assessment within seven (7) working days. The purpose of the preliminary assessment is to determine whether the allegation falls within the definition of research misconduct and whether there is sufficient evidence to warrant an inquiry. If both conditions are met the inquiry process shall be initiated. If the allegation is vague, an effort should be made to obtain more information before deciding whether there is sufficient evidence to warrant an inquiry. If the preliminary assessment finds insufficient information to allow specific follow-up or the allegation falls outside the definition of research misconduct, the matter will not proceed to an inquiry, and the Vice Provost for Research or Vice President for Health Sciences shall so inform the respondent and complainant in writing. The allegation may be referred for review under another University policy, as appropriate.~~

2. Inquiry

2.1 Purpose and Initiation

If the preliminary assessment reveals that the allegation falls within the definition of research misconduct and there is sufficient information to allow specific follow-up, the inquiry process shall be initiated by the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate. The initiating official will clearly identify the original allegation and any related issues that should be evaluated in the inquiry. The purpose of the inquiry is to make a preliminary evaluation of the available evidence to determine whether there is sufficient credible evidence of possible research misconduct to warrant conducting an investigation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct occurred. The findings of the inquiry shall be set forth in an inquiry report.

2.2 Securing Research Records

Prompt securing of the research records is in the best interest of both the respondent and UNM. After determining that an inquiry will occur, the Vice President for Research or the Vice Chancellor for Research will direct a process to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence and sequester them in a secure manner, except that 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 are substantially equivalent to the evidentiary value of the instruments. Sequestration of research records must occur on or before the date on which the respondent is notified if the allegation.

~~After determining that an inquiry will occur, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, will direct the process whereby all original research records (or copies if originals cannot be located) and materials which may be relevant to the allegation are immediately secured. Prompt securing of records is in the best interests of both the respondent and UNM. Immediately upon ensuring that the research records are secure, the respondent shall be notified that an inquiry is being initiated and an inventory of the secured records shall be provided him/her. As soon as practicable, a copy of each sequestered record will be provided to the~~

~~respondent, or to the individual from whom the record is taken if not the respondent, if requested. The respondent shall be notified of the charges and the procedures to be followed.~~

2.3 Inquiry Committee

The inquiry shall be carried out by a committee of three persons appointed by the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate, in consultation with the President of the Faculty Senate, or his/her designate. At least two Inquiry Committee members shall be tenured faculty. One of the tenured faculty members shall chair the committee. Committee members should be selected on the basis of relevant research background and experience. Faculty members from other universities may be named to the Inquiry Committee if a sufficient number of qualified UNM faculty members are not available. Members of the committee shall have no actual or potential conflicts of interest in the case, shall be unbiased, and shall, together, possess sufficient expertise to enable the committee to conduct the inquiry.

The respondent and the complainant shall be notified of the proposed committee membership and may object in writing to any of the proposed appointees on the grounds that the person, or the committee as a whole, does not meet the criteria stated above. The Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate, in consultation with the President of the Faculty Senate, or his/her designate, will consider the objection and if it has merit, shall make appropriate substitution(s). In the case of disagreement regarding appointments, the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate, shall decide the challenge. That decision shall be final.

If the committee so requests, the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate, shall designate an official to assist the committee in conducting the inquiry. The committee shall receive a written charge from the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate, defining the subject matter of its inquiry prior to beginning its work.

2.4 Inquiry Process

The respondent and complainant shall be given an opportunity to interview with the Inquiry Committee. The committee may interview others and examine relevant research records, as necessary, to determine whether there is sufficient credible evidence of possible research misconduct to warrant conducting an investigation. University legal counsel shall be available to the committee for consultation.

The length of the inquiry shall not exceed sixty (60) days unless prior written approval for a longer period is obtained from the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~ as appropriate. If the period is extended, the record of the inquiry shall include documentation of the reasons for exceeding the sixty-day period.

2.5 Inquiry Report

The Inquiry Committee shall prepare a report that includes:

(1) the names and titles of the committee members, and experts consulted, if any;
(2) the allegations;
(3) the PHS support, if any;
(4) a summary of the inquiry process;
(5) a summary of the evidence reviewed;
(6) a summary of any interviews;
(7) the conclusions of the inquiry as to whether an investigation is recommended; and
(8) whether any other action should be taken if an investigation is not recommended.

The respondent shall be given fourteen (14) days to review the report and to add his or her comments, which will become part of the final inquiry report and record. Based upon the respondent's comments, the Inquiry Committee may revise its report.

2.6 Inquiry Determination

The Inquiry Committee final report will be sent to the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate, who will determine whether the results of the inquiry provide sufficient evidence of possible research misconduct to warrant conducting an investigation or whether the matter will not be pursued further. The respondent and complainant shall be notified in writing of the decision.

3. Investigation

3.1 Purpose and Initiation

The purpose of the investigation is to explore the allegations in detail, examine the evidence in depth, and determine specifically whether research misconduct has been committed, by whom, and to what extent. If instances of possible misconduct involving a different respondent are uncovered, the matter should be sent to the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate, to initiate a preliminary assessment.

The Investigation Committee will be appointed and the process initiated within thirty (30) days after the conclusion of the inquiry. If required by sponsoring agency regulations, the office of the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate, shall notify the agency of its decision to commence an investigation on or before the date the investigation begins.

3.2 Securing Research Records

Any additional pertinent research records that were not previously sequestered during the inquiry will be immediately sequestered when the decision is made to conduct an investigation. The Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate, will direct this process. This sequestration should occur before or at the time the respondent is notified that an investigation will begin. The need for additional sequestration of records may occur for any number of reasons, including a decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured. As soon as practicable,

a copy of each sequestered record will be provided to the respondent, or to the individual from whom the record is taken if not the respondent, if requested.

3.3 Investigation Committee

The investigation shall be conducted by a committee of five persons appointed by the Faculty Senate Operations Committee, in consultation with the Chair of the Research Policy Committee or his/her designate. Committee members should be selected on the basis of relevant research background and experience. All persons appointed from UNM shall be tenured faculty. Tenured faculty members from other universities or senior researchers from research institutions may be named to the Investigation Committee if a sufficient number of qualified UNM faculty members are not available. Members of the committee shall have no actual or potential conflicts of interest in the case, shall be unbiased, and shall, together, possess sufficient expertise to enable the committee to conduct the investigation. No more than two members of the Inquiry Committee may be appointed to serve on the Investigation Committee.

The respondent and the complainant shall be notified of the proposed committee membership and may object in writing to any of the proposed appointees on the grounds that the person, or the committee as a whole, does not meet the criteria stated above. The Faculty Senate Operations Committee will consider the objection and if it has merit, shall make appropriate substitution(s), in consultation with the Chair of the Research Policy Committee or his/her designate. In the case of disagreement regarding appointments made by the Faculty Senate Operations Committee, the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate, shall decide the challenge. That decision shall be final.

If the committee so requests, the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~ shall designate an official to assist the committee in conducting the investigation. The committee shall receive a written charge from the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate, defining the subject matter of its investigation prior to beginning its work.

3.4 Investigation Process

~~The investigation will normally involve examination of all relevant documentation.~~ The Investigation Committee will pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence or additional instances of possible research misconduct, and continue the investigation to completion. The committee shall make diligent efforts to interview the complainant, the respondent, and other individuals who might have information regarding aspects of the allegations. The interviews will be recorded on a recording device provided by the office of the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~ as appropriate. A verbatim written record shall be made of all interviews. A transcript of his/her interview shall be provided to each witness for review and correction of errors, which shall be returned and become part of the investigatory file. University legal counsel shall be available to the committee for consultation.

3.5 Investigation Report

The Investigation Committee shall prepare a draft of the final report that includes:

(1) the names and titles of the committee members, and experts consulted, if any;
(2) the allegations;
(3) the PHS support, if any;
(4) a summary of the inquiry process;
(5) a summary of the evidence reviewed;
(6) a summary of any interviews;
(7) findings and basis for each finding;
(8) conclusion(s) as to whether research misconduct occurred; and
(9) recommendations for institutional action.

Copies of all significant documentary evidence that is referenced in the report should be appended to the report.

A finding of research misconduct requires that four conditions be met:

(1) the conduct at issue falls within this policy's definition of research misconduct;
(2) the misconduct be committed intentionally, or knowingly, or recklessly;
(3) there be a significant departure from accepted practices of the relevant research community; and
(4) the allegation be proven by a preponderance of the evidence. This means that the evidence shows that it is more likely than not that the respondent committed research misconduct.

The respondent shall be given a copy of the draft investigation report for comment and, concurrently, a copy of, or supervised access to the evidence on which the report is based. The respondent will be allowed thirty (30) days from the date he/she received the draft report to submit comments. The respondent's comments must be included and considered in the final report. The complainant may be provided with those portions of the draft investigation report that address the complainant's role and opinions in the investigation, and the complainant will have thirty (30) days to submit any comments to the investigation committee. The report may be modified, as appropriate, based on the complainant's comments.

~~The respondent will be provided with a copy of the draft investigation report for review and comment. The respondent will be allowed fourteen (14) days for review and any comments will be attached to the final report. The findings of the final report should take into account the respondent's comments in addition to all of the other evidence. The complainant may be provided with those portions of the draft investigation report that address the complainant's role and opinions in the investigation, and the complainant will have fourteen (14) days to review and submit any comments to the Investigation Committee. The report may be modified, as appropriate, based on the complainant's comments.~~

If the Investigation Committee puts forward a final report with a finding of research misconduct, the respondent has 14 days to elect a hearing before the Vice President for Research or Vice Chancellor for Research ~~Provost or Vice President for Health Sciences~~, as appropriate. The hearing will allow for argument, rebuttal, cross-examinations and a written record of the proceedings.

3.6 Institutional Review and Determination

The Investigation Committee final report will be forwarded to the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate. The Vice President ~~Provost~~ for Research will transmit the report to the Provost who is the University deciding official for cases where the respondent is not a Health Sciences Center employee. The Chancellor ~~Vice President~~ for Health Sciences is the deciding official for cases where the respondent is a Health Sciences Center employee. The deciding official will make the final determination whether to accept the investigation report, its findings, and the recommended institutional actions.

If the respondent has elected a hearing, the deciding official will conduct the hearing following the University model hearing procedure, available from the University Counsel's office. The Investigation Committee presents the case consistent with its report. The respondent presents the rebuttal. The respondent may have an advisor present.

The deciding official's decision should be consistent with the definition of research misconduct, the University's policies, and the evidence reviewed and analyzed by the Investigation Committee. The deciding official may also return the report to the Investigation Committee with a request for further fact-finding or analysis. The deciding official's final determination will be sent to the respondent and complainant. If the deciding official's decision varies from that of the Investigation Committee, the basis for rendering a different decision will be explained in the report to ORI and other agencies as appropriate.

Respondents may appeal the final determination to the University President. An appeal is limited to: (1) a claim of procedural error; and/or (2) a claim that the sanction imposed as a result of a finding of research misconduct is inappropriate.

Except as to PHS funded research, the investigation shall be completed within 180 days of the first meeting of the Investigation Committee. However, ~~if~~ for PHS sponsored the research, unless an extension has been granted, UNM must submit the following to ORI ~~the investigation shall be completed, with the final investigation report and final determination submitted to ORI,~~ within 120 days of the first meeting of the Investigation Committee: (1) a copy of the final investigation report with all attachments; (2) a statement of whether UNM accepts the findings of the investigation report; (3) a statement of whether UNM found misconduct and, if so, who committed the misconduct; and (4) a description of any pending or completed administrative actions against the respondent. ~~, unless ORI grants an extension.~~

4. Actions Following Investigation

4.1 Finding of Research Misconduct

If the final determination is that research misconduct occurred, UNM shall take appropriate action, which may include but is not limited to:

(1) notifying the sponsoring agency;
(2) withdrawal or correction of all pending or published abstracts and papers emanating from the research;
(3) removal of the responsible person from the particular project, letter of reprimand, special

monitoring of future work, probation, suspension, salary reduction, rank reduction or termination of employment in accordance with UNM policies and procedures. In cases involving faculty, implementation must be consistent with the Policy on Academic Freedom and Tenure;
(4) determining whether law enforcement agencies, professional societies, professional licensing boards, collaborators of the respondent, or other relevant parties should be notified; and
(5) any other steps deemed appropriate to accomplish justice and preserve the integrity of UNM and the credibility of the sponsor's program.

4.2 Restoration of Respondent's Reputation

If the final determination is that no research misconduct occurred, efforts shall be undertaken to the extent possible and appropriate to fully protect, restore, or maintain the credibility of the research project, research results, and the reputation of the respondent, the sponsor and others who were involved in the investigation or deleteriously affected thereby. Depending on the circumstances, consideration should be given to notifying those individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in forums in which the allegation of research misconduct was previously publicized, expunging all reference to the research misconduct allegation from the respondent's personnel files, or reviewing negative decisions related to tenure or advancement to candidacy that occurred during the investigation. Any institutional actions to restore the respondent's reputation must first be approved by the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, as appropriate.

4.3 Protection of the Complainant and Others

Regardless of whether UNM determines that research misconduct occurred, reasonable efforts will be undertaken to protect complainants who made allegations of scientific misconduct in good faith and others who cooperate in good faith with inquiries and investigations of such allegations. The Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~, or designee, will also take appropriate steps during the inquiry and investigation to prevent retaliation against the complainant. If a complainant believes that retaliation was threatened, attempted or occurred, he or she may file a complaint with the UNM Audit Department.

4.4 Allegations Made in Bad Faith

If relevant, the Vice President ~~Provost~~ for Research or Vice Chancellor for Research ~~President for Health Sciences~~ will determine whether the complainant's allegation of research misconduct was made in good faith. If an allegation was made in bad faith, appropriate disciplinary action will be taken in accordance with UNM policies and procedures. If the complainant is not associated with UNM, appropriate organizations or authorities may be notified and administrative or legal action considered.

5. Other Considerations

5.1 Requirements for Reporting to ORI When Funding from PHS Is Involved

5.1.1 The decision to initiate an investigation must be reported in writing to the Director, ORI, on or before the date the investigation begins. The notification must include at a minimum the name of the person(s) against whom the allegations have been made, the general nature of the allegation, and the PHS application or grant number(s) involved.

5.1.2 If UNM plans to terminate an inquiry or investigation without completing all relevant requirements of the PHS regulation, a report of such planned termination shall be made to ORI, including a description of the reasons for the proposed termination.

5.1.3 If UNM determines that it will not be able to complete the investigation within 120 days, a written request for an extension shall be submitted to ORI that explains the delay, reports on the progress to date, estimates the date of completion and describes other necessary steps to be taken. If the request is granted, UNM must file periodic progress reports as requested by ORI.

5.1.4 UNM will keep ORI apprised of any developments during the course of an investigation that may affect current or potential Department of Health and Human Services funding for the individual(s) under investigation or that the PHS needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.

5.1.5 ORI shall be notified immediately, at any time during a research misconduct proceeding, if there is any reason to believe that any of the following conditions exist:

(1) Health or safety of the public is a risk, including an need to protect human or animal subjects;

(2) HHS resources or interests are threatened

(3) Research activities should be suspended;

(4) There is a reasonable indication of possible violations of civil or criminal law;

(5) Federal action is required to protect the interests of those involved in the research misconduct proceeding;

(6) 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

(7) The research community or public should be informed.

~~ORI shall be notified at any stage of the inquiry or investigation if any of the following conditions exist:~~

~~(1) there is an immediate health hazard involved;~~
~~(2) there is an immediate need to protect federal funds or equipment;~~
~~(3) there is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s)~~
~~who is the subject of the allegations as well as his/her co-investigators and associates, if any;~~
~~(4) it is probable that the alleged incident is going to be reported publicly;~~

~~(5) the allegation involves a public health sensitive issue (e.g. a clinical trial); or~~
~~(6) there is reasonable indication of possible criminal violation in which case UNM must inform ORI within 24 hours of obtaining that information.~~

5.2 Requirements for Reporting When NSF Funding Is Involved

5.2.1 The decision to initiate an investigation must be reported immediately in writing to NSF.

5.2.2 NSF shall be notified at any stage of the inquiry or investigation if any of the following conditions exist:

(1) public health or safety is at risk;
(2) NSF's resources, reputation, or other interests need protecting;
(3) there is reasonable indication of possible violations of civil or criminal law;
(4) research activities should be suspended;
(5) federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or
(6) the scientific community or the public should be informed.

5.2.3 NSF shall be provided with a copy of the final investigation report.

5.2.4 The inquiry shall be completed within 90 days and the investigation completed within 180 days of its initiation. If completion of an inquiry or investigation will be delayed, NSF shall be notified and may require submission of periodic status reports.

5.3 ~~Interim~~ Administrative Action

UNM officials will take ~~interim~~ administrative actions, as appropriate, to protect federal funds and insure that the purposes of the federal financial assistance are carried out. UNM officials shall ensure that administrative actions taken by the institution and ORI are enforced and shall take appropriate action to notify other involved parties such as sponsors, law enforcement agencies, professional societies, and licensing boards, of those actions.

