

Faculty Senate Policy Committee
Meeting Agenda, Scholes Hall Room 101, November 4, 2015, 3:30 pm –5:00 pm

Action Items

Consent Agenda Topics: None

Agenda Topics

1. E40 “Research Misconduct” Determine any changes needed to address feedback from ORI and R Larson. **pg. 1**

Key pre-meeting preparation: Review attached draft of E40, ORI communication, and email from R Larson.

Desired outcome: Approval to send draft to Operations for endorsement to send out for campus comment.

2. A53 “Development and Approval of Faculty Policies” Proposing changes to add definitions for policy, procedures, standards and guidelines. **pg. 22**

Key pre-meeting preparation: Review attached draft of A53 with proposed changes highlighted.

Desired outcome: Approval of definitions.

3. COG Taskforce recommendations: Memorandum from the task force identifies references to be added to current faculty policies and also some concerns and/or recommendations the task force would like the Policy Committee to consider. **pg. 27**

Key pre-meeting preparation: Review task force memorandum.

Desired outcome: Develop an action plan to address the issues raised in the task force memorandum.

4. UAP Policies out for Campus Comment: Four new policies, significant changes to four existing policies (including the Whistleblower Policy), minor changes to three existing policies, and proposed rescission of one policy. **pg. 37**

Key pre-meeting preparation: Review Policy Office memorandum, review the proposed changes to Policy 2200 “Whistleblower Protection and Reporting Suspected Misconduct,” with a focus on faculty and students reporting misconduct. Review any other policies listed that you feel need discussion.

Desired outcome: Determine if a response to the Policy Office is needed, and if so, what.

Updates

A88 and E60 approved by Faculty Senate 10/27/15 and posted to website.

Campus Comment Period: end 11/17/15: A53 “Development and Approval of Faculty Policies” and A53.1 “Policies Applicable to Faculty” out for faculty comment.

A61.8 Faculty Ethics and Advisory Committee: under review by AF&T

C07 “Faculty Disciplinary Policy” Policy concerns and proposed peer hearing procedures have been forwarded to AF&T for review.

C09 “Respectful Campus” A taskforce, chaired by J. Hood, is being formed to review concerns.

C200 “Sabbatical Leave” forwarded to AF&T for review.

E90 “Human Subjects in Research” Discussion with R. Larson on review process.

E40: Research Misconduct

Approved By: Faculty Senate, Board of Regents

Last Updated: **Draft 9/29/15**

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.

This policy is intended to carry out **UNM's** responsibilities under the PHS regulations on Research Misconduct, 42 CFR Part 93. UNM extends this policy to PHS and non-PHS supported research.

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 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 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 applicable persons (as described in Applicability section below) 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 for Research, or the appropriate 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 Chancellor for Health Sciences, 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. 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.
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DEFINITIONS

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

Deciding Official will make the final determination whether to accept the investigation report, its findings, and the recommended institutional actions. The Provost is the deciding official for cases where the respondent is not a HSC employee. The Chancellor for Health Sciences is the deciding official for cases where the respondent is a HSC employee.

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, students, [contractors, visiting scholars, and any other member of UNM's academic community involved in the conduct or research or the reporting of research results.](#)
- 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.
- [Any person who brings forth any allegation of research misconduct.](#)
- [Any person against whom an allegation of research misconduct is directed or the person who is the subject of a research misconduct inquiry or investigation.](#)

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 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 Provest](#) 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 Provest](#) 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 of the allegation.

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.

~~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.~~

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 for Research, Richard Larson and the Faculty Senate Policy Committee

July 1, 2015 Supplemental Policy with proposed changes to E40 prepared by HSC

COMMENTS TO:
handbook@unm.edu

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

RECEIVED

OCT 19 2015

Office of Research
University of New Mexico

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

OCT 13 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

Dear Dr. Larson and Ms. Penick:

I would like to acknowledge your letter of September 18, 2015, that provides an update on the implementation of the Corrective and Preventative Action Plan undertaken in response to the compliance review conducted by the Office of Research Integrity (ORI). More specifically, you have provided a draft addendum to the institutional research misconduct policy (HSC Supplement to the University of New Mexico [UNM] Health Sciences Center's "Faculty Handbook Policy E40: Research Misconduct") that incorporates specific recommended revisions to bring it into compliance with the requirements of the Federal regulation at 42 CFR Part 93. ORI understands that this supplemental document will remain in force pending final review and approval of the "E40: Research Misconduct" policy by the UNM Faculty Senate.

ORI has reviewed the revisions made to the UNM misconduct policy and finds that the revisions address all of the concerns noted in the ORI policy review included in our letter of January 8, 2015.

Please inform ORI when the UNM misconduct policy ("E40: Research Misconduct") receives final approval and provide us with a copy, or website link, to its official final version.

Finally, please feel free to contact any of the investigative staff at ORI if you have any specific questions related to the process of addressing research misconduct allegations.

Sincerely,

A handwritten signature in black ink that reads "Donald Wright MD MPH". The signature is written in a cursive style.

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

From: Butler, John (HHS/OASH) [<mailto:John.Butler@hhs.gov>]
Sent: Tuesday, October 06, 2015 3:25 PM
To: Catherine Penick <CPenick@salud.unm.edu>
Subject: RE: Question regarding Institutions Research Misconduct Policy

Dear Catherine:

This is a follow-up to our discussion yesterday regarding the issue of providing copies of sequestered records to the respondent.

You cited 42 CFR 93.305(b) that provides that institutions must “where appropriate, give the respondent copies of, or reasonable, supervised access to the research records.” Your specific question is at what stage of the inquiry/investigation process should this happen.