5.4 Termination of UNM Employment

The termination of the respondent's UNM employment, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported, will not preclude or terminate the misconduct procedures. If the respondent refuses to participate in the process after termination of employment, the committee will use its best efforts to reach a conclusion concerning the allegations, noting in its report the respondent's failure to cooperate and its effect on the committee's review of all the evidence.

5.5 Record Retention

Records of the research misconduct proceeding will be maintained in a secure manner for seven (7) years after completion of any proceeding by UNM involving research misconduct allegation, or the completion of any ORI proceeding involving the allegation of research misconduct, whichever is later, unless custody of the records has been transferred to ORI or

ORI has advised that the records no longer need to be retained. When it is determine that an investigation is not warranted, detailed documentation of the inquiry must be retained for at least seven (7) years after termination of the inquiry, so that ORI may assess the reasons why UNM decided not to conduct an investigation.

~~All documentation of an inquiry that does not lead to an investigation shall be maintained in University Counsel Office files for at least three (3) years after the conclusion of the inquiry. All documentation of an investigation shall be maintained in University Counsel Office files for five (5) years after the end of the investigation. Documentation shall be provided to the sponsoring agency and ORI upon request or if required by the agency's regulations. Documentation shall be treated as confidential personnel information to the extent provided for by law.~~

5.6 Reimbursement

If requested, the UNM Board of Regents in the pursuit of justice and fairness may, in its sole discretion, fully or partially reimburse the respondent and/or the complainant for legal fees in cases of unusual hardship.

5.7 Federal Regulatory Changes

If PHS, ORI, NSF or any other federal agency amends its requirements on research misconduct, those amendments shall govern where applicable and shall be incorporated into this policy by reference herein. Such changes in federal requirements shall supersede all relevant portions of this policy.

5.8 Revision

The Faculty Senate is authorized to make minor technical and implementing modifications to the detailed Research Misconduct Policy subject to approval of the President of the University.

HISTORY

Effective:

Research Misconduct Policy (amended) Approved by UNM Board of Regents April 13, 2004
Research Misconduct Policy (amended) Approved by Faculty Senate February 24, 2004
Research Misconduct Policy (amended) Approved by Faculty Senate April 22, 2003
Research Misconduct Policy (amended) Approved by UNM Board of Regents May 10, 2002
Research Misconduct Policy (amended) Approved by Faculty Senate April 23, 2002
Research Fraud Policy Approved by UNM Board of Regents October 10, 1996
Research Fraud Policy Approved by Faculty Senate September 10, 1996

DRAFT HISTORY

September 9, 2015—Proposed revised draft placed in new policy format for review by Vice Chancellor Larson and the Faculty Senate Policy Committee
July 1, 2015 Supplemental Policy with proposed changes to E40 prepared by HSC

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E40: Research Misconduct

Policy

(Research Fraud Policy approved by UNM Faculty Senate, September 10, 1996; approved by the UNM Board of Regents, October 10, 1996; revised as "Research Misconduct Policy" approved by the UNM Faculty Senate, April 23, 2002; approved by the UNM Board of Regents, May 10, 2002; approved by the Faculty Senate, April 22, 2003 and February 24, 2004; approved by UNM Board of Regents, April 13, 2004.)

1. INTRODUCTION AND SCOPE

Integrity, trust, and respect are important elements in an academic research environment. Investigators typically conduct research and explain findings and theories with painstaking diligence, precision, and responsibility. However, research misconduct threatens both to erode the public trust and to cast doubt on the credibility of all researchers.

Because the University of New Mexico as well as the general public and government are affected by this issue, the faculty and administration have created a process to deal with research misconduct if it arises and to ensure the credibility and objectivity of research activities. In broad terms this process is to:

- Ensure that ethical standards for research at UNM are clearly stated and applied.
- Promptly inquire into allegations of misconduct and, where appropriate, initiate formal investigations and advise sponsors of action taken.
- Ensure that each investigation is properly documented to support findings and carefully conducted to protect any person whose reputation may be placed at risk during the process.
- Respect the principles of academic freedom.

The policy and procedures regarding research misconduct are intended to protect the integrity of the University's research enterprise and not hinder the search for truth or interfere with the expansion of knowledge.

This policy applies to all individuals who may be involved with a research project, including, but not limited to, faculty, graduate/undergraduate students, staff, employees, contractors, visiting scholars, and any other member of the University's academic community.

2. DEFINITIONS

2.1 "Complainant" means a person who makes an allegation of research misconduct. There can be more than one complainant in any inquiry or investigation.

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

2.3 "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.

2.4 "NSF" means the National Science Foundation. The NSF has adopted rules establishing standards for institutional responses to allegations of research misconduct.

2.5 "ORI" means the Office of Research Integrity, an office within the U.S. Department of Health and Human Services that is responsible for overseeing the implementation of PHS policies and procedures on research misconduct.

2.6 "PHS" means the Public Health Service, a component of the U.S. Department of Health and Human Services. The PHS has adopted rules establishing standards for institutional responses to allegations of research misconduct.

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

2.8 "Recklessly" means that a person acts in such a manner that the individual consciously disregards a substantial and unjustifiable risk or grossly deviates from the standard of conduct that a reasonable individual would observe.

2.9 "Research misconduct" is defined as fabrication, falsification or plagiarism in proposing, conducting, reporting or reviewing sponsored or unsponsored research. The misconduct must have been committed intentionally, knowingly or recklessly. Research misconduct is further defined to include gross carelessness in conducting research amounting to wanton disregard of truth or objectivity, or failure to comply or at least attempt to comply with material and relevant aspects of valid statutory or regulatory requirements governing the research in question. Research misconduct is more than a simple instance of an error in judgment, a misinterpretation of experimental results, an oversight in attribution, a disagreement with recognized authorities, a failure in either inductive or deductive reasoning, an error in planning or carrying out experiments, or a calculation mistake.

2.10 "Respondent" means the person against whom an allegation of research misconduct is directed or the person who is the subject of the inquiry or investigation. There can be more than one respondent in any inquiry or investigation.

3. GENERAL PRINCIPLES

3.1 Research misconduct cannot be tolerated and will be firmly dealt with when found to exist.

3.2 For purposes of resolving allegations of research misconduct, the process established by this policy shall apply to allegations of fabrication, falsification or plagiarism. All other allegations of research misconduct shall be resolved utilizing other applicable University policies and procedures.

3.3 Charges of research misconduct shall be promptly reviewed and a copy of this policy shall be made available to the complainant. Allegations must be made in writing, and signed and dated by the complainant. If health or safety is involved, prompt remedial action shall be taken.

3.4 Every effort shall be made to protect the rights and the reputations of everyone involved, including the individual who in good faith alleges perceived misconduct as well as the alleged violator(s). A good faith allegation is made with the honest belief that research misconduct may have occurred. Persons making a good faith allegation shall be protected against retaliation. However, persons making allegations in bad faith will be subject to disciplinary action, up to and including termination or expulsion. An allegation is made in bad faith if the complainant knows that it is false or makes the allegation with reckless disregard for or willful ignorance of facts that would disprove it.

3.5 All members of the University community are expected to cooperate with committees conducting inquiries or investigations.

3.6 Confidentiality

Care will be exercised at all times to ensure confidentiality to the maximum extent possible and to protect the privacy of persons involved in the research under inquiry or investigation. The privacy of those who report misconduct in good faith will also be protected to the maximum extent possible. Files involved in an inquiry or investigation shall be kept secure and applicable state and federal law shall be followed regarding confidentiality of personnel records.

3.7 Conflict of Interest

If the Provost, the Vice Provost for Research, or Vice President for Health Sciences, as appropriate, has any actual or potential conflict of interest, the persons shall recuse themselves from the case. The President of the University shall appoint designates to act instead.

When a case continues to the Inquiry and Investigation stages (Sections 5.3 and 6.3), if the President of the Faculty Senate has any actual or potential conflict of interest, the person shall recuse him/herself from the case and the Senate President-Elect shall appoint a designate to act instead.

If any member of the Faculty Senate Operations Committee or the Chair of the Research Policy Committee has any actual or potential conflict of interest, the persons shall recuse themselves

from the case. The Faculty Senate President, or designate as appropriate, shall appoint faculty members to act instead.

4. PRELIMINARY ASSESSMENT OF ALLEGATIONS

4.1 An initial report of alleged research misconduct shall be treated and brought in a confidential manner to the attention of the faculty member or other person (e.g., chairperson, supervisor, director, principal investigator) responsible for the researcher(s) whose actions are in question, or to the dean of the researcher's college, or to the Vice Provost for Research (for allegations concerning a main campus researcher) or Vice President for Health Sciences (for allegations concerning a HSC researcher). The person receiving the initial report shall, in turn, make an immediate confidential report of the allegations to the Vice Provost for Research or Vice President for Health Sciences, as appropriate.

4.2 An initial report of research misconduct might arise as part of an administrative review. Such a report will be acted upon in accordance with this policy. The report should be brought confidentially to the Vice Provost for Research or Vice President for Health Sciences, as appropriate.

4.3 Upon receipt of an initial report of alleged research misconduct, the Vice Provost for Research or Vice President for Health Sciences, or designee, shall conduct a preliminary assessment within seven (7) working days. The purpose of the preliminary assessment is to determine whether the allegation falls within the definition of research misconduct and whether there is sufficient evidence to warrant an inquiry. If both conditions are met the inquiry process shall be initiated. If the allegation is vague, an effort should be made to obtain more information before deciding whether there is sufficient evidence to warrant an inquiry. If the preliminary assessment finds insufficient information to allow specific follow-up or the allegation falls outside the definition of research misconduct, the matter will not proceed to an inquiry, and the Vice Provost for Research or Vice President for Health Sciences shall so inform the respondent and complainant in writing. The allegation may be referred for review under another University policy, as appropriate.

5. INQUIRY

5.1 Purpose and Initiation

If the preliminary assessment reveals that the allegation falls within the definition of research misconduct and there is sufficient information to allow specific follow-up, the inquiry process shall be initiated by the Vice Provost for Research or Vice President for Health Sciences, as appropriate. The initiating official will clearly identify the original allegation and any related issues that should be evaluated in the inquiry. The purpose of the inquiry is to make a preliminary evaluation of the available evidence to determine whether there is sufficient credible evidence of possible research misconduct to warrant conducting an investigation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct occurred. The findings of the inquiry shall be set forth in an inquiry report.

Securing Research Records

After determining that an inquiry will occur, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, will direct the process whereby all original research records (or copies if originals cannot be located) and materials which may be relevant to the allegation are immediately secured. Prompt securing of records is in the best interests of both the respondent and UNM. Immediately upon ensuring that the research records are secure, the respondent shall be notified that an inquiry is being initiated and an inventory of the secured records shall be provided him/her. As soon as practicable, a copy of each sequestered record will be provided to the respondent, or to the individual from whom the record is taken if not the respondent, if requested. The respondent shall be notified of the charges and the procedures to be followed.

Inquiry Committee

The inquiry shall be carried out by a committee of three persons appointed by the Vice Provost for Research or Vice President for Health Sciences, as appropriate, in consultation with the President of the Faculty Senate, or his/her designate. At least two Inquiry Committee members shall be tenured faculty. One of the tenured faculty members shall chair the committee. Committee members should be selected on the basis of relevant research background and experience. Faculty members from other universities may be named to the Inquiry Committee if a sufficient number of qualified UNM faculty members are not available. Members of the committee shall have no actual or potential conflicts of interest in the case, shall be unbiased, and shall, together, possess sufficient expertise to enable the committee to conduct the inquiry.

The respondent and the complainant shall be notified of the proposed committee membership and may object in writing to any of the proposed appointees on the grounds that the person, or the committee as a whole, does not meet the criteria stated above. The Vice Provost for Research or Vice President for Health Sciences, as appropriate, in consultation with the President of the Faculty Senate, or his/her designate, will consider the objection and if it has merit, shall make appropriate substitution(s). In the case of disagreement regarding appointments, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, shall decide the challenge. That decision shall be final.

If the committee so requests, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, shall designate an official to assist the committee in conducting the inquiry. The committee shall receive a written charge from the Vice Provost for Research or Vice President for Health Sciences, as appropriate, defining the subject matter of its inquiry prior to beginning its work.

Inquiry Process

The respondent and complainant shall be given an opportunity to interview with the Inquiry Committee. The committee may interview others and examine relevant research records, as necessary, to determine whether there is sufficient credible evidence of possible research misconduct to warrant conducting an investigation. University legal counsel shall be available to the committee for consultation.

The length of the inquiry shall not exceed sixty (60) days unless prior written approval for a longer period is obtained from the Vice Provost for Research or Vice President for Health Sciences as appropriate. If the period is extended, the record of the inquiry shall include documentation of the reasons for exceeding the sixty-day period.

Inquiry Report

The Inquiry Committee shall prepare a report that includes:

(1) the names and titles of the committee members, and experts consulted, if any;
(2) the allegations;
(3) the PHS support, if any;
(4) a summary of the inquiry process;
(5) a summary of the evidence reviewed;
(6) a summary of any interviews;
(7) the conclusions of the inquiry as to whether an investigation is recommended; and
(8) whether any other action should be taken if an investigation is not recommended.

The respondent shall be given fourteen (14) days to review the report and to add his or her comments, which will become part of the final inquiry report and record. Based upon the respondent's comments, the Inquiry Committee may revise its report.

Inquiry Determination

The Inquiry Committee final report will be sent to the Vice Provost for Research or Vice President for Health Sciences, as appropriate, who will determine whether the results of the inquiry provide sufficient evidence of possible research misconduct to warrant conducting an investigation or whether the matter will not be pursued further. The respondent and complainant shall be notified in writing of the decision.

6. INVESTIGATION

6.1 Purpose and Initiation

The purpose of the investigation is to explore the allegations in detail, examine the evidence in depth, and determine specifically whether research misconduct has been committed, by whom, and to what extent. If instances of possible misconduct involving a different respondent are uncovered, the matter should be sent to the Vice Provost for Research or Vice President for Health Sciences, as appropriate, to initiate a preliminary assessment.

The Investigation Committee will be appointed and the process initiated within thirty (30) days after the conclusion of the inquiry. If required by sponsoring agency regulations, the office of the Vice Provost for Research or Vice President for Health Sciences, as appropriate, shall notify the agency of its decision to commence an investigation on or before the date the investigation begins.

Securing Research Records

Any additional pertinent research records that were not previously sequestered during the inquiry will be immediately sequestered when the decision is made to conduct an investigation. The Vice Provost for Research or Vice President for Health Sciences, as appropriate, will direct this process. This sequestration should occur before or at the time the respondent is notified that an investigation will begin. The need for additional sequestration of records may occur for any number of reasons, including a decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured. As soon as practicable, a copy of each sequestered record will be provided to the respondent, or to the individual from whom the record is taken if not the respondent, if requested.

6.3 Investigation Committee

The investigation shall be conducted by a committee of five persons appointed by the Faculty Senate Operations Committee, in consultation with the Chair of the Research Policy Committee or his/her designate. Committee members should be selected on the basis of relevant research background and experience. All persons appointed from UNM shall be tenured faculty. Tenured faculty members from other universities or senior researchers from research institutions may be named to the Investigation Committee if a sufficient number of qualified UNM faculty members are not available. Members of the committee shall have no actual or potential conflicts of interest in the case, shall be unbiased, and shall, together, possess sufficient expertise to enable the committee to conduct the investigation. No more than two members of the Inquiry Committee may be appointed to serve on the Investigation Committee.

The respondent and the complainant shall be notified of the proposed committee membership and may object in writing to any of the proposed appointees on the grounds that the person, or the committee as a whole, does not meet the criteria stated above. The Faculty Senate Operations Committee will consider the objection and if it has merit, shall make appropriate substitution(s), in consultation with the Chair of the Research Policy Committee or his/her designate. In the case of disagreement regarding appointments made by the Faculty Senate Operations Committee, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, shall decide the challenge. That decision shall be final.

If the committee so requests, the Vice Provost for Research or Vice President for Health Sciences shall designate an official to assist the committee in conducting the investigation. The committee shall receive a written charge from the Vice Provost for Research or Vice President for Health Sciences, as appropriate, defining the subject matter of its investigation prior to beginning its work.

6.4 Investigation Process

The investigation will normally involve examination of all relevant documentation. The committee shall make diligent efforts to interview the complainant, the respondent, and other individuals who might have information regarding aspects of the allegations. The interviews will

be recorded on a recording device provided by the office of the Vice Provost for Research or Vice President for Health Sciences as appropriate. A verbatim written record shall be made of all interviews. A transcript of his/her interview shall be provided to each witness for review and correction of errors, which shall be returned and become part of the investigatory file. University legal counsel shall be available to the committee for consultation.

6.5 Investigation Report

The Investigation Committee shall prepare a draft of the final report that includes:

(1) the names and titles of the committee members, and experts consulted, if any;
(2) the allegations;
(3) the PHS support, if any;
(4) a summary of the inquiry process;
(5) a summary of the evidence reviewed;
(6) a summary of any interviews;
(7) findings and basis for each finding;
(8) conclusion(s) as to whether research misconduct occurred; and
(9) recommendations for institutional action.

Copies of all significant documentary evidence that is referenced in the report should be appended to the report.

A finding of research misconduct requires that four conditions be met:

(1) the conduct at issue falls within this policy's definition of research misconduct;
(2) the misconduct be committed intentionally, or knowingly, or recklessly;
(3) there be a significant departure from accepted practices of the relevant research community; and
(4) the allegation be proven by a preponderance of the evidence. This means that the evidence shows that it is more likely than not that the respondent committed research misconduct.

The respondent will be provided with a copy of the draft investigation report for review and comment. The respondent will be allowed fourteen (14) days for review and any comments will be attached to the final report. The findings of the final report should take into account the respondent's comments in addition to all of the other evidence. The complainant may be provided with those portions of the draft investigation report that address the complainant's role and opinions in the investigation, and the complainant will have fourteen (14) days to review and submit any comments to the Investigation Committee. The report may be modified, as appropriate, based on the complainant's comments.

If the Investigation Committee puts forward a final report with a finding of research misconduct, the respondent has 14 days to elect a hearing before the Provost or Vice President for Health Sciences, as appropriate. The hearing will allow for argument, rebuttal, cross-examinations and a written record of the proceedings.

6.6 Institutional Review and Determination

The Investigation Committee final report will be forwarded to the Vice Provost for Research or Vice President for Health Sciences, as appropriate. The Vice Provost for Research will transmit the report to the Provost who is the University deciding official for cases where the respondent is not a Health Sciences Center employee. The Vice President for Health Sciences is the deciding official for cases where the respondent is a Health Sciences Center employee. The deciding official will make the final determination whether to accept the investigation report, its findings, and the recommended institutional actions.

If the respondent has elected a hearing, the deciding official will conduct the hearing following the University model hearing procedure, available from the University Counsel's office. The Investigation Committee presents the case consistent with its report. The respondent presents the rebuttal. The respondent may have an advisor present.

The deciding official's decision should be consistent with the definition of research misconduct, the University's policies, and the evidence reviewed and analyzed by the Investigation Committee. The deciding official may also return the report to the Investigation Committee with a request for further fact-finding or analysis. The deciding official's final determination will be sent to the respondent and complainant. If the deciding official's decision varies from that of the Investigation Committee, the basis for rendering a different decision will be explained in the report to ORI and other agencies as appropriate.

Respondent may appeal the final determination to the University President. An appeal is limited to: (1) a claim of procedural error; and/or (2) a claim that the sanction imposed as a result of a finding of research misconduct is inappropriate.

The investigation shall be completed within 180 days of the first meeting of the Investigation Committee. However, if PHS sponsored the research, the investigation shall be completed, with the final investigation report and final determination submitted to ORI, within 120 days of the first meeting of the Investigation Committee, unless ORI grants an extension.

7. ACTIONS FOLLOWING INVESTIGATION

7.1 Finding of Research Misconduct

If the final determination is that research misconduct occurred, UNM shall take appropriate action, which may include but is not limited to:

(1) notifying the sponsoring agency;
(2) withdrawal or correction of all pending or published abstracts and papers emanating from the research;
(3) removal of the responsible person from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, rank reduction or termination of employment in accordance with UNM policies and procedures. In cases involving faculty, implementation must be consistent with the Policy on Academic Freedom and Tenure;

(4) determining whether law enforcement agencies, professional societies, professional licensing boards, collaborators of the respondent, or other relevant parties should be notified; and
(5) any other steps deemed appropriate to accomplish justice and preserve the integrity of UNM and the credibility of the sponsor's program.

7.2 Restoration of Respondent's Reputation

If the final determination is that no research misconduct occurred, efforts shall be undertaken to the extent possible and appropriate to fully protect, restore, or maintain the credibility of the research project, research results, and the reputation of the respondent, the sponsor and others who were involved in the investigation or deleteriously affected thereby. Depending on the circumstances, consideration should be given to notifying those individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in forums in which the allegation of research misconduct was previously publicized, expunging all reference to the research misconduct allegation from the respondent's personnel files, or reviewing negative decisions related to tenure or advancement to candidacy that occurred during the investigation. Any institutional actions to restore the respondent's reputation must first be approved by the Vice Provost for Research or Vice President for Health Sciences, as appropriate.

7.3 Protection of the Complainant and Others

Regardless of whether UNM determines that research misconduct occurred, reasonable efforts will be undertaken to protect complainants who made allegations of scientific misconduct in good faith and others who cooperate in good faith with inquiries and investigations of such allegations. The Vice Provost for Research and Vice President for Health Sciences, or designee, will also take appropriate steps during the inquiry and investigation to prevent retaliation against the complainant. If a complainant believes that retaliation was threatened, attempted or occurred, he or she may file a complaint with the UNM Audit Department.

7.4 Allegations Made in Bad Faith

If relevant, the Vice Provost for Research or Vice President for Health Sciences will determine whether the complainant's allegation of research misconduct was made in good faith. If an allegation was made in bad faith, appropriate disciplinary action will be taken in accordance with UNM policies and procedures. If the complainant is not associated with UNM, appropriate organizations or authorities may be notified and administrative or legal action considered.

8. OTHER CONSIDERATIONS

8.1 Requirements for Reporting to ORI When Funding from PHS Is Involved

8.1.1 The decision to initiate an investigation must be reported in writing to the Director, ORI, on or before the date the investigation begins. The notification must include at a minimum the name of the person(s) against whom the allegations have been made, the general nature of the allegation, and the PHS application or grant number(s) involved.

8.1.2 If UNM plans to terminate an inquiry or investigation without completing all relevant requirements of the PHS regulation, a report of such planned termination shall be made to ORI, including a description of the reasons for the proposed termination.

8.1.3 If UNM determines that it will not be able to complete the investigation within 120 days, a written request for an extension shall be submitted to ORI that explains the delay, reports on the progress to date, estimates the date of completion and describes other necessary steps to be taken. If the request is granted, UNM must file periodic progress reports as requested by ORI.

8.1.4 UNM will keep ORI apprised of any developments during the course of an investigation that may affect current or potential Department of Health and Human Services funding for the individual(s) under investigation or that the PHS needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.

8.1.5 ORI shall be notified at any stage of the inquiry or investigation if any of the following conditions exist:

(1) there is an immediate health hazard involved;
(2) there is an immediate need to protect federal funds or equipment;
(3) there is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s)
who is the subject of the allegations as well as his/her co-investigators and associates, if any;
(4) it is probable that the alleged incident is going to be reported publicly;
(5) the allegation involves a public health sensitive issue (e.g. a clinical trial); or
(6) there is reasonable indication of possible criminal violation in which case UNM must inform ORI within 24 hours of obtaining that information.

8.2 Requirements for Reporting When NSF Funding Is Involved

8.2.1 The decision to initiate an investigation must be reported immediately in writing to NSF.

8.2.2 NSF shall be notified at any stage of the inquiry or investigation if any of the following conditions exist:

(1) public health or safety is at risk;
(2) NSF's resources, reputation, or other interests need protecting;
(3) there is reasonable indication of possible violations of civil or criminal law;
(4) research activities should be suspended;
(5) federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or
(6) the scientific community or the public should be informed.

8.2.3 NSF shall be provided with a copy of the final investigation report.

8.2.4 The inquiry shall be completed within 90 days and the investigation completed within 180 days of its initiation. If completion of an inquiry or investigation will be delayed, NSF shall be notified and may require submission of periodic status reports.

8.3 Interim Administrative Action

UNM officials will take interim administrative actions, as appropriate, to protect federal funds and insure that the purposes of the federal financial assistance are carried out.

8.4 Termination of UNM Employment

The termination of the respondent's UNM employment, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported, will not preclude or terminate the misconduct procedures. If the respondent refuses to participate in the process after termination of employment, the committee will use its best efforts to reach a conclusion concerning the allegations, noting in its report the respondent's failure to cooperate and its effect on the committee's review of all the evidence.

8.5 Record Retention

All documentation of an inquiry that does not lead to an investigation shall be maintained in University Counsel Office files for at least three (3) years after the conclusion of the inquiry. All documentation of an investigation shall be maintained in University Counsel Office files for five (5) years after the end of the investigation. Documentation shall be provided to the sponsoring agency and ORI upon request or if required by the agency's regulations. Documentation shall be treated as confidential personnel information to the extent provided for by law.

8.6 Reimbursement

If requested, the Board of Regents in the pursuit of justice and fairness may, in its sole discretion, fully or partially reimburse the respondent and/or the complainant for legal fees in cases of unusual hardship.

8.7 Federal Regulatory Changes

If PHS, ORI, NSF or any other federal agency amends its requirements on research misconduct, those amendments shall govern where applicable and shall be incorporated into this policy by reference herein. Such changes in federal requirements shall supersede all relevant portions of this policy.

8.8 Revision

The Faculty Senate is authorized to make minor technical and implementing modifications to the detailed Research Misconduct Policy subject to approval of the President of the University.

UNM HEALTH SCIENCES CENTER

HSC Supplement to UNM Faculty Handbook Policy E40: Research Misconduct

Title: HSC Supplement to UNM Faculty Handbook Policy E40: Research Misconduct		
Doc Type: Policy	**Policy #:** R.01.003.P	**Effective Date:** 7/1/2015
Owner(s) (Name and Title): Richard S. Larson, MD, PhD. Executive Vice Chancellor Vice Chancellor for Research	**Revision Date:**	**Applies To:** See applicability

PURPOSE

The University of New Mexico's current *Faculty Handbook Policy E40: Research Misconduct (FHB Policy E40)*, revised in 2002 and approved by the UNM Board of Regents on April 13, 2004, predates the issuance of the current Public Health Service (PHS) regulation (42CFR Part 93) dated June 16, 2005. *FHB Policy E40 (*Section 8.7) provides that any amendment to the Federal requirements in addressing research misconduct shall supersede the relevant portions of the UNM policy. UNM is committed to taking the appropriate steps to address the necessary updates to the *FHB Policy E40* to meet the requirements of the current PHS regulations. However, given the time involved in addressing updates and obtaining approval of a Faculty Handbook policy, UNM HSC has implemented this supplement to the *FHB Policy E40* to ensure UNM HSC compliance with the current PHS regulations. Although the UNM HSC remains governed by the University's policies, it has the authority to implement additional or more restrictive policies to meet the needs of its operations and all federal laws and regulations.

APPLICABILITY

FHB Policy E40, along with this supplement, are intended to carry out UNM HSC's responsibilities under the PHS regulations on Research Misconduct, 42 CFR Part 93. *FHB Policy E40* and this supplement apply to allegations of research misconduct (as defined in *FHB Policy E40*), or in reporting research results involving:

- any individual who, at the time of the alleged research misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with this institution; including, but not limited to, faculty, graduate/undergraduate students, staff, employees, contractors, visiting scholars, and any other member of the University's academic community and
- one or more of the following:

  (1) PHS supported or non-PHS supported biomedical or behavioral research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information, (2) applications or proposals for PHS support or non-PHS support for biomedical or behavioral research, research training or activities related to that research or research training, or (3) plagiarism of research records produced in the course of research, research training or activities related to that research or research training. This includes any research proposed, performed, reviewed, or reported, or any research record generated from that research, regardless of whether an application or proposal resulted in a grant, contract, cooperative agreement, or other form of support.

These policies and procedures do not apply to authorship or collaboration disputes and apply only to

allegations of research misconduct that occurred within six (6) 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).

POLICY STATEMENT

This UNM HSC supplemental policy addresses omissions or areas that require additional clarification in *FHB Policy E40* in order to meet the current PHS regulations at 42 CFR Part 93. Section numbers refer to sections of *FHB Policy E40. Only sections requiring modifications or additions are listed.*

1. INTRODUCTION AND SCOPE

- *Change title of section 1. From "INTRODUCTION AND SCOPE" to "INTRODUCTION"*
- *Eliminate last paragraph of section 1. INTRODUCTION AND SCOPE*
- *Address "scope" in new section titled APPLICABILITY (see below)*

2. APPLICABILITY *(new section)*

FHB Policy E40, along with this supplement, are intended to carry out UNM HSC's responsibilities under the PHS Policies on Research Misconduct, 42 CFR Part 93. *FHB Policy E40* and this supplement apply to allegations of research misconduct (as defined below),, or in reporting research results involving:

- any individual who, at the time of the alleged research misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with this institution; including, but not limited to, faculty, graduate/undergraduate students, staff, employees, contractors, visiting scholars, and any other member of the University's academic community and
- one or more of the following

  (1) PHS supported or non-PHS supported biomedical or behavioral research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information, (2) applications or proposals for PHS support or non-PHS support for biomedical or behavioral research, research training or activities related to that research or research training, or (3) plagiarism of research records produced in the course of research, research training or activities related to that research or research training. This includes any research proposed, performed, reviewed, or reported, or any research record generated from that research, regardless of whether an application or proposal resulted in a grant, contract, cooperative agreement, or other form of support.

These policies and procedures do not apply to authorship or collaboration disputes and apply 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).

3. GENERAL PRINCIPLES

- *Replace section 3.3 with the following revised language:*

  3.3 All faculty and staff will report observed, suspected, or apparent research misconduct in accordance with section 4.1 of this policy. Allegations may be made in writing, orally or anonymously and in all cases, must be sufficiently credible and specific. 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 Vice Chancellor for Research or HSC Research Integrity Officer (RIO) to discuss the suspected research misconduct informally, which may include discussing it anonymously and/or hypothetically. A copy of this policy shall be made available to the complainant.

- *Add the following provision to section 3:*

3. 8. The institution will respond to each research misconduct allegation in a thorough, competent, objective and fair manner.

3. 9. UNM HSC will ensure its deans, directors, chairs, and graduate advisors are reminded annually of the institution's policies and procedures on Research Misconduct including *FHB Policy E40* and this UNM HSC Supplement to *FHB Policy E40.* The HSC will also inform all faculty, students, and staff of (1) the need and importance of research integrity and (2) the importance of compliance with these policies and procedures.

4. PRELIMINARY ASSESSMENT OF ALLEGATIONS

- *Replace section 4.3 with the following revised language:*

4.3 Upon receiving an allegation of research misconduct, the Vice Chancellor for Research, or designee, shall conduct a preliminary assessment within seven (7) working days. The purpose of the preliminary assessment is to determine whether the allegation (1) is sufficiently credible and specific so that potential evidence of research misconduct may be identified, (2) whether the allegation falls within the definition of research misconduct and (3) whether it is within the jurisdictional criteria of this policy. An inquiry must be conducted if these criteria are met.

In conducting the preliminary assessment, the complainant, respondent, or other witnesses need not be interviewed and data need not be gathered beyond any that may have been submitted with the allegation, except as necessary to determine whether the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

5. INQUIRY

- *Replace section 5.2 with the following revised language:*

5.2 Securing Research Records:
Prompt securing of the research records is in the best interest of both the respondent and UNM HSC. After determining that an inquiry will occur, the Vice Chancellor for Research will direct a process to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence and sequester them in a secure manner, except that 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 are substantially equivalent to the evidentiary value of the instruments. Sequestration of research records must occur on or before the date on which the respondent is notified of the allegation.

6. INVESTIGATION

- *Replace first sentence of section 6.4 Investigation Process with the following:*

  The Investigation Committee will pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence or additional instances of possible research misconduct, and continue the investigation to completion.

- *Replace section 6.5 Investigation Report, paragraph 4 (beginning "The respondent will…") with the following revised language:*

  The respondent shall be given a copy of the draft investigation report for comment and, concurrently, a copy of, or supervised access to the evidence on which the report is based. The respondent will be allowed thirty (30) days from the date he/she received the draft report to submit comments. The respondent's comments must be included and considered in the final report. The complainant may be provided with those portions of the draft investigation report that address the complainant's role and opinions in the investigation, and the complainant will have thirty (30) days to submit any comments to the investigation committee. The report may be modified, as appropriate, based on the complainant's comments.

- *Replace 6.6 Institutional Review and Determination, paragraph 4 with the following revised language:*

  Respondents may appeal the final determination to the University President. An appeal is limited to: (1) a claim of procedural error; and/or (2) a claim that the sanction imposed as a result of a finding of research misconduct is inappropriate.

- *Replace 6.6 Institutional Review and Determination, paragraph 5 with the following revised language:*

  Except as to PHS funded research, the investigation shall be completed within 180 days of the first meeting of the Investigation Committee. However, for PHS sponsored research, unless an extension has been granted, the institution must submit the following to ORI within 120 days of the first meeting of the Investigation Committee: (1) a copy of the final investigation report with all 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.

8. OTHER CONSIDERATIONS

- *Replace section 8.1.5 with the following language:*

  ORI shall be notified immediately, at any time during a research misconduct proceeding, if there is any reason to believe that any of the following conditions exist:

  1. Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;

2. HHS resources or interests are threatened;
3. Research activities should be suspended;
4. There is a reasonable indication of possible violations of civil or criminal law;
5. Federal action is required to protect the interests of those involved in the research misconduct proceeding;
6. 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
7. The research community or public should be informed.

- *Replace section 8.5 Record Retention with the following language:*

  8.5 Record Retention:
  Records of the research misconduct proceeding will be maintained in a secure manner for 7 years after completion of any proceeding by the institution involving research misconduct allegation, or the completion of any ORI proceeding involving the allegation of research misconduct, whichever is later, unless custody of the records has been transferred to ORI or ORI has advised that the records no longer need to be retained. When it is determined that an investigation is not warranted, detailed documentation of the inquiry must be retained for at least 7 years after termination of the inquiry, so that ORI may assess the reasons why the institution decided not to conduct an investigation.