ORI believes that institutions should take all reasonable steps to insure that respondents have access to all materials critical to responding to the misconduct allegations made against them. The institution must provide the respondent the opportunity to respond to its inquiry report, and that report should include the relevant records and evidence examined in support of the institutional conclusions of whether an investigation is warranted, or not. Providing relevant records at this point is appropriate. But the inquiry stage is primarily for initial fact finding to determine whether the allegations may have substance, and does not necessarily require an extensive examination of all relevant records - this is normally done during an investigation. The records supporting an inquiry finding would likely be a subset of the entire record.

The second citation you note is 42 CFR 93.312(a) that requires institutions to provide the respondent with copies of, or supervised access to, the evidence on which the findings in an investigation report are based. Again, the respondent should have access to all the evidence that an institution used to support its findings

So the circumstances of each misconduct case will likely determine the timing and extent of disclosures to the respondent during the full institutional process.

It was noted that The UNM E40 Policy currently under revision includes the following provision at the inquiry stage: “As soon as practicable, a copy of each sequestered record will be provided to the respondent, or to the individual from whom the record was taken, if not the respondent, if requested.” The Federal regulation consistently states that, when appropriate, the respondent be provided copies, or supervised access to the research record. The requirement to provide copies of each sequestered record goes beyond the requirements of the regulation, but is acceptable as it does not contravene any provisions of the applicable Federal requirements. However, there are issues to think about if UNM is going to provide a copy of all sequestered records as soon as they are secured:

1. The sequestration process often requires the securing of multiple computer hard drives, and the hard drives likely will contain information unrelated to the allegations.
2. Other data records, either electronic or manual, may also contain significant information that is unrelated to allegations.

3. The inquiry may not proceed to an investigation, likely making the copying and sharing of records unnecessary.
4. In the case of multiple allegations, and/or multiple respondents, the sequestered record may be very large and not all the allegations may be found to be credible at the inquiry stage, making the copying and distribution of potential evidence and records burdensome and unwarranted.

This list is far from comprehensive, but points to some obvious drawbacks to the requirement that all sequestered information immediately be copied and provided to the respondent.

ORI believes that the citation you noted above, 42 CFR 93.305(b), provides an institution the most reasonable means of addressing these concerns: the institution can judge the timing and circumstances under which either copies or supervised access to the original data are provided to respondents.

If you have any questions, or wish to discuss this matter further, feel free to contact me at 240-453-8436.

John Butler
Compliance Coordinator
Office of Research Integrity

A53: Development and Approval of Faculty Policies



Approved by: Faculty Senate

Effective Date: August 27, 2013 **Revised Draft 10/29/15**

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 or academic administrator 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. Because faculty policy is a shared governance process, policy actions generally require one to two full semesters for appropriate review, approval, and implementation. 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

Policy and Procedures are sections of each policy document. Changes to the Policy Section require approval of the approving bodies listed in the policy heading; at a minimum this includes the Faculty Senate. Changes to the procedures section requires approval of the Faculty Senate Policy and Operations Committees.

Policy. Provides the overall intention and direction of the policy and major mandated actions or constraints.

Procedures. Provide the information and/or steps necessary for policy compliance and outlines how the policy's requirements will be met.

To assist with implementation of the policy, standards and guidelines may be issued by the office responsible for administration of a specific policy, as identified in the heading of each policy.

Standards. Required processes necessary for compliance with the policy document.

Guidelines. Recommended practices or processes designed to streamline particular processes according to a set routine or sound practice. Guidelines allow some discretion or leeway in interpretation, implementation, or use.

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

Draft History

October 28, 2015—Defintions added to policy document and Section 4. added to the Procedures section to allow for issuance of standards and guidelines.

October 28, 2015 – Changes to policy sent to faculty for campus comment



Committee on Governance

Date: September 25, 2015
To: Faculty Senate Policy Committee
From: COG Faculty Policy Analysis Task Force
RE: Addition of References to Faculty Policies

The recent change to the Faculty Constitution requires that all policies that are applicable to faculty be identified and listed in the *Faculty Handbook (FH)*. The COG Policy Analysis Task force was appointed to achieve this goal. The task force reviewed Regent (RPM) and University Administrative Policies (UAP) to identify policies that apply to faculty, so that references could be included in the *FH*. The task force has identified a two-step process to provide this information in a meaningful manner. The first step was to develop a table sorted by subject matter that lists RPM and UAP policies that apply to faculty. This Table is included in the attached draft of proposed policy A53.1 "Policies Applicable to Faculty." The task force would appreciate the Committee taking prompt action on the proposed policy so that it can be in place before the end of the fall semester. Since it would be beneficial for the Faculty Handbook to include links to policies developed by schools and colleges, A53.1 may need to clarify or reinforce the hierarchy of university policies overall.

The second step will be to include references to the RPM and UAP policies in the applicable FH policy, if one exists. Below is a list of FH policies that will need to be revised to include the applicable references.

The task force also reviewed these policies for any policy conflicts between the FH and/or RPM and UAP policy and identified any required corrections. Requests for policy corrections or updates have been forwarded to the Policy Office for revisions to RPM and UAP policies. Concerns or corrections pertaining to the FH are included in the tables below for your review and action. In addition, some RPM and UAP policies have been identified that should be reviewed by the Policy Committee to determine if changes need to be made to the RPM or UAP policies, or if a separate Faculty Handbook policy should be developed to more adequately address faculty issues. Please let us know if you need further information, and we appreciate your assistance with this important project. Pamela Cheek and Melinda Tinkle would both be happy to attend a meeting of the Policy Committee to address any questions or concerns.

FH policies that need to be revised to include the applicable references and/or corrections.

FH Policy	References to be added	Reason and/or Other Recommendations or Concerns
A20	RPM 2.14 Branch Colleges and Off Campus Education Centers RPM 3.4 Health Sciences Center and Services UAP 1000 UNM History, Mission, and Organizations	A20 should be revised to better articulate the scope and how it relates to other policy documents.
A50	RPM 5.1 The Faculty's Role in the University's Academic Mission	Regent policy that authorizes A50. Should RPM 2 nd para info be in A50? Is requirement for Regent approval too general?

A60	RPM 1.7 Advisors to the Board of Regents	Regent policy lists Faculty Senate President as advisor to the Board of Regents.
A88	RPM 5.1 The Faculty's Role in the University's Academic Mission	RPM 5.1 gives faculty a role in the creation and reorganization of academic units.
A91	RPM 5.1 The Faculty's Role in the University's Academic Mission	RPM 5.1 gives faculty a role in the creation and reorganization of research centers and institutes.
C05	RPM 2.4 Diversity and Campus Climate RPM 5.1 The Faculty's Role in the University's Academic Mission UAP 2210 Campus Violence	These policies provide important information that should be referenced in the Faculty Handbook. Policy content which focuses on a state of emergency seems inconsistent with C05 title. Content that should be in this policy seems to be missing. The task force requests the Committee conduct a full review of this policy and perhaps broaden C05 to provide a positive description of faculty rights and responsibilities.
C07	RPM 2.5 Sexual Harassment RPM 2.6 Drug Free Environment RPM 2.9 University Archives and Records RPM 6.4 Employee Code of Conduct and Conflicts of Interest policy UAP 2140 Possession of Alcohol on University Property UAP 2200 Whistleblower Protection and Reporting Suspected Misconduct and Retaliation UAP 2210 Campus Violence UAP 2215 Consensual Relationships and Conflicts of Interest UAP 2730 Sexual Harassment UAP 3715 Code of Conduct UAP 3720 Conflicts of Interest UAP 3270 Suspected Employee Impairment at Work UAP 3290 Professional Development and Training	These policies provide important information that should be referenced in the Faculty Handbook. Include these references in C07 because they discuss behavior that can result in disciplinary action.
C09	UAP 2200 Whistleblower Protection and Reporting Suspected Misconduct and Retaliation UAP 2210 Campus Violence	These policies provide important information that should be referenced in the Faculty Handbook.
C20	RPM 5.3 Employment of UNM Graduates	Regent policy that authorizes C20. Update HSC Chancellor title.
C70	RPM 2.17 Public Access to University Records RPM 5.7 Confidentiality of Faculty Records RPM 6.8 Disclosure of Information About Employees	These policies contain information that is important for faculty to know—such as “opt out procedures” to protect home address, phone#, personal cell phone #, and personal email addresses.

	UAP 2300 Inspection of Public Records UAP 3710 Personnel Information Disclosure Policy	
C130	RPM 5.5 Outside Employment RPM 6.4 Employee Code of Conduct and Conflicts of Interest Policy UAP 3720 Conflicts of Interest	RPM 5.5 authorizes C130. RPM 6.4 and UAP 3720 provide conflict of interest restrictions and state law pertaining to financial disclosure requirements.
C140	RPM 5.6 Extra Compensation	Update Chancellor title.
C150	RPM 2.7 Use of University's Name and Symbols RPM 6.5 Political Activity UAP 1010 University External Graphic Identification Standards UAP 2060 Political Activity UAP 3740 Media Response	Useful information for faculty engaging in political activity. Newly revised political activity policy number changed to 2060. Either revise C150 to state UAP 2060 does not apply to faculty or ask Policy Office to update 2060 to reference process for leave for faculty to serve in legislature.
C220	Holidays	Update for current holidays and add language asking instructors to accommodate student religious holidays. See UAP 3405 for useful language.
C225	RPM 7.7 Travel UAP 4030 Travel Reimbursement and Per Diem	These policies provide important information that should be referenced in the Faculty Handbook.
C230	Military Leave of Absence	Required by law, C230 is outdated and provides little guidance. Needs to address tenure clock—tricky because based on federal law; need assistance from legal counsel. See UAP 3425 for guidance.
NEW	Domestic Abuse Leave	This leave is required by NM State Law. Do faculty need a separate policy?
C240	RPM 6.5 Political Activity by Employees	Regent policy authorizes C240.
C305	RPM 6.3 Privileges and Benefits	Regent policy authorizes C304.
NEW	Copyright Policy and Law	Consider developing a policy on copyrights. See Pathfinder for useful language.
D100	RPM 4.8 Academic Dishonestly	Regent policy that authorizes D100. Does D100 need to be revised to include full RPM definition?
D170	Student Attendance	Need to add a section to address military withdrawal, recognize the use of on-line systems to drop, and make it clear it is the student's responsibility to make sure a drop happens.
D175	RPM 4.2 Student Code of Conduct RPM 4.3 Student Grievances	Regent policy that authorizes D175; and RPM 4.2 describes conduct subject to D175.
D176	RPM 4.3 Student Grievances	Regent policy that authorizes D176. Update to allow for appeal to BOR.