- *Change sub-heading of section 8.3 from "Interim Administrative Action" to "Administrative Action"*

- *Add the following provision to section 8.3:*

  UNM HSC Officials shall ensure that administrative actions taken by the institution and ORI are enforced and shall take appropriate action to notify other involved parties such as sponsors, law enforcement agencies, professional societies, and licensing boards, of those actions.

DEFINITIONS

See UNM Faculty Handbook Policy E40

REFERENCES

UNM Faculty Handbook Policy E40
PHS regulations at 42 CFR Part 93

RESPONSIBLITY

This supplemental policy applies to any individual who, at the time of the alleged research misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with the University of New Mexico Health Sciences Center (UNM HSC); including, but not limited to, faculty, graduate/undergraduate students, staff, employees, contractors, visiting scholars, and any other member of the UNM HSC.

UNM HEALTH SCIENCES CENTER

RESOURCES AND TRAINING

Resource/Department	Contact Information
Vice Chancellor for Research	Richard S. Larson, MD, PhD rlarson@salud.unm.edu 505-272-6950
Research Integrity Officer	Catherine Penick cpenick@salud.unm.edu 505-272-6950
Compliance Hotline and Online Reporting	HSC Compliance Hotline 1-888-899-6092. Anonymous online reporting EthicsPoint
Deans and Department Chairs	Consult UNM Directory

DOCUMENT APPROVAL & TRACKING

Item	Contact	Date	Approval
Owner	Richard S. Larson, MD, PhD, Vice Chancellor for Research		
Consultant(s)	[Name, Title]		
Recommender(s)			N/A
Committee(s)	Research Strategic Planning Committee		Yes
HSC Legal Office	Ariadna Vazquez, Esq. Associate University Counsel	July 9, 2015	Yes
Official Approver	Paul B. Roth, MD, MS Chancellor for Health Sciences CEO, UNM Health System Dean, School of Medicine		Yes
Official Approver Signature		Date: July 9, 2015	
2nd Approver			
2nd Approver Signature (Optional)		Date:	
Policy Origination Date: 7/9/2015			

ATTACHMENTS

UNM Faculty Handbook Policy E40

Point by Point Supplemental Policy Statements in response to ORI review of FHB Policy E40 dated December 2, 2014

This document addresses areas of the current *FHB Policy E40*, by section, that ORI identified as either partially addressed, not properly addressed, not addressed or needing clarification in order to meet the current PHS regulations at 42 CFR Part 93. UNM HSC's Supplement to UNM Faculty Handbook Policy E40: Research Misconduct, dated February 9, 2015, is derived from these statements and has been implemented to ensure UNM HSC compliance with the current PHS regulations.

APPLICABILITY

Comment 1:
FHB Policy E40 notes certain requirements for reporting to ORI when U.S. Public Health Service (PHS) funding is involved but does not reference the citation (42 CRF Part 93). (§93.302(a))

Comment 2:
The introduction section of *FHB Policy E40* notes that the policy applies to most, if not all, members of the University's academic community, but there are only general references to PHS funding, as required. (§93.214 and §93.102)

Comment 3:
FHB Policy E40 does not include or incorporate by reference the limitation to research misconduct occurring within six years of the date that HHS or the institution receives an allegation of research misconduct. (§93.105)

HSC E40 Supplement Policy Statement:

1. INTRODUCTION AND SCOPE

- *Change title of section 1. From "INTRODUCTION AND SCOPE" to "INTRODUCTION"*
- *Eliminate last paragraph of section 1. INTRODUCTION AND SCOPE*
- *Address "scope" in new section titled APPLICABILITY (see below)*

2. APPLICABILITY *(new section)*

FHB Policy E40, along with this supplement, are intended to carry out UNM HSC's responsibilities under the PHS regulations on Research Misconduct, 42 CFR Part 93. *FHB Policy E40* and this supplement apply to allegations of research misconduct (as defined in *FHB Policy E40*), or in reporting research results involving:

- any individual who, at the time of the alleged research misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with this institution; including, but not limited to, faculty, graduate/undergraduate students, staff, employees, contractors, visiting scholars, and any other member of the University's academic community and
- one or more of the following:

  (1) PHS supported or non-PHS supported biomedical or behavioral research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research

information, (2) applications or proposals for PHS support or non-PHS support for biomedical or behavioral research, research training or activities related to that research or research training, or (3) plagiarism of research records produced in the course of research, research training or activities related to that research or research training. This includes any research proposed, performed, reviewed, or reported, or any research record generated from that research, regardless of whether an application or proposal resulted in a grant, contract, cooperative agreement, or other form of support.

These policies and procedures do not apply to authorship or collaboration disputes and apply only to allegations of research misconduct that occurred within six (6) 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).

GENERAL PRINCIPLES

Comment 4:
Responding to each allegation of research misconduct in a thorough, competent, objective, and fair manner. (§93.300(b)) The E40 policy "generally meets" these criteria, but it is inferred rather than stated.

HSC E40 Supplement Policy Statement:
3. GENERAL PRINCIPLES

- *Add the following language:*

3.8. The institution will respond to each research misconduct allegation in a thorough, competent, objective and fair manner.

Comment 5:
FHB Policy E40 does not currently include information on how the institution informs its faculty and staff, beyond publication of the *FHB Policy E40*, of the policies and procedures related to allegations of research misconduct and the importance of compliance with those procedures. (§93.302(a)(2)(i))

HSC E40 Supplement Policy Statement:
3. GENERAL PRINCIPLES

- *Add the following language:*

3.9. UNM HSC will ensure its deans, directors, chairs, and graduate advisors are reminded annually of the institution's policies and procedures on Research Misconduct including *FHB Policy E40* and the UNM HSC Supplement to *FHB Policy E40.* The HSC will also inform all faculty, students, and staff of (1) the need and importance of research integrity and (2) the importance of compliance with these policies and procedures.

Comment 6:
Section 3.3 states that "allegations must be made in writing, and signed and dated by the complainant". The PHS regulation requires institutions initiate an inquiry into allegations of research misconduct if the allegations are "sufficiently credible and specific" without qualification. Anonymous and/or oral allegations that are credible and specific must be addressed. (§93.201)

HSC E40 Supplement Policy Statement:

3. GENERAL PRINCIPLES

- *Replace section 3.3 with the following revised language:*

3.3 All faculty and staff will report observed, suspected, or apparent research misconduct in accordance with section 4.1 of this policy. Allegations may be made in writing, orally or anonymously and in all cases, must be sufficiently credible and specific. 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 Vice Chancellor for Research or HSC Research Integrity Officer (RIO) to discuss the suspected research misconduct informally, which may include discussing it anonymously and/or hypothetically. A copy of this policy shall be made available to the complainant.

PRELIMINARY ASSESSMENT OF ALLEGATIONS

Comment 7:
The PHS regulations require that the policy provides for assessment of the allegation to determine if an inquiry is warranted because the allegation: (1) is within the definition of research misconduct in §93.103; (2) is an allegation to which the research misconduct regulation applies under §93.102; and (3) is sufficiently credible and specific so that potential evidence of research misconduct may be identified (§93.307(a))

HSC E40 Supplement Policy Statement:

4. PRELIMINARY ASSESSMENT OF ALLEGATIONS

- *Replace section 4.3 with the following revised language:*

4.3 Upon receiving an allegation of research misconduct, the Vice Chancellor for Research, or designee, shall conduct a preliminary assessment within seven (7) working days. The purpose of the preliminary assessment is to determine whether the allegation (1) is sufficiently credible and specific so that potential evidence of research misconduct may be identified, (2) whether the allegation falls within the definition of research misconduct and (3) whether it is within the jurisdictional criteria of this policy. An inquiry must be conducted if these criteria are met.

In conducting the preliminary assessment, the complainant, respondent, or other witnesses need not be interviewed and data need not be gathered beyond any that may have been submitted with the allegation, except as necessary to determine whether the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

INQUIRY

Comment 8:
On or before the respondent is notified of the research misconduct allegations, take all practical steps to sequester, inventory, and secure the research record and other relevant evidence (§93.305(a), §93.307(b), (§93.310(d)(2)), and after sequestration, allowing the respondent copies of , or reasonable, supervised access to the research records (§93.305(b))

HSC E40 Supplement Policy Statement:

5. INQUIRY

- *Replace section 5.2 with the following revised language:*

5.2 Securing Research Records:
Prompt securing of the research records is in the best interest of both the respondent and UNM HSC. After determining that an inquiry will occur, the Vice Chancellor for Research will direct a process to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence and sequester them in a secure manner, except that 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 are substantially equivalent to the evidentiary value of the instruments. Sequestration of research records must occur on or before the date on which the respondent is notified of the allegation.

INVESTIGATION

Comment 9:
Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence or additional instances of possible research misconduct, and continue the investigation to completion (§93.310(h))

HSC E40 Supplement Policy Statement:

6. INVESTIGATION

- *Replace first sentence of section 6.4 Investigation Process with the following:*

The Investigation Committee will pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence or additional instances of possible research misconduct, and continue the investigation to completion.

Comment 10:
Section 6.5 provides the respondent an opportunity to review and comment on the draft report, but there is no specific provision to provide access to the relevant evidence on which the report was based. (§93.312(a))

HSC E40 Supplement Policy Statement:

6. INVESTIGATION

- *Replace section 6.5 Investigation Report, paragraph 4 (beginning "The respondent will…") with the following revised language:*

The respondent shall be given a copy of the draft investigation report for comment and, concurrently, a copy of, or supervised access to the evidence on which the report is based. The respondent will be allowed thirty (30) days from the date he/she received the draft report to submit comments. The respondent's comments must be included and considered in the final report. The complainant may be provided with those portions of the draft investigation report that address the complainant's role and opinions in the investigation, and the complainant will have thirty (30) days to submit any comments to the investigation committee. The report may be modified, as appropriate, based on the complainant's comments.

Comment 11:

The appeal process identified in FHB *Policy E40, section 6.6 is limited to claims of procedural error, or a claim that the sanctions imposed as a result of a finding of research misconduct were inappropriate. If an institution's procedures provide for an appeal by the respondent that could result in the reversal of the findings of research misconduct in the investigation report, the institution must complete any such appeal within 120 days of the appeal's filing. Appeals from personnel or similar actions that would not result in a reversal or modification of the findings of research misconduct are excluded from the 120-day limit.*

HSC E40 Supplement Policy Statement:

6. INVESTIGATION

- *Replace 6.6 Institutional Review and Determination, paragraph 4 with the following revised language:*

Respondents may appeal the final determination to the University President. An appeal is limited to: (1) a claim of procedural error; and/or (2) a claim that the sanction imposed as a result of a finding of research misconduct is inappropriate.

Comment 12:

At the completion of the investigation process, provide ORI with the investigation report (including the report, all attachments, and any appeal), the final institutional actions (that is, was there research misconduct, and if so, who was responsible), the institutional findings (the institution's acceptance of the investigation's findings) and any administrative actions against the respondent (§93.315) while ORI considers this provision "generally met" there are omissions of details outlined in the PHS regulations.

HSC E40 Supplement Policy Statement:

6. INVESTIGATION

- *Replace 6.6 Institutional Review and Determination, paragraph 5 with the following revised language:*

Except as to PHS funded research, the investigation shall be completed within 180 days of the first meeting of the Investigation Committee. However, for PHS sponsored research, unless an extension has been granted, the institution must submit the following to ORI within 120 days of the first meeting of the Investigation Committee: (1) a copy of the final investigation report with all 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.

OTHER CONSIDERATIONS

Comment 13:
Notify ORI immediately if the health and safety of the public is at risk, if HHS resources or interests are threatened, if research activities should be suspended, if federal action is required to protect the research misconduct proceedings, if the alleged incident might be publically reported, or if the research community or public should be informed (§93.318). If a reasonable indication of possible criminal violations is found, ORI must be notified immediately (§93.318(d))

HSC E40 Supplement Policy Statement:
8. OTHER CONSIDERATIONS

- *Replace section 8.1.5 with the following language:*

ORI shall be notified immediately, at any time during a research misconduct proceeding, if there is any reason to believe that any of the following conditions exist:

1. Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;
2. HHS resources or interests are threatened;
3. Research activities should be suspended;
4. There is a reasonable indication of possible violations of civil or criminal law;
5. Federal action is required to protect the interests of those involved in the research misconduct proceeding;
6. 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
7. The research community or public should be informed

Comment 14:
Section 8.5 Record Retention, does not meet current PHS requirements for record retention) (§93.317(b) and§93.309(d))

Comment 15:
Provide for documentation in inquiries in sufficient detail to permit a later assessment by ORI of the reasons why the institution decided not to conduct an investigation (§93.309(c))

HSC E40 Supplement Policy Statement:

8. OTHER CONSIDERATIONS

- *Replace section 8.5 Record Retention with the following language:*

8.5 Record Retention:
Records of the research misconduct proceeding will be maintained in a secure manner for 7 years after completion of any proceeding by the institution involving research misconduct allegation, or the completion of any ORI proceeding involving the allegation of research misconduct, whichever is later, unless custody of the records has been transferred to ORI or ORI has advised that the records no longer need to be retained. When it is determined that an investigation is not warranted, detailed documentation of the inquiry must be retained for at least 7 years after termination of the inquiry, so that ORI may assess the reasons why the institution decided not to conduct an investigation.

Comment:

Assist in administering and enforcing any HHS administrative actions imposed on its institutional members; (§93.300(h))

HSC E40 Supplement Policy Statement:

8. OTHER CONSIDERATIONS

- *Change sub-heading of section 8.3 from "Interim Administrative Action" to "Administrative Action"*
- *Add the following provision to section 8.3:*

UNM HSC Officials shall ensure that administrative actions taken by the institution and ORI are enforced and shall take appropriate action to notify other involved parties such as sponsors, law enforcement agencies, professional societies, and licensing boards, of those actions.

UNM HEALTH SCIENCES CENTER

OFFICE OF RESEARCH

March 3, 2015

VIA OVERNIGHT DELIVERY AND VIA E-MAIL

Donald Wright, M.D., M.P.H.
Acting Director
Office of Research Integrity
1101 Wootton Parkway, Suite 750
Rockville, MD 20852

RE: Response to: ORI letters dated December 30, 2014 and January 8, 2015 and related to ORI 2014-11

Dear Dr. Wright,

The undersigned are the Vice Chancellor for Research and Research Integrity Officer for the University of New Mexico Health Sciences Center (UNMHSC). We are writing in response to your letters dated December 30, 2014 and January 8, 2015, regarding the compliance review of our UNM Misconduct Policy (included in the UNM Faculty Handbook as *E40: Research Misconduct)* conducted by the Office of Research Integrity (ORI) during the course of the Division of Investigative Oversight's (DIO) oversight review of misconduct investigation ORI 2014-11.

The University of New Mexico is committed to complying with its regulatory obligations related to research integrity as enunciated by the requirements of the U.S. Public Health Service (PHS) regulation (42 CFR Part 93). As you are aware, in carrying out our responsibilities in relation to the research misconduct case ORI 2014-11, our institution participated in a joint investigation, led by the University of Kansas Medical Center via involvement of our Sr. Associate Dean for Research. We are disappointed when our policies, procedures or practices are not perceived to live up to the expectations of a regulatory authority with jurisdiction to oversee and regulate our operations. As such, the University of New Mexico takes very seriously the ORI's findings of unsatisfactory processes during the course of its compliance review, and we are fully committed to understanding, promptly and aggressively correcting, and working hard to prevent the recurrence of any regulatory deficiencies identified during this review. In addition, we fully acknowledge that our current Research Misconduct policy dated April 13, 2004, predates the issuance of the current PHS regulation at 42 CFR Part 93 on June 16, 2005.

With that in mind, please let this letter serve as our written response to your letters dated December 30, 2014 and January 8, 2015.

ORI letter dated December 30, 2014

Based on ORI's conclusions as to lack of original research records at either institution, the lack of appropriate forensic analysis, and the lack of sufficient interviews or other processes to determine the respondent's culpability the following corrective actions were recommended:

1. **The requirements for the collection, storage, and management of research records are detailed in the KUMC institutional policies. (A similar policy for UNMHSC was not found.) Institutional officials should assess the current practices of data management, and based on this assessment, officials should develop a strategy to address any weaknesses in the collection, storage, and management of research records.**

Response:

Corrective Action:

A formalized policy has been developed to address the collection, storage and management of research records. (See Attachment 1 - *HSC-R801 PR.1 Research Data and Materials Retention Policy)*

***Preventative Action*:**

This policy has been reviewed with and assessed by key leadership, including deans and department chairs, each of whom will be responsible for dissemination and implementation of the policy. It is also posted on the HSC Office of Research web page at http://hsc.unm.edu/research/

Completion Dates:

Complete.

2. **Institutional officials should develop a protocol for the forensic analysis of computer hard drives, as well as other electronic storage devices, to properly test and otherwise examine this media to insure that all recoverable data and other relevant evidence are properly retrieved.**

Response:

Corrective Action:

A policy addressing digital storage, search and seizure of computers, hard drives, and other digital storage devices has been finalized. (See Attachment 2–*HSC-200 SOP.1- Digital Storage Search and Seizure*)

***Preventative Action*:**

This policy has been reviewed with key leadership, including deans and department chairs, each of whom will be responsible for dissemination and implementation of the policy. It is also posted on the HSC Office of Research web page at http://hsc.unm.edu/research/

Completion Dates:

Complete.