E10	RPM 5.11 Classified Research	Regent policy authorizes and restricts classified research. Update E10 #4 for HSC counterparts.
E20	RPM 5.12 Overseas Research	Discusses overseas research. Revise references in E20 to state the provisions of E40. E60 & E70 apply.
E40	RPM 5.13 Research Fraud	Authorizes and requires E40. Update HSC titles.
E60	RPM 5.9 Sponsored Research UAP 2425 Recovery of Facilities and Administration Costs UAP 2480 Incentives to Program Participants UAP 2470 Sub-Award Administration	These policies provide important information that should be referenced in the Faculty Handbook.
E70	RPM 2.15 Science and Technology Corporation at UNM RPM 5.8 Intellectual Property	Describes requirements for protection and commercialization of intellectual property. Update HSC titles; possibly add sentence from RPM 2.15; add STC requirements from RPM 2.15 to E70.
E80	RPM 5.17 Conflict of Interest Waiver for Technology Transfer	Authorizes E80. Update HSC title.
E90	RPM 5.14 Human Beings as Subjects in Research	Provides guidance for E90.
E100	RPM 5.15 Use of Animals in Education and Research	Provides guidance for E100. Is the FH Policy title complete?
E110	RPM 5.10 Conflict of Interest in Research	Provides guidance for E110.

Placeholder Policies in FH: In addition to the references listed below, the task force identified a few general topics that are not discussed in the FH, but that have a number of important RPM or UAP policies that are applicable to faculty, which made it difficult to associate the applicable policies with a FH policy that would reference them. These topics include employee benefits, information technology, safety and security, and student policies. The task force recommends that the Policy Committee review these topics to determine if a high level faculty policy should be developed to address the issue and contain references to applicable RPM or UAP policies.

Employee Benefits	RPM 6.11 Dependent Education Benefits UAP 3600 Eligibility for Employee, Retiree, and Dependent Benefit Plans UAP 3625 Retirement UAP 3630 Worker's Compensation UAP 3635 Unemployment Compensation UAP 3640 Supplemental Retirement Savings Plans UAP 3650 Flexible Spending Accounts UAP 3700 Education Benefits UAP 3745 Service Awards UAP 3750 Counseling, Assistance, and Referral Service UAP 3790 Domestic Partners
Information Technology and Security—Does there	UAP 2000 Responsibility and Accountability for University Information and Transactions

need to be a separate IT Policy in the Faculty Handbook?	UAP 2030 Social Security Numbers UAP 2500 Acceptable Computer Use UAP 2510 Computer Use Guidelines UAP 2520 Computer Security Controls and Access to Sensitive and Protected Information UAP 2540 Student Email UAP 2550 Information Security UAP 2570 Official University Webpages
Payroll	UAP 2615 Non Standard Payment Processing UAP 2620 Distribution of Pay UAP 2635 Payroll Deductions, W-2s, and Tax Reporting UAP 2650 Payment When Terminating Employment UAP 2670 Garnishments and Other Wage Withholdings UAP 2680 Payroll Overpayments and Collection
Safety and Security	RPM 3.7 Health Sciences Center Institutional Compliance Program RPM 7.14 Risk Management and Insurance RPM 8.2 Law Enforcement on Campus RPM 8.3 Parking and Vehicles on Campus UAP 2210 Campus Violence UAP 2250 Tobacco-Free Campus UAP 2260 Bicycles and Other Non-Motorized Vehicles UAP 2290 Animal Control on University Property UAP 6100 Risk Management UAP 6110 Safety and Risk Services UAP 6130 Emergency Control UAP 6150 Casualty and Liability Insurance and Claims
Student Policies	UAP 2310 Academic Adjustments for Student with Disabilities UAP 2710 Education Abroad Health and Safety

Major Concerns with:

UAP 2100 “Sustainability” Please review UAP 2100 pertaining to academic freedom. Sec 3.2.2 of UAP 2100 addresses faculty's role and Sec 5 addresses curriculum and research. The task force raised the following concerns about 2100:

- 1) Does there need to be a partner policy that protects academic freedom?
- 2) Should University Counsel be asked if this should even be a policy—isn't it more a value?
- 3) Can a faculty member be disciplined for not complying with UAP 2100? If so, should C07 be revised to address academic freedom concerns?

UAP 3425 “Military Leave and Related Service” Please review UAP 3425 to determine applicability to faculty and students. There is concern as to how the policy would relate to the tenure clock. Also there are specific grade, credit, and graduation legal requirements for faculty pertaining to students who are called to active service during a semester. The Policy Committee should determine if changes need to be made to UAP 3425 or whether a separate Faculty Handbook policy should be developed.

Political Activities, Freedom of Speech and Media Response Policies. Please review UAP 3740 to determine if changes are needed to address the faculty role. This should be done in conjunction with a review on C150, RPM 2.1, RPM 6.5, UAP 2220, and UAP 3735, which pertain to political activity and

freedom of speech. After review by the Policy Committee, requests should be made to the Policy Office for any revisions to applicable RPM and/or UAP policies.

Public Records. The Committee may want to revisit the discussion of public records and how faculty information is or is not released in response to an Inspection of public records request.

FIRE Report: The Foundation for Individual Rights in Education issued the report “Spotlight on Speech Codes 2015: The State of Free Speech on our Nation’s Campuses.” Professor Geoffrey Miller performed an analysis on UNM policies that he feels support or undermine academic free speech. He raised concerns, which may or may not be valid about the policies listed below. The task force wanted to bring his concerns to the attention of the Policy Committee for possible review.

FH A20 Vision, Mission, and Value Statements

FH C05 Rights and Responsibility at UNM

FH C09 Respectful Campus

FH C150 Political Activity—Professor Miller had only positive comments for this policy, but as the Committee reviews it for other issues raised by the task force, it might be helpful to read Professor Miller’s analysis on this policy.



Committee on Governance

Date: September 25, 2015
 To: Academic Freedom and Tenure Committee
 From: COG Faculty Policy Analysis Task Force
 RE: AF&T Policy Issues Identified in Task Force Work

The recent change to the Faculty Constitution requires that all policies that are applicable to faculty be identified and listed in the Faculty Handbook (FH). The Committee on Governance appointed a task force to accomplish this task. Part of the Committee’s charge was to compare FH policies with Regent (RPM) and University Administrative Policies (UAP) to identify any conflicts, required corrections, and/or concerns. The task force identified some concerns related to Section B: Academic Freedom and Tenure and existing RPM and UAP policies. The task force would appreciate it if AF&T could review the following issues to determine if there are conflicts and/or concerns that need to be addressed. Please let us know if you need further information, and we appreciate your assistance with this important project.

Policies	Concerns
RPM 2.1 Free Expression and Advocacy RPM 6.5 Political Activity UAP 2060 Political Activity UAP 2220 Free Expression and Dissent	Does faculty need more specific protection when engaging in political activities in classes? 1) Perhaps add a subsection under Section 4 of UAP 2060 or add a specific paragraph to Section B. 2) The task force thought that AF&T asked that Section B be referenced in the newly issued UAP Policy 2060 on Political Activity, but it doesn’t appear this has taken place.
FH F90 Branch Campuses	Please review for any conflicts with Section B
RPM 2.1 Free Expression an Advocacy RPM 2.3, UAP 2270 Equal Opportunity and Affirmative Action for Employees and Students RPM 2.4 Diversity and Campus Climate RPM 2.5 Sexual Harassment UAP 2060 Political Activity UAP 2100 Sustainability UAP 2220 Freedom of Expression and Dissent UAP 2230 Police and Security Services UAP 2240 Respectful Campus UAP 2730 Sexual Harassment UAP 3740 Media Response FH A20 Vision, Mission, and Value Statements FH Section B 1.1(b) FH C05 Rights and Responsibility at UNM FH C09 Respectful Campus Pathfinder Student Code of Conduct Pathfinder Visitor Code of Conduct	FIRE Report: The Foundation for Individual Rights in Education issued the report “Spotlight on Speech Codes 2015: The State of Free Speech on our Nation’s Campuses.” Professor Geoffrey Miller performed an analysis on UNM policies that support or undermine academic free speech. In his analysis he raised concerns about the policies listed in the previous column. The concerns he voiced may or may not be valid and may or may not have an impact on academic freedom, so the task force wanted to bring them to the attention of the AF&T Committee for possible review. For your convenience we have attached a copy of the FIRE report and Professor Miller’s analysis.



Committee on Governance

Date: September 25, 2015
To: Pamina Deutsch, Director of UNM Policy Office
From: COG Faculty Policy Analysis Task Force
RE: Proposed Revisions to Regents' and University Administrative Policies

The recent change to the Faculty Constitution requires that all policies that are applicable to faculty be identified and listed in the *Faculty Handbook (FH)*. The COG Policy Analysis Taskforce was appointed to achieve this goal. The first step in this process was development of a Reference Table A53.1 for the *FH*, which lists applicable policies sorted by topic and with links to each policy. A copy of A53.1 is attached. An additional part of our charge was to compare faculty handbook policies with Regent (RPM) and University Administrative Policies (UAP) to identify any conflicts or required corrections. The taskforce has identified the following corrections and/or updates that need to be made to RPM and UAP policies. To assist with this process we have included with this memo revised policy drafts indicating the changes requested. Please let us know if you need further information to facilitate the changes. We appreciate your assistance.

Corrections Needed to the Following Regent and UAP Policies:

RPM #	RPM Title	Summary of Change(s) Requested
1.5	Appeals to the Board of Regents	Revise the policy to clarify "working" days. Add a section for AF&T appeals which have different time restrictions than general appeals.
5.4	Leaves of Absence	Policy Section: add other types of leaves authorized by policy. Might want to add inclement weather. Reference Section: add references to related faculty leave policies.
5.5 5.6	Outside Employment Extra Compensation	On 4/30/08, the Regents approved revisions to FH Policies C130 Outside Employment, and C140 Extra Compensation. See attached minutes from 4/30/08 Regents meeting. However, Regents policies 5.5 and 5.6 were not revised to reflect the approved changes; therefore RPM 5.5 and RPM 5.6 need to be revised for these approved changes.
5.13	Research Fraud	Replace term "fraud" with "misconduct"--the term used in FH Policy E40 Research Misconduct. Misconduct addresses situations that may not rise to the level of fraud but are serious and should be investigated with appropriate action taken. Delete implementation section and update reference to FH E40. NOTE: E40 is currently under review which may result in additional changes to RPM 5.13.
5.18	Endowed Faculty Chairs	Revise to discuss faculty role per C170 Endowed Chairs and Named Professorships and reference C170.
6.3	Privileges and Benefits	Policy Section: add "in accordance with Faculty Handbook C305 Emeriti Status"; update references.
6.5	Political Activity by Employees	Policy Section: add allowance for leave of absence Update references to include C150 Political Activity and C240 Leave of Absence Incident to Political Activity.
2730	Sexual Harassment	Add language to clarify that there are different disciplinary processes for faculty and students. Add reference to C07 to ensure that Faculty

		Disciplinary Policy is followed. Add reference to UAP 3290 which discusses mandatory training.
3415	Leave with Pay	Revise jury duty section to allow employees to keep mileage reimbursement.