ORI letter dated January 8, 2015

In comparing the provisions of the UNM policy document with the requirements of the U.S. Public Health Service (PHS) regulation (42CFR Part 93), ORI's compliance review found a limited number of omissions and sections requiring revision or clarification. A report was enclosed with further information. ORI notes that while the effective date of this policy predates the issuance of the current PHS regulation (42 CFR Part 93) on June 16, 2005, many of the provisions within the UNM policy already incorporate the updated requirements of the revised Federal regulation.

ORI requested that we develop a plan and timetable to make the necessary changes to the UNM misconduct policy to bring it into compliance with all of the requirements of the current PHS regulations and your institutional assurance as to those changes.

Response:

Preliminary Statement:

As ORI has acknowledged in its letter dated January 8, 2015, "making changes to institutional policy documents can be timely and involves multiple layers of approval". In accordance with UNM *Faculty Handbook Policy A53: Development and Approval of Faculty Policies*, changes to existing faculty handbook policies must be submitted to the Office of the University Secretary, who will forward it to the Faculty Senate Research Policy Committee for consideration and appropriate action. The policy also requires that changes to UNM faculty policies be posted on the Faculty Handbook website for review and comment by UNM faculty members. Once comments are addressed the final proposed draft policy is sent to the Faculty Senate for approval. The proposed policy may also require approval by University faculty, the UNM Board of Regents, and/or the UNM President and/or Provost or the Chancellor for Health Sciences.

A Board of Directors, designated by the UNM Board of Regents, oversees and governs the operations and affairs of the UNMHSC and the UNM Health System. This includes clinical, operational, financial, research, and educational affairs. The UNMHSC has a separate Office of Research from the UNM main campus with a separate Research Integrity program and staff. Although the UNMHSC is still governed by the University's policies, it has the authority to implement additional or more restrictive policies to meet the needs of its operations.

UNM HSC is committed to taking the appropriate steps to address the necessary updates to the *Faculty Handbook Policy E40: Research Misconduct.* However, given the time involved in addressing a Faculty Handbook policy, *we* are taking the following additional corrective actions.

Corrective Action:

1. UNMHSC will create a UNMHSC policy addendum to the current *UNM Faculty Handbook Policy E40: Research Misconduct*, ensuring alignment with the current PHS regulations (42 CFR Part 93) and paying particular attention to those items detailed in ORI's report dated December 2, 2014.

2. In compliance with UNM policy and as stated above, UNM HSC will submit proposed changes to the *Faculty Handbook Policy E40: Research Misconduct* to the University Secretary who will forward it to the Faculty Senate Research Policy Committee for further review and approval.

***Preventative Action*:**

Until the UNMHSC addendum is approved, UNMHSC understands that the Federal requirements in addressing research misconduct (42 CFR 46) supersede the UNM policy and shall conduct research misconduct procedures for responding to allegations of research misconduct accordingly.

Completion Dates:

1. The *UNM HSC Research Misconduct Policy Addendum* will be completed by June 1, 2015 and we anticipate approvals to be obtained by **July 1, 2015.**
2. UNM HSC will submit proposed changes to the *Faculty Handbook Policy E40: Research Misconduct* to the University Secretary by **September 1, 2015,** corresponding to the next academic year**.**

* * *

As stated previously, the University of New Mexico and its Health Sciences Center is fully committed to complying with its regulatory obligations relative to research integrity as set forth in the PHS regulations. We trust and hope that you will find this written response to your letters dated December 30, 2015 and January 8, 2015 to be satisfactory and acceptable, and to evidence our commitment to ongoing quality improvement of our research integrity program.

Thank you for your thoughtful consideration of these matters. Should you have any questions concerning our response, please contact either of us at (505) 272-6950.

Very truly yours,

Richard S. Larson, MD, PhD
Executive Vice Chancellor
Vice Chancellor for Research

Catherine Penick
Executive Research Operations Officer
Research Integrity Officer

UNM HEALTH SCIENCES CENTER

Digital Storage Search And Seizure

Title: Digital Storage Search And Seizure		Applicable Policy: HSC-200 Security and Mgmt of HSC IT Resources
Doc Type: Procedure	Procedure #: HSC-200 SOP.1	Effective Date:
Process Owner (Name and Title): HSC CIO	Revision Date:	Applies To: HSC Workforce

PURPOSE/DESCRIPTION/OVERVIEW

A search and seizure of computers, hard drives, and other digital storage devices may only be executed by the Executive Vice Chancellor or his/her designee if, in assessing the circumstances presented and exercising practical judgment and common sense, he/she decides that there is a fair probability that evidence might be destroyed or is being used in an unauthorized manner.

An Emergency Situation Exception may be applied to searches that must be conducted immediately, and may be used in situations where any delay would result in the destruction or removal of evidence.

PROCEDURE

Each search and seizure action is to be carried out in alignment with the principle and standards defined below. A written report will be produced by the lead investigator detailing how the actions taken align to these principles and standards. Any conclusions in the final report must be based on evidence gathered in alignment with the principles and standards outline below.

Notification of Seizure

Except where the owner or consignee is personally notified or seizure is made pursuant to a search warrant, the HSC shall, as soon as practicable following the seizure or other receipt of seized property, provide notification of seizure through a verifiable process, to the owner or consignee, if known or easily ascertainable. Such notification shall describe the seized property, and shall state the time, place, and reason for the seizure.

Seizure Principles:

1. When dealing with digital evidence, all general forensic and procedural principles must be applied.
2. Upon seizing digital evidence, actions taken should not change or modify the evidence.
3. When it is necessary for a person to access original digital evidence, that person should be trained for the purpose.
4. All activities relating to the seizure, access, storage or transfer of digital evidence must be fully documented, preserved and available for review.
5. An individual is responsible for all actions taken with respect to digital evidence while the digital evidence is in their possession.
6. Any individual or agency which is responsible for seizing, accessing, storing or transferring digital evidence is responsible for compliance with these principles.

General Evidence Dos & Don'ts

1. Minimize Handling/Corruption of Original Data
2. Account for Any Changes and Keep Detailed Logs of Actions
3. Comply with the Five Rules of Evidence (Admissible, Authentic, Complete, Reliable, Believable)

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4. Do Not Exceed Your Knowledge
5. Follow Local Security Policy and Obtain Written Permission
6. Capture as Accurate an Image of the System as Possible
7. Be Prepared to Testify
8. Ensure Your Actions are Repeatable
9. Work Quickly
10. Proceed from Volatile to Persistent Evidence
11. Do Not Run Any Programs on the Affected System
12. Ensure that Complete and Accurate Documentation is of the Highest Priority

Electronic Evidence May Include the Following:

- System (computers and peripherals functioning together)
- Stand-alone computers
- Laptops
- Cell phones
- Media
- Hard drives
- Diskettes
- USB Storage devices
- Memory cards
- Other similar devices

Step 1: Preparing for the Search & Seizure

- Ensure that all written authorizations are in order
- Responders should determine:
    - The type of case (e.g., misconduct, ePHI safety, child porn, IP theft, etc.)
    - The type of computer(s) involved;
    - The operating system(s) used; and
    - The level of technical savvy of the end user.
- A Primary Evidence (PE) person should be appointed. The PE is responsible for preparing a detailed plan for documenting, preserving, and maintaining the integrity of all seized evidence (digital and paper).

Step 2: Securing and Evaluating the Scene

- Control the scene
    - Limit access to only authorized persons
    - Record the names of all individuals present during the search
    - Obtain signatures from department and/or police representative
- Confirm when the system was last accessed
- Establish a chronology of access to the media
- Photograph or video tape the entire scene including the contents on the monitor

Step 3: Securing the System

- If the system is "On" do not perform a controlled shut down. Pull the power cable! (Unless a memory dump is required, i.e., encryption keys need to be retrieved.)
- If the computer is "Off" do not turn it on.

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- Disconnect all remote access to the system (e.g., Network cables, USB cables, etc.). Tag and label all cables and connectors.
- Physically examine the system (i.e., remove covers and photograph).
- Document models and serial numbers of the system and its components.
- Inventory all peripherals (e.g., USB devices, printers, scanners, WAPs, fax machines, etc.).
- Search scene for secondary storage media (USB drives, devices, diskettes, tapes, etc.)
- Make detailed notes and complete the attached Chain of Custody form.

Step 4: Processing

In compliance with the principle and standards above the HSC will uses forensic equipment to document the steps above and the details of the analysis used in the course of gathering evidence. To aid in these efforts the HSC maintains forensic equipment that is capable of the following:

Generate forensic results that are court-cited for a digital investigations platform. Quick, stable and with ease of use features. Performs comprehensive processing and indexing of all data (in allocated and slack space) stored on the target media. Built-in methods to review data and identify relevant evidence (visualization and explicit image detection technology may be included) to quickly discern and report the most relevant material to the investigation. Correlation of data sets from different sources, such as, computer hard-drives, mobile devices, network data, internet storage, etc. is possible if needed. (As of Jan. 2015 the AccessData FTK Ver. 5.6 is in use)
*Note: Other technical and non-technical methods may be used to gather evidence if authorized by the lead investigator.

Search and seizure actions are to be carried out by authorized UNMHSC/UNMH staff acting on written authorization and working in accordance with the forensic principles defined above. The determination of what data is relevant, what devices will be searched and what will be reported rests with the authorized investigator assigned to the case.
Forensic equipment maintained by the HSC Information Security Office (or other professionally contracted equipment) may be used to manage and process search and seizure actions. These actions may include, but are not limited to, forensic copies, advanced searching, secure storage of devices, and management of any advanced or third party analysis. The HSC procedures for use of the HSC ISO forensic equipment are to be carried out and overseen by the HSC ISO, unless an otherwise authorized and approved authority intervenes.

DEFINITIONS

Emergency Situation Exception: A person who possesses common authority or has frequent access over the premises; e.g., co-worker, janitor, etc. can authorize a consent to search within limits (NOT the whole office or any computers). Many departments require signing a consent form. Silence, simple nodding of the head, or waving through an open door is NOT consent. Agents should be especially careful about relying on consent as the basis for a search of a computer when they obtain consent for one reason but then wish to conduct a search for another reason.

SEIZURE: By definition is the deprivation of enjoyment to exercise dominion or control over a thing. Management may temporarily seize university property and hold it indefinitely if it is material to an ongoing investigation.

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REFERENCES
HHS, IRB, HRRC, HIPAA

AREAS OF RESPONSIBLITY
Executive Vice Chancellor: Authorization
HSC Chief Information Officer: Procedures
HSC Information Security Officer: Security Oversight

RESOURCES AND TRAINING

Resource/Department	Contact Information
HSC Information Security Office	HSC-ISO@salud.unm.edu 272-1696

SUMMARY OF CHANGES
New Procedure

DOCUMENT APPROVAL & TRACKING

Item	Contact	Date	Approval
Owner	HSC Chief Information Security Officer HSC Information Security Officer		
Consultant(s)	[Name, Title]		
Recommender(s)			[Y or N/A]
Committee(s)	IRB, HSC IT Security Council		[Y or N/A]
HSC Legal Office			[Y or N/A]
Official Approver	Executive Vice Chancellor for Health Sciences Center		Yes
Official Approver Signature		Date: 3/2/2015	
2nd Approver			
2nd Approver Signature (Optional)		Date:	
Policy Origination Date:			

ATTACHMENTS
Appendix A: Chain of Custody Form Attached Below

Computer Evidence Chain of Custody

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Item Number(s): ______________________

Case: ______________________

To be completed by initial collector:

Evidence collected by (name): ______________________

Date/Time collected: ______________________

Evidence description:

____

____

Describe Collection method (include operating system, utility, commands, arguments, etc):

____

____

What application software/utility is required to view the file?:

____

____

Where is evidence initially stored?: ______________________

How is evidence initially secured?: ______________________

Collector signature: ______________________ Date: ____________

Copy History:

Date	Copied By	Copy Method	Disposition of original and all copies

Transfer History:

Transferred from (print name, sign & date): ______________________

Transferred to (print name, sign & date): ______________________

Where is evidence now stored?: ______________________

How is evidence now secured?: ______________________

Transferred from (print name, sign & date): ______________________

Transferred to (print name, sign & date): ______________________

Where is evidence now stored?: ______________________

How is evidence now secured?: ______________________

Transferred from (print name, sign & date): ______________________

Transferred to (print name, sign & date): ______________________

Where is evidence now stored?: ______________________

How is evidence now secured?: ______________________

Transferred from (print name, sign & date): ______________________

Transferred to (print name, sign & date): ______________________

Where is evidence now stored?: ______________________

How is evidence now secured?: ______________________

Transferred from (print name, sign & date): ______________________

Transferred to (print name, sign & date): ______________________

Where is evidence now stored?: ______________________

How is evidence now secured?: ______________________

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Research Data and Materials Retention Policy

Title: Research Data and Materials Retention Policy		
Doc Type: Policy-Procedure	**Policy-Procedure #:HSC-**R-801 PR.1	**Effective Date:** 02/18/2015
Owner(s) (Name and Title): Vice Chancellor for Research	**Revision Date:**	**Applies To:** All UNM Health Sciences Center components, as applicable.

DESCRIPTION/OVERVIEW

The University of New Mexico Health Sciences Center ("UNMHSC") has both rights and responsibilities toward scientific data generated by research on its campus.

This policy serves to:

1) ensure that Research Data and Materials are properly protected, archived, retained and available for review under the appropriate circumstances;
2) ensure compliance with local, state, and federal laws and regulations;
3) support matters of scientific integrity, human subjects, and animal use;
4) satisfy contractual obligations and sponsored project agreement requirements;
5) assure appropriate use of recombinant DNA, etiologic agents, radioactive materials, etc.; and
6) provide an overarching umbrella approach to research data and records management across UNMHSC since other division policies also exist and apply.

Additionally, the objective of this policy is to complement, and not supercede or conflict, other policies or Standard Operating Procedures ("SOP") of UNMHSC regarding records retention.

APPLICABILITY

This policy shall apply to all UNMHSC faculty, staff, postdoctoral fellows, students, and any other persons, including consultants, involved in the design, conduct or reporting of research performed at or under the auspices of UNMHSC, including all research projects on which those individuals work, regardless of funding source for the project.

DEFINITIONS

HRRC: Human Research Review Committee(s), which serve as the Institutional Review Board(s) relative to human subjects research conducted at or through the UNMHSC.

Human Subjects: a living individual whom an investigator (whether professional or student) conducting research obtains 1) data through intervention or interaction with the individual; or 2) identifiable private information.

IACUC: Institutional Animal Care and Use Committee

Principal Investigator: The individual who bears primary responsibility for technical, programmatic, fiscal, and administrative requirements of the project.

Research Data and Materials: Information recorded in physical form, regardless of form, or the media on which it may be recorded. For the purposes of this policy, Research Data and Materials is further defined as including any record that would be used for the reconstruction and evaluation of reported or otherwise published results. Research Data and Materials also include, but are not limited to: unmodified biological specimens, documentation of informed consent, original biological and environmental samples, equipment, laboratory notebooks, notes of any type, photographs, films, digital images, protocols,

numbers, graphs, charts, numerical raw experimental results, samples of chemicals and materials synthesized during research, vouchers, specimens, computer files, electronic data, electronically stored information, instrumental outputs from which Research Data and Materials can be derived and other deliverables under sponsored agreements.

Sponsor: Individual, company, institution, or organization taking responsibility for initiation, management, and financing of study.

POLICY

Retention Periods

Unless a different retention period is specified by the law, UNMHSC policy, UNMHSC SOP, sponsor, funding source, regulation, memorandum of understanding, agreement, or written exception by the Vice Chancellor for Research, the following retention periods shall be observed after the submission of the final report and close-out procedures on the research project for which the Research Data and Materials were prepared:

- Research Data and Materials are to be retained by UNMHSC for a period of at a minimum three (3) years. 45 CFR 46.115(b)
- Research Data and Materials involving Human Subjects are to be retained by UNMHSC for a period that is the greater of: (a) the retention period required by the sponsor in respect of a sponsored research project (as set forth in the definitive Clinical Trial Agreement with the sponsor), or (b) if no such agreement exists, then seven (7) years from and after the closure of the study in question.
- For Research Data and Materials involving Protected Health Information ("PHI"), the Principal Investigator must retain the signed consent forms that contain the permission to use the PHI for six (6) years beyond the expiration date of the authorization (i.e. the consent form or authorization). 45 CFR § 164.105
- Research Data and Materials involving minors aged eighteen (18) years of age and younger are to be retained by UNMHSC until the minor reaches the age of 22. NMAC 1.15.8.101.D(2)
- Research Data and Materials involving the research of drugs, devices, or biologics being tested in humans for FDA approval shall retain records for "a period of 2 years following the date a marketing application is approved for the drug for the indication for which it is being investigated; or, if no application is to be filed or if the application is not approved for such indication, until 2 years after the investigation is discontinued and FDA is notified." 21 CFR § 312.62.c
- If there are two or more overlapping retention periods, then the applicable retention period is the longer (or longest) length of time between the two or more overlapping periods.