References: Adding or Updating Faculty Handbook References/Dates to RPM Policies:

The current version of the Regent Policy Manual was implemented September 12, 1996. Regent policies applicable to faculty contain references to page numbers in the printed Faculty Handbook that was available in 1996. Since 1996, the Faculty Handbook was redesigned and published on UNM’s website. This has resulted in outdated references in many Regent policies. In addition other faculty policies need to be added to the applicable Regent policy. Below is a list of Regent policies that require updating of references.

RPM UAP #	Policy Title	Summary of Change(s) Requested
2.1	Free Expression and Advocacy	Add references to FH Section B, C150 and UAP 2060, 2220.
2.5	Sexual Harassment	Add reference to FH C07 to ensure that Faculty Disciplinary Policy is followed.
2.15	Science and Technology Corporation at UNM	Add reference to E70.
4.2	Student Code of Conduct	Reference RPM 4.3; D175 and D176.
4.3	Student Grievances	Reference Section: Ref D175 and D176 instead of Pathfinder.
4.5	Student Publications	Delete reference to FH 70.2—policy was abolished 4/24/07.
5.1	The Faculty’s Role in the University’s Academic Mission	Update the date the Faculty Constitution was approved; update Faculty Handbook references.
5.2	Academic Freedom and Tenure; Appointments and Promotions	Revise to update amendment dates or delete them.
5.7	Confidentiality of Faculty Records	Update Implementation Section to reflect recent approval dates. Update Reference Section update FH references.
5.8	Intellectual Property	Update reference to FH E70
5.9	Sponsored Research	Update reference to FH E60
5.11	Classified Research	Update reference to FH E10
5.12	Overseas Research	Update reference to FH E20
5.14	Human Beings as Subjects of Research	Update reference to E90. NOTE: E90 is currently under review which may result in additional changes to RPM 5.14.
5.17	Conflict of Interest Waiver for Technology Transfer	Update reference: Add E80 and E110
5200	Allocation and Assignment of Space	Add reference to A89 Allocation of Office, Laboratory, and Classroom Space

Other Potential Issues Identified by COG Taskforce:

Policies RPM 2.6 Drug Free Environment and UAP 2140: There may be a potential conflict around the appropriate use of alcohol. Please review both of these policies to ensure definitions align properly.



Committee on Governance

Date: September 25, 2015
To: Tomas A Aguirre, Dean of Students
Julie Coonrod, Dean of Graduate Studies
Tim Lowrey, Associate Dean of Graduate Studies
Kim Kloepfel, Chief Operations Officer, Division of Student Affairs
Eliseo Torres, Vice President for Student Affairs
Patricia Mercer, Admin Support Supervisor, Dean of Students
From: COG Faculty Policy Analysis Task Force
RE: Review of Pathfinder Policies for Consistency with Applicable University Policies

The recent change to the Faculty Constitution requires that all policies that are applicable to faculty be identified and listed in the *Faculty Handbook*. The COG Policy Analysis Task force was appointed to achieve this goal. The first step in this process was development of a Reference Table A53.1 for the Faculty Handbook, which lists applicable Regents and University Administrative policies sorted by topic and with links to each policy. An additional part of our charge was to compare Faculty Handbook policies with other University policies, including Regent and University Administrative policies to identify any conflicts or required corrections. During this review, it became apparent the many of the policies in the Pathfinder may be in conflict with Regent, Faculty Handbook, and University Administrative Policies. The task force would like to request that a comprehensive review be performed on Pathfinder policies to ensure they are consistent with applicable University policies.

From: UNM Policy Office [mailto:UNM_POLICY_OFFICE-L@unm.edu] **On Behalf Of** UNM Policy Office
Sent: Thursday, October 29, 2015 9:01 AM
To: UNM_POLICY_OFFICE-L@LIST.UNM.EDU
Subject: Policy drafts available for review and comment

As discussed in more detail below, four proposed new policies and proposed revisions to ten existing policies are available for review and comment by you and your respective constituent groups. Please forward this email to your constituents. Concurrently, the policies are being posted for a 30-day, all-campus review and comment period.

Comments may be submitted to the Policy Office directly by emailing policy@unm.edu or by submitting the comments online through the red hyperlinks below. Please submit your comments by Monday, November 30, 2015.

If you would like to meet with the Policy Office to discuss these draft policies, please contact University Policy Specialist Bonnie Leigh Reifsteck at bonniec@unm.edu to schedule a meeting. Thank you.

To review a draft of the policies or to submit comments online, please click on the red hyperlinks below.

NEW POLICIES

[UAP 2XXX \("Data Governance"\)](#)

This policy establishes a framework for ensuring that University data are accessible, accurate, secure, and easily integrated across the University's information systems. The policy applies to Main Campus and the branches, but excludes the Health Sciences Center, which has its own data governance structure.

[UAP 2XXX \("Protection of Minors on Campus"\)](#)

After the Main Campus Chief Compliance Officer identified minors on campus as UNM's most significant risk, this policy was developed by a task force of stakeholders to mitigate the risk. This is intended as a Phase I policy in that subcommittees of the task force are continuing to meet and discuss additional aspects of mitigating risks to minors.

[UAP 2XXX \("Lactation Support Program"\)](#)

A committee developed this policy, which describes UNM's lactation support program, explains legal requirements, and provides guidance to instructors and supervisors in accommodating lactation breaks.