Responsibility

The collection, management, retention, and maintenance of the original Research Data and Materials in accordance with this policy and other applicable UNMHSC SOP shall be the responsibility of the Principal Investigator on behalf of UNM.

Ownership of Research Data

UNMHSC compensates researchers and allows students to produce work. Accordingly, UNMHSC owns all the Research Data and Materials generated by research projects conducted at or under the auspices of UNMHSC regardless of funding source, unless specific terms of sponsorships or other agreements

supersede these rights.

All researchers and students, including the Principal Investigator, may not copy, remove, or destroy data without explicit written permission from the Vice Chancellor of Research.

PROCEDURES

The following apply unless an explicit written exception to do otherwise has been given by the Vice Chancellor for Research.

Retention of Research Data and Materials.

- The Principal Investigator should adopt an organized system for Research Data and Materials retention and ensure compliance by all of his/her direct reports.
- The Principal Investigator is also responsible for providing responses to questions about accuracy, authenticity, primacy, and compliance with laws and regulations governing the conduct of research, and permit for a retrospective audit if necessary. He or she should also consult with UNMHSC officials regarding the development of any contingency plans.
- Research Data and Materials shall be maintained in the department or division in which they were produced; if they are in a shared, network-based electronic file, then access shall be limited to authorized personnel.
- Research Data and Materials must be retained on UNMHSC campus, campus affiliate, or an appropriate UNM-approved storage facility.
- In order to support the credibility of UNM's rights and ability to meet obligations related to the Research Data and Materials, should any revisions to the final Research Data and Materials be contemplated, the Principal Investigator must notify the appropriate offices at UNMHSC and the originator of the information.
- When research results in an invention assigned to UNMHSC, and made available for commercialization through STC.UNM, the original research lab log book that verifies the original discovery must be forwarded and stored with that respective department. The Principal Investigator may take a copy of the research lab log book with the approval of the Vice Chancellor for Research. This archive becomes the responsibility of that respective department.

Transfer of Research Data and Materials

- UNMHSC must retain all original Research Data and Materials. Any patient/subject records will require appropriate patient/subject authorization for use and disclosure to another entity.
- Before transferring the grant and a copy of the Research Data and Materials, the Principal Investigator must ensure that any special conditions stated in the grant, contract, or agreement are met.
- If a grant is being transferred to another institution with the Principal Investigator, then the Principal Investigator is responsible for leaving the original of all Research Data and Materials with UNM.
- The department is responsible for archiving the Research Data and Materials for at least six (6) years following the transfer of the Principal Investigator or the term of the grant or agreement, whichever is longer.
- Prior to the removal of any tangible research from UNMHSC, the recipient/institution must execute a Material Transfer Agreement with UNM.

Access to Research Data and Materials

- The Principal Investigator will have access to the Research Data and Materials generated by the project. Any other faculty, staff, student, or person involved in the creation of the Research Data and Materials may have the right to review that portion that he or she created.

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- UNMHSC will have access to the Research Data and Materials as necessary for technology transfer, compliance, and for any other purposes.
- UNMHSC will have the option to take custody of the Research Data and Materials, as determined by the Vice Chancellor for Research (or designee), but such shall not be invoked without cause and subsequent notification of the Principal Investigator.
- The Research Data and Materials shall be available to designated governmental officials or to a research sponsor, where such access is appropriate.
- Any disputes regarding requests for original Research Data and Materials, copies, or transfer of this data will be resolved by the Vice Chancellor for Research (or designee).

Destruction of Research Data and Materials

- Research Data and Materials must not be destroyed without prior approval of the Vice Chancellor for Research.
- Prior to any Research Data and Materials destruction, the following information shall be recorded in a log within that department or division: Principal Investigator name, protocol identifiers such as funding source or sponsor (when applicable), protocol number, HSC/IACUC or committee identifier, date of destruction, person destroying the documents, and a summary of the documents shredded.
- If the study is an industry-sponsored study, prior to destroying the documents or disposal of materials, the sponsor will be contacted and written permission obtained to destroy the documents.
- When the Research Data and Materials have met the applicable retention periods and all necessary information have been recorded, the destruction shall be as follows: the paper documents will be shredded, and the records stored on a computer hard drive should be erased using commercial software applications designed to remove all data from the storage device.

REFERENCES

- UNM Health Sciences Center Records Management, Retention, and Disposal Policy
- 21 CFR § 812.140
- 21 CFR § 56.11.5
- 21 CFR § 312.62
- 38 CFR § 16.115(b)
- 45 CFR § 46
- 45 CFR § 164.105
- NMAC 1.15.8.101.D(2)

DOCUMENT APPROVAL & TRACKING

Item	Contact	Date	Approval
Owner	UNM Health Sciences Center – Office of Research		
Consultant(s)			
Recommender(s)			[Y or N/A]
Committee(s)	Research Strategic Planning Committee		[Y or N/A]
HSC Legal Office	Rosalyn D. Nguyen, Esq., Associate University Counsel		[Y or N/A]
Official Approver	Richard S. Larson, MD, PhD, Executive Vice Chancellor, Vice Chancellor for Research		Yes

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Item	Contact	Date	Approval
Official Approver Signature		Date:	2/18/2015
2nd Approver			
2nd Approver Signature (Optional)		Date:	
Policy Origination Date:			

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Assistant Secretary for Health
Office of Research Integrity
1101 Wootton Parkway, Suite 750
Rockville, MD 20852

Phone: 240-453-8200
FAX: 301-594-0043

APR 23 2015

CONFIDENTIAL/SENSITIVE

Richard S. Larson, M.D., Ph.D.
Executive Vice Chancellor
Vice Chancellor for Research
University of New Mexico
Health Sciences Center
MSC 08 4560
Albuquerque, NM 87131-0001

Ms. Catherine N. Penick
Executive Research Operations Officer
Research Integrity Officer
University of New Mexico
Health Sciences Center
MSC 08 4560
Albuquerque, NM 87131-0001

Re: ORI 2014-11, Compliance Review

Dear Dr. Larson and Ms. Penick:

I would like to acknowledge your letter of March 3, 2015, responding to the report of the compliance review conducted by the Office of Research Integrity (ORI). The compliance review included both an assessment of the institutional research misconduct policy (Faculty Handbook – E40) for conformity with the requirements of the U.S. Public Health Service (PHS) regulation (42 C.F.R. Part 93) and an examination of specific issues related to the institutional process in addressing allegations of research misconduct for the above-referenced case. The research misconduct allegations were investigated jointly by the University of New Mexico Health Science Center (UNMHSC) and the University of Kansas Medical Center.

The ORI compliance review included recommendations that officials at UNMHSC develop a corrective action plan to address weaknesses in the collection, storage, and management of research records and to develop a protocol for the retrieval and forensic analysis of digital evidence associated with the questioned research.

In your response, you provided two revised and/or new policy-procedure documents: "Research Data and Materials Retention Policy" and "Digital Storage Search and Seizure." These documents provide a detailed process for managing and safeguarding research records, which in turn will preserve critical evidence necessary for an institution to properly address allegations of research misconduct.

With respect to the lengthy process required by UNMHSC to revise the institutional misconduct policy, we ask that you keep ORI informed of its progress in meeting the stated deadlines included in your letter.

Thank you for your thoughtful and comprehensive response to the compliance issues identified in our report. If you have any questions or wish to discuss any aspect of these issues further, please contact me or any of the investigative staff within the Division of Investigative Oversight at 240-453-8800.

Sincerely,

Donald Wright MD MPH

Donald Wright, M.D., M.P.H.
Acting Director
Office of Research Integrity

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Assistant Secretary for Health
Office of Research Integrity
1101 Wootton Parkway, Suite 750
Rockville, MD 20852

Ph. 240-453-8200
FAX 301-594-0043

CONFIDENTIAL/SENSITIVE

January 8, 2015

Ms. Catherine N. Penick
Executive Research Operations Officer
University of New Mexico Health Sciences Center
MSC 08 4560
Albuquerque, NM 87131-0001

Re: ORI 2014-11

Dear Ms. Penick:

Enclosed is the report of the Office of Research Integrity's (ORI) review of the University of New Mexico's (UNM) research misconduct policy. The policy that ORI reviewed is incorporated into the UNM Faculty Handbook, is identified as *E40: Research Misconduct*, and was approved on by the Board of Regents on April 13, 2004.

In comparing the provisions of the UNM policy document with the requirements of the U.S. Public Health Service (PHS) regulation (42 CFR Part 93), ORI's review found a limited number of omissions and sections requiring revision or clarification. A report is enclosed for your information. ORI notes that while the effective date of this policy predates the issuance of the current PHS regulation (42 CFR Part 93) on June 16, 2005, many of the provisions within the UNM policy already incorporate the updated requirements of the revised Federal regulation.

ORI requests that you develop a plan and timetable to make the necessary changes to the UNM misconduct policy to bring it into compliance with all of the requirements of the current PHS regulations and your institutional assurance. ORI would appreciate a response by March 6, 2015.

ORI understands that making changes to institutional policy documents can be timely and involves multiple layers of approval, but note that the current policy (Section 8.7.) provides that any amendment to the Federal requirements in addressing research misconduct shall supersede the relevant portions of the UNM policy. This provision will allow UNM to properly address any allegations of research misconduct that may arise in the interim.

If you have any questions or wish to discuss this issue further, please contact ORI at 240-453-8200.

Sincerely,

Donald Wright MD MPH

Donald Wright, M.D., M.P.H.
Acting Director
Office of Research Integrity

Enclosure

Office of Research Integrity (ORI)

Review of Policies and Procedures for Addressing Research Misconduct Allegations

As Required by 42 CFR Part 93

Institution: University of New Mexico Health Sciences Center (UNM)

Date: December 2, 2014

A review of the UNM Faculty Handbook – E40: Research Misconduct policy for responding to research misconduct allegations indicates that the following requirements of the research misconduct regulation at 42 CFR Part 93[1] either are or are not appropriately reflected in the institution's policies and procedures, as noted in the comment sections below.[2] The comment section(s) indicate the needed modification(s).

Applicability

Establishes policies and procedures according to 42 CFR Part 93, keeps them in compliance with this part, and upon request, provides them to ORI, other U.S. Department of Health and Human Services (HHS) personnel, and members of the public (§93.302(a)).

Comment: Partially Addressed – The policy notes certain requirements for reporting to ORI when U.S. Public Health Service (PHS) funding is involved but does not reference the citation (42 CFR Part 93).

Relationship to PHS Support. Applies to allegations of research misconduct involving: "institutional members," as defined in § 93.214,[3] and one or more of the following: (1) applications or proposals for PHS support for biomedical or behavioral research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information; (2) PHS supported research, research training, or activities related to that research or research training; or (3) plagiarism of research records produced in the course of PHS supported research, research training or activities related to that research or research training (§93.102).

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[1]This form does not encompass all of the obligations of institutions under 42 CFR Part 93.

[2]Under § 93.319 institutions may have internal standards of conduct different than those set forth in 42 CFR Part 93. An institution may find conduct to be actionable under its standards, even if the action does not meet the definition of research misconduct in the HHS regulation.

[3]Institutional member or members means a person who is employed by, is an agent of, or is affiliated by contract or agreement with an institution. Institutional 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 fellows, students, volunteers, agents, and contractors, subcontractors, and subawardees, and their employees.

Comment: Partially addressed – The introduction section of the policy notes that the policy applies to most, if not all, members of the University's academic community, but there are only general references to PHS funding.

Time Limitations. Includes or incorporates by reference the limitation to research misconduct occurring within six years of the date that HHS or the institution receives an allegation of research misconduct.[4]

Comment: Not addressed.

General Policies and Principles

Informs its scientific and administrative staff of the policies and procedures and the importance of compliance with those policies and procedures (§93.302(a)(2((I)).

Comment: Partially addressed – The policy is found in the faculty handbook, but there is no further information on how the requirements are further disbursed to faculty and staff.

Defines allegation as any disclosure of possible research misconduct through any means of communications, i.e., by written or oral statements or other communications to an institutional or HHS official (§93.201).

Comment: Not properly addressed – The policy, in Section 3.3, states that "allegations must be made in writing, and signed and dated by the complainant." The PHS regulation requires institutions initiate an inquiry into allegations of research misconduct if the allegations are "sufficiently credible and specific" without qualification. Anonymous and/or oral allegations that are credible and specific must be addressed.

Defines research misconduct as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results (§93.103).

Comments: OK, Section 2.9.

An ORI finding of research misconduct requires that there be a significant departure from accepted practices of the relevant research community, that the misconduct be committed intentionally, knowingly, or recklessly, and the allegation be proven by the preponderance of the evidence (§93.104, 106(a)).

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[4]Time limit exceptions: (1) continuation of renewal of any incident of research misconduct that occurred before the 6-year limit through the citation, republication, or other use for the potential benefit of the respondent of the research record that is the subject of the allegation, (2) alleged research misconduct that, if it occurred, would have a substantial adverse effect on the health or safety of the public, as determined by ORI or by the institution in consultation with ORI, or (3) receipt of the allegation by HHS or the institution before June 16, 2005 (§93.105).

Comment: OK, Section 6.5.

Affording the affected individual(s) confidential treatment to the maximum extent possible (§93.108, §93.300(e)).

Comment: OK, Section 3.6.

Responding to each allegation of research misconduct in a thorough, competent, objective, and fair manner (§93.300(b)).

Comment: Policy generally meets this criteria.

Notify ORI immediate if the health and safety of the public is at risk, if HHS resources or interests are threatened, if research activities should be suspended, if federal action is required to protect the research misconduct proceedings, if the alleged incident might be publically reported, or if the research community or public should be informed (§93.318). If a reasonable indication of possible criminal violations is found, ORI must be notified immediately (§93.318(d)).

Comment: Generally OK, Section 8.1.5.

Provides for appropriate interim institutional actions, such as additional monitoring of the research process or the handling of federal funds or equipment, reassignment of personnel, or additional review of research data and results, during a research misconduct proceeding to protect public health, federal funds and equipment, and the integrity of the PHS supported research process (§93.304(h)).

Comment: OK, Section 8.3.

Preparation and maintenance of the documentation of the research misconduct proceedings in a secure manner for at least seven (7) years after completion of any PHS proceedings involving the research misconduct allegations (§93.317(b)) and providing them to ORI or other HHS personnel upon request (§93.309(d)).

Comment: Retention terms for inquiry (3 years) and investigations (5 years) do not meet the current requirement of 7 years after the completion of the proceedings.

Provides for reasonable and practical steps to protect or restore the positions and reputations of good faith complainants, witnesses and committee members and protect them from actual or potential retaliation by respondents or other institutional members (§§93.300(d), 93.304(l)).

Comment: OK, Section 7.3.

Make all reasonable and practical efforts to protect or restore the reputations of persons alleged to have engaged in misconduct when allegations are not confirmed (§93.304(k)).

Comment: OK, Section 7.2.

Notify ORI in advance if the investigation process is to close prematurely, based on the admission of guilt or settlement agreement with the respondent, or for any other reason (§93.316).

Comment: OK, Section 8.1.2.

Enforcing any HHS administrative actions imposed on institutional members (§93.300(h)).

Comment: Not addressed.

Assessment of Allegations to Determine if an Inquiry is Warranted

Provides for assessment of the allegation to determine if an inquiry is warranted because the allegation: (1) is within the definition of research misconduct in § 93.103; (2) is an allegation to which the research misconduct regulation applies under § 93.102; and (3) is sufficiently credible and specific so that potential evidence of research misconduct may be identified (§ 93.307(a)).

Comment: Generally OK, Section 4.3.

Inquiries

The purpose of an inquiry is to perform an initial review of the evidence to determine whether to carry out an investigation; a full review of all of the evidence related to the allegation is not needed (§ 93.307(c)).

Comment: OK, Section 5.1.

On or before the respondent is notified of the research misconduct allegations, take all practical steps to sequester, inventory, and secure the research record and other relevant evidence (§93.305(a), §93.307(b), §93.310(d)(2)), and after sequestration, allowing the respondent copies of, or reasonable, supervised access to the research records (§93.305(b)).

Comment: Generally OK, Section on "Securing Research Record" (section number missing, but passage should be identified as Section 6.2.)

Completion of each inquiry within 60 calendar days from receipt of allegation (§93.307(g)), including the receipt and evaluation of comments by the respondent (§93.307(f)), and the preparation of a written report[5] (§93.307(e)). If the inquiry is not completed within the 60-day

[5]Inquiry report should include the name and position of the respondent, a description of the allegations of research misconduct, the PHS support involved, the basis for recommending an investigation, and any comments on the report by the respondent or complainant.

period, the reasons for exceeding that period will be included in the record of the inquiry (§93.307(g)).

Comment: OK.

Provide written notification to the respondent before an inquiry is initiated (§93.307(b)).

Comment: OK, Section "Securing Research Records."

Precautions against real or apparent conflicts of interest in inquiries (§93.300(b), §93.304(b)).

Comment: OK, Section "Inquiry Committee."

Provide the respondent an opportunity to review and comment on the inquiry report (§93.307(f)).

Comment: OK, Section "Inquiry Report."

Provide for documentation in inquiries in sufficient detail to permit a later assessment by ORI of the reasons why the institution decided not to conduct an investigation (§93.309(c)).

Comment: Generally OK, under Section 8.5.

Initiate an investigation if the preliminary information-gathering and preliminary fact-finding from the inquiry indicate that the allegations may have substance (§93.307(d)).

Comments: OK, under Inquiry determination.

Investigations

Initiation of an investigation within 30 calendar days after a determination that an investigation is warranted (§93.310(a)).

Comment: OK, Section 6.1.

Notification to the Office of Research Integrity (ORI), PHS, prior to the initiation of an investigation (§93.310(b)), including a copy of the inquiry report (§93.309(a)).

Comment: OK, Section 8.1.1.

Selection of impartial experts to conduct investigations (§93.310(f)).

Comment: OK, Section 6.3.

Precautions against real or apparent conflicts of interest in investigations (§93.310(f)).

Comment: OK, Section 6.3.

Provide written notification to the respondent when a determination is made that an investigation is warranted (§93.308(a), §93.310(c)).[6]

Comment: OK, under "Inquiry Determination."

Provide for interviewing each respondent, complainant, and any other available person having information regarding any relevant aspect of the investigation, and recording and transcribing each interview, and providing the recording or transcript to the interviewee for correction (§93.310(g)).

Comment: OK, Section 6.4.

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 (§93.310(h)).

Comment: Not specifically stated, but generally implied.

Completion of an investigation within 120 calendar days (§93.311(a)), including the preparation of the report of findings, providing the draft report for comment (§93.312), and sending to ORI the investigation report.

Comments: OK, Section 6.6 and 6.5.

If unable to complete the investigation in 120 days, the institution must ask ORI for an extension in writing (§93.311(b)).

Comment: OK, Section 8.1.3.

Provide the respondent an opportunity to review and comment on the draft investigation report and, concurrently, a copy of (or supervised access to) the evidence on which the report was based (§93.312(a)).

Comment: Partially met– Section 6.5 provides the respondent an opportunity to review and comment on the draft report, but there is no specific provision to provide access to the relevant evidence on which the report was based.

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[6]The institution must give the respondent written notice of any new allegations of research misconduct within a reasonable amount of time of deciding to pursue allegations not addressed during the inquiry or in the initial notice of investigation.

At the completion of the investigation process, provide ORI with the investigation report[7] (including the report, all attachments, and any appeal), the final institutional actions (that is, was there research misconduct, and if so, who was responsible), the institutional findings (the institution's acceptance of the investigation's findings) and any administrative actions against the respondent (§93.315).

Comment: The provision is generally met by procedures in Section 6.6, Institutional Review and Determination.

Institution Appeal Process

If an institution's procedures provide for an appeal by the respondent that could result in the reversal or modification of the findings of research misconduct in the investigation report, the institution must complete any such appeal within 120 days of its filing. Appeals from personnel or similar actions that would not result in a reversal or modification of the findings of research misconduct are excluded from the 120-day limit.

Comment: Not applicable – The appeal process in this policy is limited to claims of procedural error, or a claim that the sanctions imposed as a result of a finding of research misconduct were inappropriate.

[7]Body of report to include the allegations, the PHS support, the institutional charge, the policies and procedures, the research records and evidence, the statement of findings (§93.313(f)), and comments by the respondent and complainant (§93.313).

UNM | Faculty Handbook

C07: Faculty Disciplinary Policy

Approved By: Faculty Senate
Effective: **Draft Revision March 22, 2015**
Responsible Faculty Committee: Policy Committee
Office Responsible for Administration: Office of the Provost and Office of the HSC Chancellor

Legend of highlighted text: All text in black are part of the existing faculty policy. All text in red include proposed additions and/or changes.

Revisions to the Policy Rationale, Policy Statement, and Applicability sections of this document must be approved by the full Faculty Senate.

POLICY RATIONALE

The University encourages a supportive problem-solving approach to workplace problems, but the University recognizes that misconduct may require disciplinary action. The University normally uses progressive discipline to address possible misconduct. Progressive discipline is intended to be corrective, not punitive in nature. It is designed to provide faculty with notice of deficiencies and an opportunity to improve. However, some violations of policies and procedures, or continued negative behavior, may be of such serious nature that suspension without pay or discharge pursuant to *Faculty Handbook* policies may be appropriate. This Policy provides the policies, processes, and procedures to be followed to ensure fairness and equity.

POLICY STATEMENT

Any member of the faculty, including any serving as an academic administrator, who violates a published University policy may be subject to warning, censure, suspension without pay, or dismissal. Teaching or research assistants in their faculty capacity are considered faculty members for purposes of this Policy.

Academic Freedom and Tenure Jurisdiction

The procedures specified in this Policy provide for the consideration and determination of proposed disciplinary actions against faculty members short of dismissal. Consideration and determination of disciplinary actions that may result in a proposed dismissal of a tenured faculty member, or dismissal of an untenured faculty member prior to expiration of his or her contract term, are governed by "Academic Freedom and Tenure" sections B.5.3, B.6.4.3, or B.5.4, respectively, of the *Faculty Handbook* and are not covered by these procedures. However, cases in which faculty dismissal has been considered pursuant to sections B.5.3, B.6.4.3, or B.5.4, and a lesser sanction is ultimately proposed instead by the administration, shall be handled under this Policy, without duplicating steps that have already taken place. In particular, if the chair and dean conclude that suspension without pay is appropriate in a case in which dismissal was

considered but rejected, the faculty member is entitled to request a peer hearing as provided below in sections 10 and 11 of this Policy Document.

~~Scope Specific University Policy Investigations~~ Allegations Outside the Scope of this Policy

In the case of allegations against a faculty member that appear to be within the scope of another specific University policy that has its own procedures for investigation and resolution (including but not limited to allegations of research misconduct, discrimination, or sexual harassment), the chair or dean shall forward such allegations to the appropriate person or department for handling pursuant to the ~~applicable~~ policy that appears to apply to the substance of the allegations. If such a process requires the chair to make a disciplinary determination after an investigation and recommendation from another University body, this policy will be followed in determining the appropriate discipline. If the other procedure involved a hearing before a faculty committee, any factual determinations will not be subject to reconsideration by faculty peer review under this policy.

Commented [KB1]: Unclear whose responsibility this ultimately is

Commented [KB2]: Is there a circumstance where this could actually happen?

APPLICABILITY

All UNM academic faculty and administrators, including the Health Sciences Center and Branch Campuses.

Revisions to the remaining sections of this document may be amended with the approval of the Faculty Senate Policy and Operations Committee in consultation with the responsible Faculty Senate Committee listed in Policy Heading.

DEFINITIONS

Warning means an oral reprimand or expression of disapproval.

Commented [KB3]: Does the policy intend to allow multiple levels of procedure and/or review for an oral warning or censure?

Censure means a written reprimand or expression of disapproval, which should include an explanation of the nature of the misconduct, and the specific action to be taken by the faculty member and/or chair to correct the problem, including mentoring, if appropriate, and a statement that further disciplinary action could occur should the problem persists.

Suspension without pay means disciplinary suspension without regular salary for a stated period of time.

Dismissal means termination of employment (see Faculty Handbook sections B.5.3, B.6.4.3, and B.5.4).

Peer Hearing Definitions

Complainant is the person initiating the grievance or challenging an earlier decision.

Respondent is the person responding to the grievance or seeking to uphold the earlier decision.

WHO SHOULD READ THIS POLICY

- Board of Regents
- Faculty

- Academic staff
- Academic deans and other executives, department chairs, directors, and managers

RELATED DOCUMENTS

University Administrative Policies and Procedures Manual:

Policy 2200 "Whistleblower Protection and Reporting Suspected Misconduct and Retaliation"
Policy 2210 "Campus Violence."
Policy 2220 "Freedom of Expression and Dissent"
Policy 2240 "Respectful Campus"
Policy 2720 "Equal Opportunity, Non-Discrimination, and Affirmative Action"
Policy 2730 "Sexual Harassment"

Pathfinder:

"Visitor Code of Conduct,"
"Student Code of Conduct,"

Faculty Handbook:

Section B, Appendix V
Policy C05, "Rights and Responsibilities at the University of New Mexico."
Policy C07 "Faculty Disciplinary Policy"
Policy C70 "Confidentiality of Faculty Records"
Policy C345 **"**Ombuds Dispute Resolution Services for Faculty"

CONTACTS

Direct any questions about this Policy to the Office of the Provost or the Office of the Chancellor for Health Sciences.

PROCEDURES

Faculty Disciplinary Procedures

1. References to the department chair in this Policy also include the program director or associate or vice dean in a non-departmentalized school or college. If allegations are made against a department chair or other administrator, the next higher academic authority shall perform the functions assigned in this Policy to the chair, and the provisions shall be modified as appropriate. Any individual(s) bringing an allegation of faculty misconduct to the chair's attention is protected by, and subject to, the University's policy on reporting misconduct (UAP **Policy 2200**, "Whistleblower Protection and Reporting Suspected Misconduct and Retaliation").

2. In all cases other than those set forth in the Policy Statement~~ection~~ ~~paragraphs 3 and 4~~ above, if a member of the faculty is alleged to have violated a policy of the University, the department chair shall provide the faculty member a written notice explaining the nature and specific content of the alleged violation, together with a copy of this Policy, and shall discuss the alleged violation with the faculty member. The written notice shall be given to the faculty member within ninety (90) days of the chair learning of the apparent violation of policy. The faculty member may be accompanied by one person in meeting with the chair, but the faculty member must speak on his

or her own behalf at the meeting. The faculty member and the chair shall notify each other at least two working days prior to the scheduled meeting who, if anyone, will be accompanying them at the meeting. The chair should issue a written report within five (5) working days after the meeting summarizing the discussion with the faculty member, keep a copy in the faculty member's file, and send a signed copy to the faculty member. Before, during or after the meeting, the chair may ask the faculty member to respond in writing to the notice and present any relevant written material within a reasonable time specified by the chair. Likewise, the faculty member shall be free to submit any materials believed to be relevant to the chair ~~reasonably desired on his/her own volition,~~ no later than five (5) working days after meeting with the chair unless the chair grants additional time in writing. The matter may be concluded at this point by the mutual consent of all parties.

3. The department chair or the faculty member may initiate conciliation proceedings at any time prior to the chair's decision by contacting the Ombuds/Dispute Resolution Services for Faculty ~~Faculty Dispute Resolution program as provided in Section C345~~ with notice to the other parties. Conciliation may be undertaken if both parties agree.

4. If a mutually agreeable resolution (with or without conciliation) is not achieved, the department chair shall make a decision in the matter and communicate it to the faculty member in writing within ten (10) working days after meeting with the faculty member or the termination of conciliation efforts if they are unsuccessful, whichever is later. The faculty member shall have ten (10) working days from receipt of the written decision to submit a written request for review by the appropriate dean, who will issue a written decision concerning whether the chair's decision is upheld, modified or reversed after examination of all materials collected by, or provided to, department the chair. Prior to making a decision, the dean shall meet with the department chair and the faculty member, and their representatives if desired, together or separately, and shall receive and consider any documents the parties wish to submit. Documents shall be submitted within five (5) working days of the faculty member's request for review. If formal conciliation has not been attempted previously, the dean may refer the matter to Ombuds/Dispute Resolution Services for Faculty ~~Faculty Dispute Resolution~~. The dean will communicate his/her decision to the parties in writing within ten (10) working days after meeting with the faculty member or the termination of conciliation efforts if they are unsuccessful, whichever is later.

5. If the faculty member does not agree with the dean's action, he/she may submit a written request for review by the Provost (for main campus faculty) or Chancellor (for HSC faculty) within five (5) working days of receipt of the dean's decision. The Provost/Chancellor will decide the matter on the record unless he/she determines that it would be helpful to meet with the parties, together or separately. Within ten (10) working days after receipt of the complete record or after meeting with the parties, whichever is later, the Provost/Chancellor shall uphold, modify, or reverse the dean's decision by written notice to the parties. The Provost/Chancellor may seek an advisory investigation and opinion from the Faculty Ethics Committee. The decision of the Provost/Chancellor is subject to discretionary review by the President or Board of Regents if requested by the faculty member.

6. If the chair, after meeting with the faculty member and considering all materials submitted pursuant to section 2 above, proposes to suspend the faculty member without pay, the chair shall meet with the dean to review the matter. If the proposal is supported by the dean after meeting with the chair and the faculty member, the faculty member is entitled to a faculty peer hearing. The faculty member shall send such a request to the Provost/Chancellor within five (5) working

Commented [KB4]: What file?

Commented [KB5]: "Representative" is different from a person accompanying the faculty member to the meeting. This language suggests that an attorney would be appropriate and, in any case, suggests that the faculty member need not speak on his/her own behalf.

Commented [KB6]: Why are more documents permitted at this stage? If this is an appeal of the chair's decision, no more documents should be permitted. If not, then it's fine as is, and my suggested language above ("…after examination of all materials …") should probably be deleted.

Commented [KB7]: This is unclear. Normally, the next step would be the President, and then a subsequent appeal to the BOR. If that is the intent, this language should be changed (although this would also create four separate opportunities for review of the chair's decision.)

Commented [KB8]: This is intended to stop the review process in Sec. 5, correct? Maybe something should be added to clarify here.

days of receipt of the dean's determination.

7. If a faculty peer hearing is requested as provided in this Policy, the chair of the Faculty Ethics Committee will arrange for a hearing before two members of that Committee from outside the faculty member's department, chosen by the Ethics Committee, and one uninvolved department chair from a different school or college chosen by the Provost/Chancellor. The hearing will be held as soon as reasonably possible and shall be conducted according to the Faculty Peer Hearing Procedures listed below. ~~University's Dispute Resolution Hearing Procedures.~~ The Office of University Secretary ~~office~~ shall make arrangements for the hearing. Hearings shall be recorded and shall be private to the extent permitted by law unless both parties agree that the hearing shall be open. The hearing Panel may uphold or reverse the proposal to suspend the faculty member without pay. If the Panel's decision is to reverse the proposal, the Panel may direct the chair and dean to impose a lesser disciplinary measure. The Panel's decision may be reviewed on the record by the Provost/Chancellor, but the Panel's decision shall not be reversed or modified except in the case of clear error, which shall be detailed in writing by the Provost/Chancellor. The decision of the Provost/Chancellor is subject to discretionary review by the President or Board of Regents if requested by the faculty member.

8. The faculty member may bring a complaint before the Committee on Academic Freedom and Tenure (AF&T) if he/she believes the matter or its handling is within the jurisdiction of the Committee. The Committee will determine whether the matter is within its jurisdiction and, if so, shall handle the matter under the Policy on Academic Freedom and Tenure. Normally, review by the AF&T Committee should be sought after the determination by the Provost/Chancellor. If the faculty member pursues the matter before the AF&T Committee, AF&T shall accept the facts as determined by the faculty peer hearing, if one was held.

9. If the final determination is that no misconduct occurred, efforts shall be undertaken to the extent possible and appropriate to fully protect, restore, or maintain the reputation of the faculty member.

10. These procedures do not supersede Appendix VIII to Part B of the *Faculty Handbook*, concerning the Faculty Ethics Committee, and a faculty member who believes that he/she has been improperly accused of unethical behavior may bring the matter to the attention of the Ethics Committee under Appendix VIII after determination by the Provost/Chancellor.

Faculty Peer Hearing Procedures

Article 1. Introduction

These procedures are based on the "Model Hearing Procedure" which provides a standard operating procedure for formal hearings to resolve conflicts at institutions of higher education. Normally, a peer hearing will be held only in a circumstance where suspension without pay has been determined as an appropriate disciplinary sanction by a department chair after consultation with the cognizant dean. ~~after items one through six of the Faculty Disciplinary Procedures above have taken place~~. These procedures assume that a Panel has been appointed by the Faculty Ethics Committee in accordance with section 7 of the Faculty Disciplinary Procedures above.

Commented [KB9]: Which Model Hearing Procedure?

Commented [KB10]: I recommend deleting this.

1.1 Attorney for Panel. The Panel shall consult with the Office of University Counsel prior to the hearing, and a University Counsel attorney will be appointed to assist the Panel. ~~-~~The Panel

will consult with its University Counsel attorney on any procedural issues it can't resolve. ~~-~~The Panel's University Counsel attorney will either be present at the hearing or will be available for consultation. Factual findings and the final decision(s) of the Panel are made solely by the Panel.

1.2. Persons with Disabilities. Persons with disabilities who ~~want~~ desire reasonable accommodations should let the Office of the University Secretary know at least ten (10) working days before the accommodation is required.

Article 2. Pre-Hearing Matters

2.1 Preparation of Evidence

2.1.1 If any material facts are believed to be in dispute, the parties shall ~~prepare~~ provide evidence for the hearing which may be in the form of documents, testimony of witnesses, or other materials. Parties are responsible for their own evidence.

2.1.2 All faculty~~,~~ and staff~~, and students~~ shall cooperate with the parties' reasonable requests to provide evidence and to appear at the hearing as witnesses. If a party is having difficulty getting cooperation from a potential witness or obtaining existing ~~source of~~ evidence, he or she shall file a request for assistance with the Office of University Secretary, who shall forward it to the Panel. If the Panel determines that the request is reasonable, it shall assist the party in gaining the necessary cooperation to the best of its ability.~~-~~ ~~–~~Parties may use reasonable and equitable University work time~~,~~ and equipment~~, and support staff assistance~~ in preparing for the hearing.