[UAP 2XXX \("Recreational Drones"\)](#)

This policy was developed at the request of Campus Police, Athletics, and the University Emergency Manager, who were concerned about recreational drones threatening the safety of stadium events, nearby airports (including the University Hospital helipad), and members of the campus community. Campus Police and the University Emergency Manager recommended that the policy ban all recreational drones from flying over the Albuquerque campus, including model airplanes. Drones

used for research are outside the scope of this policy, and governed by a separate set of Federal Aviation Administration regulations.

SIGNIFICANT CHANGES TO EXISTING POLICIES:

[UAP 2200 \(“Whistleblower Protection and Reporting Suspected Misconduct”\)](#)

The Director of Internal Audit and the HSC and Main Campus Chief Compliance Officers drafted substantial revisions to the policy. Their work was later reviewed and revised by others, including by a few dozen staff, faculty, and administrators who attended three meetings that were scheduled to discuss the policy draft.

[UAP 3290 \(“Professional Development and Training”\)](#)

The changes to this policy address an Internal Audit report finding that all employees should be required to take the University’s mandatory training.

[UAP 3630 \(“Workers’ Compensation”\)](#)

This policy was revised to include language required by the State Risk Management Department on vacant positions. Additionally, the Employee Occupational Health Program and Safety and Risk Services suggested other changes to conform to, and clarify, current practices.

[UAP 7200 \(“Cash Management”\) and \[UAP 7215 \\(“Credit Card Processing”\\)\]\(#\)](#)

The two policies were revised to update language on the Payment Card Industry standards, and also to conform to current practices.

MINOR REVISIONS TO EXISTING POLICIES:

[UAP 1150 \(“Staff Council”\)](#)

The policy was revised to reflect a new stipend for the Staff Council President.

[UAP 6150 \(“Casualty and Liability Insurance and Claims”\) and \[UAP 7710 \\(“Property Management and Control”\\)\]\(#\)](#)

Purchasing requested revisions to these two policies that require departments to provide the serial number and UNM tag number of stolen items when making reports to Campus Police, in the hope that this information will assist with the recovery of stolen items.

[UAP 7730 \(“Taking University Property Off Campus”\)](#)

Purchasing requested two additions. One requires an annual re-certification of the location of UNM property taken off-campus. The other clarifies that in accordance with the Faculty Handbook’s policy on emeriti faculty, emeriti may check out computers for use off campus.

RESCISSION OF A POLICY:

[UAP 3000 \(“Guiding Principles”\)](#)

This Human Resources policy dates from 1997, was never revised, refers to a pre-2000 strategic plan, and has the same title as a new policy approved by the Regents. Human Resources asked to have the policy rescinded because it is dated and no longer necessary.

UNM Policy Office, 114B Scholes Hall
MSC05 3357
1 University of New Mexico
Albuquerque, NM 87131-0001
Tel. 505.277-6531
Web. <http://policy.unm.edu>

DRAFT OF 10-23-2015

Administrative Policies and Procedures Manual - Policy 2200: Whistleblower Protection and Reporting Suspected Misconduct and Retaliation

Date Originally Issued: 10-26-1994

- ~~Revised~~ : 01

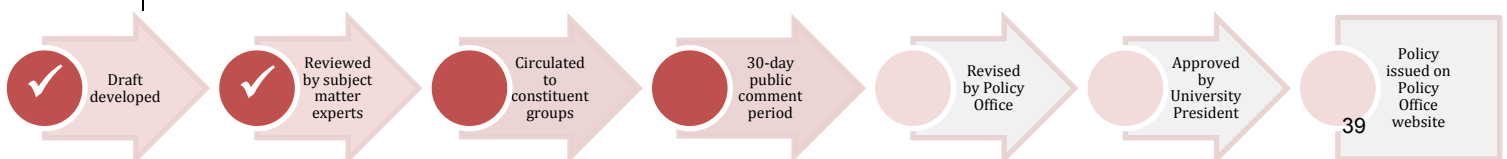
Authorized by Regents' Policy 3.1 ("Responsibilities of the President")
Process Owner: University President

1. General

The University of New Mexico ~~strongly encourages all~~ is committed to the highest ethical and professional standards of conduct. To achieve this goal, the University ~~employees, acting in good faith, to report any suspected misconduct that may be taking place at~~ relies on each member of the University. ~~An employee who interferes with or tries to interfere with the right of another employee reporting suspected misconduct is subject to disciplinary action, up to and including dismissal.~~ community to comply with all laws, regulations, and University policies that relate to them. The University ~~is committed to protecting employees who report suspected misconduct in accordance with the Whistleblower Protection Act. Misconduct is any on the job activity performed by a University employee that violates state and/or federal laws or regulations, local ordinances, or also relies on members of the~~ University ~~policy.~~ A more detailed definition is provided in Section 2, below. community to comport themselves with honesty, integrity, and good judgment.

Members of the University community are expected, and in some cases required, to report suspected violations of laws, regulations, or University policies, or other suspected misconduct that come to their attention, including violations of ethical and professional standards. Persons who report suspected misconduct are afforded whistleblower protection from retaliation by the University for such reporting.