2.1.3 The Office of University Secretary will advise parties about procedures and give them a general overview of the type of evidence that is usually submitted in these kinds of matters.

2.1.4 If the ~~c~~Complainant hires an attorney ~~lawyer~~ and intends to bring the attorney to the hearing, the Complainant shall notify the Office of the University Secretary in writing no less than fifteen (15) working days prior to the hearing. Failure to so notify the Office of the University Secretary will result in the prohibition of the attorney from attending the hearing.~~,~~ (See Section 2.2.3 below.) ~~then~~ If the Complainant appropriately notifies the Office of the University Secretary of his/her intent to bring an attorney to the hearing, the R~~r~~espondent may request an attorney ~~lawyer~~ from University Counsel's Office.

2.2 Notice Requirements: At least ten (10) working days before the hearing, each party shall provide the Office of the University Secretary with the following information~~,~~ in writing, which will be distributed to the other party and the Panel:

2.2.1 A list of intended witnesses, or a statement that no witnesses will be called. ~~-~~The Panel may place reasonable limitations on the number of witnesses, either before or after the list is submitted, but in no event less than three working days prior to the hearing.~~-~~ No witnesses other than those on the list may testify without consent from the P~~p~~anel. The Parties must also provide the estimated duration of each witness's testimony and any information regarding accommodations that any witness may require.

2.2.2 Any witness affidavit ~~statement~~ submitted pursuant to Section 3.5 herein.

Commented [KB11]: Are the parties responsible for providing copies of their evidence to the Panel, or to the Office of the Univ. Secretary sometime prior to the hearing? I recommend that it be provided to the Ofc Univ. Secretary 10 days prior to the hearing, so that pages can be numbered, copies can be made (I know this presents a burden, but it saves endless procedural problems for the hearing), and so that each side receives the other side's evidence prior to the hearing and make objections to the Panel if they wish.

Commented [KB12]: I don't think that students can be required to cooperate.

2.2.3 The name of any advisor appearing with the party at the hearing and whether the advisor is an attorney. ~~-~~A party may not bring an advisor without such notification, unless the other party and Panel consent. No advisor, whether an attorney or otherwise, may speak on behalf of any party or otherwise participate in the presentation of evidence. ~~one of the following exceptions applies.~~

2.2.3.1 A party may bring any advisor if the other party and the Panel consent.

2.2.3.2 If a party does not designate an advisor, and the other party designates a non-attorney advisor, the first part may bring a non-attorney advisor without prior notification

2.2.3.3 If a party does not designate an attorney advisor and the other party does designate an attorney advisor, the first party may bring an attorney advisor without prior notification.

Commented [KB13]: I would recommend taking 2.2.3.2 and 2.2.3.3 out. The way this is structured, the Complainant will always be the faculty member and the Respondent will be the department. I'm not aware of any circumstance where a chair wanted a non-attorney advisor to be present.

~~**2.2.4** Whether the party requests that his advisor be allowed to present the case, in whole or in part.~~

Commented [KB14]: I do not recommend permitting this.

2.2.5 Copies of documents the party plans to introduce into evidence. No other document may be introduced into evidence without notification unless the other party or the Panel consents. Approval of the Panel shall depend on the importance of the document, whether the party could have obtained it earlier, the time remaining until the hearing, and the degree of prejudice to the other party.

Commented [KB15]: This will need to be re-numbered, and I think it needs to be clear when copies need to be provided and to whom. See my proposed language to 2.1.4.

2.2.6 If a party requests a document from any employee of the University who has custody of that document, that ~~person~~ employee shall give either the requesting party or the Office of University Secretary ~~the original or~~ a copy of the~~at~~ document within one work day, unless the document is confidential or otherwise protected by law. If the document is confidential or protected by law, the Panel's University Counsel attorney will advise the party and the Panel on how to proceed. to all parties and the Panel.

2.3 Order of Arguments and Evidence. The Panel may, at least three (3) days before the hearing, specify the order in which the parties present their arguments and any evidence. If the Panel does not specify within this time frame the order specified in Section 3.4 shall be used.

2.4 Pre-Hearing Conference. After receipt of the information specified in Section 2.2, the Office of University Secretary and/or the chair of the Panel may meet with the parties and/or their advisors (if appropriate notification of advisors has been provided) to consider clarifying or simplifying the issues to be heard by the Panel, answering any procedural questions, limiting the number of witnesses, or considering any other matters which may aid the conduct of the hearing.

2.5 The Panel may set reasonable time limits for the hearing.

Article 3. Hearings

3.1 Evidence. If any material facts are in dispute, the parties may testify and may present testimony of other witnesses and introduce and explain documents and other evidence at the hearing. The Panel may exclude duplicative ~~unfair~~ and/or irrelevant evidence at its sole discretion, ~~but is not required to~~ and no ~~follow~~ judicial rules of evidence apply to any hearing.

At either party'sies' request, the Panel shall consult with the Panel's University Counsel on evidence issues. The Panel may requestire the production of further evidence beyond that presented by the parties (including the testimony of other witnesses) if it believes such evidence is available and material to the issues in dispute. -Either the parties or the Office of University Secretary may be asked to obtain such evidence. ~~The hearing shall be resumed when such evidence is produced.~~

3.2 Absent Parties. All Panel members and both parties shall be present at hearings. Failure by either party to appear at the hearing may be grounds for summeary findings against the absent party.~~-~~ Alternatively, the Panel may choose to proceed with the hearing without the absent party, and make its decision based upon the evidence available.~~–~~ Failure to comply with the notification provisions of section 2.2 may be construed as failure to appear~~,~~ for the purposes of this section at the Panel's discretion. Upon request of the absent party, a finding made under this section may be set aside and a new hearing scheduled if the absent party ~~ee shows~~ demonstrates to the Panel's satisfaction that he or she could neither attend the hearing nor request a postponement of the hearing in a timely manner.

3.3 Advisors. Each party may have one advisor at the hearing, who may be an attorney. (See Section 2.1.4.) Parties may consult freely with their advisors throughout the hearing, but advisors may not speak for the parties. If a Party believes that he/she is unable to present his/her case and evidence on his/her own, a request and explanation to have an advisor make a portion or all of the presentation on behalf of the Party shall be made to the Panel in writing no less than ten (10) working days prior to the hearing. Such a request shall be provided to the Office of the University Secretary. ~~unless the Panel determines that one or both parties are unable fairly to present their case except through their advisor.~~

3.4 Order of Evidence. The Panel may, pursuant to section 2.3, determine the order in which the parties present their arguments and any evidence. If the Panel does not specify, the following order shall be used:

(1) C~~c~~omplainant presents his or her case;

(2) ~~r~~Respondent presents his or her case;

(3) in the discretion of the Panel, rebuttal by ~~c~~Complainant ~~and respondent~~ may be allowed;

4) ~~c~~Complainant makes closing argument~~s~~;

5) ~~r~~Respondent makes closing arguments.

With permission of the Panel, evidence may be introduced out of order ~~and additional evidence may be introduced.~~.

3.5 Witnesses. The parties may present the testimony of witnesses in support of their respective position~~case~~. When a witness is unable to attend a scheduled hearing, the witness may ~~make~~ execute an affidavit which may be introduced at the hearing at the Panel's discretion. The affidavit shall be disclosed to the other party pursuant to Section 2.2.2 in order to permit the other party to contact the witness and to prepare for appropriate rebuttal at the hearing. The Panel ~~shall~~ may exclude the affidavit if the other party has been unable to secure the cooperation of the witness in spite of diligent attempts to do so.

The parties and Panel members shall have the right, within reasonable limits set by the Panel, to question or cross-examine the parties and all witnesses who testify orally. Reasonable limits may include, but are not limited to, requiring that questions be directed through the Panel.

3.6 Record of Hearing. The Office of University Secretary shall make an audio recording of the proceedings. The parties and their ~~representatives~~ respective advisors may make arrangments to listen to the recording with the Office of the University Secretary. At a party's request, the Office of University Secretary shall provide the party with a duplicate of the recording at the party's cost.

The record of the hearing shall consist of the recording and all items or documents introduced by any party as evidence. The record shall be kept by the Office of University Secretary for five (5) years after all appeals have been concluded or after the time for appeal has expired.

3.7 Written Arguments. After hearing the evidence, the Panel may request or accept ~~documented~~ arguments in writing from the parties and defer consideration of the case for up to two (2) weeks until such documented arguments have been submitted. Written arguments may be requested in lieu of oral closing arguments at the discretion of the Panel.- Time limits for the Panel's decision shall be extended accordingly. The Panel may, at its discretion, request proposed Findings and Conclusions from each party, which shall be due no more than two (2) weeks from the end of the presentation of evidence by the parties.

Article 4. General Provisions

4.1 Time Limits. For good cause, the Panel shall extend any time limit set forth in these rules. Good cause shall include, but is not limited to the fact that a time limit includes finals week or period such as vacations, holidays, or intersessions if parties or decision makers are absent from the University. Any time extension shall be communicated in writing to all interested parties along with a new written schedule.

4.2 Absent Party. If one party is absent from the University, the decision maker, with both parties' permission, may permit the absent party to participate in a hearing or interview by conference call or otherwise.

Commented [KB16]: I don't understand this section.

4.3 Mailing. All documents shall be sent to the parties by the Office of the University Secretary. No deadline extension will be permitted for mailing. Each party bears the full responsibility for ensuring that all documents are timely provided to the Office of the University Secretary by the deadlines described in these procedures.

4.4 Decision of the Panel. The decision of the Panel will be signed by all Panel members and provided to the Office of the University Secretary, who will distribute the decision to the parties.

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4.5 Appeal. Any appeal of the decision of the Panel must be provided via hand delivery to the Office of the President no more than ten (10) working days of the date that the decision was provided to the parties by the University Secretary. Any appeal of the decision of the Panel must describe the grounds for the appeal with reasonable particularity. Appeals will only be

considered when there has been an extraordinary breach of the process in the opinion and at the discretion of the University President.

DRAFT HISTORY

March 22, 2015-- Added Peer Hearing Procedures

HISTORY

December 13, 2011 – Approved by Board of Regents

March 22, 2011 – Approved by Faculty Senate

COMMENTS TO: handbook@unm.edu	FACULTY HANDBOOK HOME	TABLE OF CONTENTS	TABLE OF POLICIES	UNM HOME

A53: Development and Approval of Faculty Policies

Approved by: Faculty Senate

Effective Date: August 27, 2013 **Revised Draft 9/18/15**

Responsible Faculty Committees: Policy and Operations
Office Responsible for Administration: Office of the University Secretary

Revisions to the Policy Rationale, Policy Statement, and Applicability sections of this document must be approved by the full Faculty Senate.

POLICY RATIONALE

The *Faculty Handbook* provides University of New Mexico (UNM) faculty with a written record of faculty policies and procedures. Policies in the *Faculty Handbook* are unifying documents that describe academic principles, the reasoning behind the principles, and institutional procedures necessary for implementation. *Faculty Handbook* policies contain governing principles and procedures that mandate or constrain actions and apply to UNM faculty; therefore, the development of policies requires input from faculty members who have extensive knowledge on the subject matter and review by faculty members from a variety of academic disciplines at UNM.

POLICY STATEMENT

All UNM policies which pertain primarily to faculty and academic matters are placed in the *Faculty Handbook* and are subject to the review and approval requirements defined in this Policy Document, with the exception of Section B "Academic Freedom and Tenure" which follows a separate review and approval protocol. The scope of *Faculty Handbook* policies is established by the Faculty Constitution and the right to review and take action on these policies is granted to the faculty by UNM Board of Regents Policy 5.1 "The Faculty's Role in the University's Academic Mission."

This policy describes the process used to develop or amend *Faculty Handbook* policies, solicit input, and obtain approval.

1. Proposing a New Policy or Changes to Existing Policy. Any faculty member wishing to propose a change to an existing *Faculty Handbook* policy or propose a new policy should send their request to the Office of the University Secretary, who will forward it to the Faculty Senate Policy Committee (FSPC) for consideration. This request should include a draft policy document which shows proposed changes to the existing policy with track changes, or in the case of a new policy the request will include a proposed policy draft addressing the concerns it is intended to address. This request should also include a statement of the reason(s) for the proposed policy change(s) or the new policy. The FSPC will review the request and work with the appropriate Faculty Senate committee(s) to determine the most effective course of action. The Office of University Secretary will notify the requestor of the action taken by the FSPC.

2. Approval. Proposed new faculty policy statements, in their entirety, and changes to the Policy Rationale, Policy Statement, and Applicability sections of existing policies will be posted on the *Faculty Handbook* website for review by UNM faculty members. The Office of the University Secretary in consultation with the Chair of the FSPC will address any comments received from faculty and will forward the final proposed draft to the Faculty Senate for approval. Due to the nature of the policy or previous approval history, specific policies will also require approval by University faculty, the UNM Board of Regents, and/or the UNM President and/or Provost or the Chancellor for Health Sciences. Proposed changes to definition, procedural, and information portions of a policy document will be reviewed by the FSPC in consultation with the responsible Faculty Senate Committee(s) listed in the Policy Heading. After review and consultation, the proposed changes can be made with approval by both the FSPC and the Faculty Senate Operations Committee.

3. Distribution and Notification of New or Amended Policy.

Upon approval, the new or amended policy will be placed on the *Faculty Handbook* website and announced to the campus. Deans and department chairs, or their designees, are responsible for:

- informing their faculty members of new policies or changes to existing policies; and
- updating all related departmental processes, procedures, and/or documents to reflect new or amended policies.

APPLICABILITY

All UNM academic faculty and administrators, including the Health Sciences Center and Branch Campuses.

Revisions to the remaining sections of this document may be amended with the approval of the Faculty Senate Policy and Operations Committee in consultation with the responsible Faculty Senate Committee listed in Policy Heading.

DEFINITIONS

No specific definitions are required for this Policy Statement

WHO SHOULD READ THIS POLICY

- Board of Regents
- Faculty
- Academic staff
- Academic deans and other executives, department chairs, directors, and managers

RELATED DOCUMENTS

UNM Regents' Policy Manual 5.1 "The Faculty's Role in the University's Academic Mission"
Faculty Handbook: **Policy A50** "The Faculty's Role in the University's Academic Mission"
Faculty Handbook: **Policy A51** "Faculty Constitution"
University Administrative Policies
University Catalog
Pathfinder
HSC Policy on Policies, which contains procedures specific to the HSC

CONTACTS

Direct any questions about this Policy to the Office of the University Secretary.

PROCEDURES

Faculty Handbook policies are designed to ensure that policy level portions can only be changed with approval of the Faculty Senate, but also allow for a streamlined approval process for definition, procedural and information oriented sections of the policy to allow for timely updating to reflect new practices and/or information.

1. *Faculty Handbook* policies are composed of the following sections.

1.1 Heading. In addition to policy title and number, the heading of the policy identifies:

- The approving bodies (i.e. Faculty Senate, Provost/Chancellor for Health Sciences, President, Board of Regents, and/or University Faculty).
- Responsible Faculty Senate committee(s).
- Office responsible for administration of the Policy.

1.2 Policy Rationale. Describes the reason for the policy, its relationship to UNM's academic values and/or mission, and any philosophical, stewardship, legal, regulatory, or other requirements the policy aims to meet.

1.3 Policy Statement. Includes the overall intention and direction of the policy and major mandated actions or constraints. It does not include procedures, which are placed in a separate section to allow for greater flexibility when updating is necessary.

1.4 Applicability. Identifies which individuals and/or University units are subject to the policy. Some policies may apply to the entire academic community, while others may apply only to Main Campus, the Health Sciences Center, and/or Branch Campuses.

1.5 Definitions. Defines terms that have specialized or particular meaning in the policy.

1.6 Who Should Read This Policy. Lists individuals who must understand the policy in order to make decisions and/or do their jobs.

1.7 Related Documents. Lists related UNM policy documents and other UNM and external documents that provide helpful, relevant information.

1.8 Contacts. Contains information to assist faculty members in complying with the policy.

1.9 Procedures. Includes procedures necessary for policy compliance and outlines how the policy's requirements will be met.

1.10 History. Lists dates of amendments and summary information on changes approved.

2. Approval process for Policy Level Portions of Faculty Policies. Changes to policy level portions of the policy (sections 1.2 –1.4, herein) require approval by the approving bodies listed in the policy heading. At a minimum this includes the Faculty Senate and depending on the impact of the policy, approval may also require action by the President or Provost/Chancellor for Health Sciences, Board of Regents, and/or University faculty.

3. Approval process for Definitions, Procedures, and Information Portions of Faculty Policies. Changes to definition, procedural and information portions of the policy (sections 1.5 – 1.10, herein) can be made with approval by both the Faculty Senate Policy Committee (FSPC) and the Faculty Senate Operations Committee in consultation with the responsible Faculty Senate Committee(s) listed in the policy heading.

HISTORY

April 28, 2015 – Amended policy approved by the Faculty Senate

February 4, 2014 – Amended procedures approved by Faculty Senate Operations Committee

January 29, 2014 – Amended procedures approved by Faculty Senate Policy Committee

August 27, 2013 – Approved by the Faculty Senate