2. Definitions



For the purposes of this policy ~~the term "employee" is broadly defined and includes:~~

- "Members of the University community" means employees, students, board members acting in their UNM affiliation, UNM Hospital employees, independent contractors, visitors, service providers, and volunteers.
- "Employee" means all faculty, staff, and student employees; ~~independent contractors; and volunteers. This policy describes the procedures for reporting and investigating suspected~~
- "Suspected misconduct" means conduct or actions that a reporter, in good faith, believes to be substantive violations of University policy, applicable state and federal laws, and applicable University codes of conduct or ethical or professional standards that relate to the accused individual's position or area of responsibility. ~~Retaliation is a form of misconduct, interference with reporting suspected misconduct, and retaliation. Nothing~~
- "Whistleblowers" means individuals who report activities that they have a good faith belief are illegal or in violation of policy, and who make such reports to one or more of the parties specified in this policy ~~limits the right of any person to seek individual remedies or otherwise proceed under any other state or federal remedy, or to a regulatory or licensing agency.~~
- "Retaliation" means when individuals submit reports of suspected misconduct to one or more of the parties specified in this policy, or cooperate with or participate in an investigation, and, as a direct result of their having made such reports, experience an action that is materially adverse to their status as a member of the University community.

3.1.1 Ombuds/Dispute Resolution Services

Individuals are encouraged to consult with the staff, faculty, or graduate student Ombuds/Dispute Resolution Office, as appropriate, to discuss concerns, and to learn of official policies and procedures, where to go to file a formal complaint, or how to notify University officials of a problem. The offices can also assist in facilitating constructive dialogue and building collaboration and communication. Information given to these offices will be kept confidential to the extent provided by law. Except in cases of alleged sexual misconduct, assault, or violence, speaking with an ombudsperson about a problem does not constitute formal notice to the University of New Mexico for the purpose of

initiating mandatory reporting requirements, and the information reported will not be shared with any other office.

4. Whistleblower Protection Against Retaliation

~~Retaliation will not be tolerated and will be promptly investigated by the University. Any employee who retaliates against an employee who has reported suspected misconduct is subject to disciplinary action, up to and including dismissal. Retaliation and the procedures for reporting retaliation are described in Section 8 herein.~~

1.2. Employees

In accordance with the State Whistleblower Protection Act, the University is committed to protecting individuals who report suspected misconduct or who cooperate with or participate in an investigation. Anyone who, in good faith, reports a suspected violation of law, regulation, University policy, or ethical or professional standards will be protected from retaliation as a result of such reporting regardless of whether or not, after investigation, a violation is found to have occurred. No member of the University community shall discharge, demote, suspend, threaten, harass, discriminate against, or otherwise sanction or discipline the whistleblower for reporting what the whistleblower sincerely believes to be serious suspected misconduct.

This whistleblower protection extends to individuals who provide information in relation to an investigation. No member of the University community may interfere with or try to interfere with the right of an individual to report suspected misconduct or cooperate with or participate in an investigation. Any member of the University community who interferes with or tries to interfere with the right of another individual reporting suspected misconduct or cooperating with or participating in an investigation may be subject to disciplinary action, up to and including termination.

Reporting **Suspected Misconduct**

~~An employee reporting suspected misconduct:~~

- ~~• will be protected from retaliation for reporting suspected misconduct;~~
- ~~• can report suspected misconduct anonymously, but doing so may limit an employee's protection from retaliation and the University's ability to conduct a full investigation;~~
- ~~• can contact the University Internal Audit Department at any time concerning the timeline of the review or investigation;~~
- ~~• can amend a report if new information become available;~~

- ~~should not investigate suspected misconduct on their own; and~~
- ~~will be notified when the investigation is complete.~~

2. Misconduct

~~Misconduct is any on the job activity performed by a University employee that violates state and/or federal laws or regulations, local ordinances, or University policy. Misconduct includes, but is not limited to, the examples listed below:~~

- ~~Misuse, mismanagement, or misappropriation of funds, securities, vehicles, property, facilities or any other University asset.~~
- ~~Corruption or bribery.~~
- ~~Theft of University property.~~
- ~~Paying or receiving money for hours not worked.~~
- ~~Falsification of documents or reports.~~
- ~~Willful failure to perform duties.~~
- ~~Discrimination.~~
- ~~Sexual harassment.~~
- ~~Using or being under the influence of alcohol or drugs at work.~~
- ~~Personal use of University materials or assets (other than incidental use as defined in Section 4.2 of Policy 4000 and Section 2.3 of Policy 2500).~~
- ~~Endangerment of public health or safety.~~
- ~~Unauthorized release of confidential information.~~
- ~~Retaliation against an employee who has reported suspected misconduct or interference with the right of an employee to report suspected misconduct.~~

3. Confidentiality

~~The University will try to prevent disclosure of the identity of the employee reporting suspected misconduct without their consent. However, often the identity of an employee may become obvious to others due to the nature of the information. The reporting employee's identity may be disclosed if~~

necessary or required:

- to any law enforcement agency investigating the matter;
- to University employees assigned to investigate the matter;
- to University administrators and Regents to the extent necessary to conduct an investigation (on a need to know basis only);
- if required pursuant to a subpoena or by law;
- if necessary to defend a grievance by an employee; or
- if required by due process in connection with disciplinary action against the person accused.

The employee will be notified by the applicable University administrator when the employee's identity will be disclosed under any of the above circumstances. Whenever possible, the employee will be notified in advance of the disclosure. Employees reporting suspected misconduct or subsequent retaliation may need to testify in order to prove misconduct occurred and to defend against a legal action or grievance that may be brought against the University, its officers, or its agents.

4. Reporting Suspected Misconduct

Employees who are aware of or have reason to suspect misconduct should report the conduct, either orally or in writing using any of the following methods. An employee should report suspected misconduct as soon as reasonably possible, preferably within sixty (60) days from the time the employee becomes aware of the suspected misconduct. Employees should select the reporting method listed below that they are most comfortable with and is most appropriate to the situation.

- Report the conduct to your supervisor unless there is reason to believe the supervisor may be involved in the misconduct.
- Call the UNM Hotline 1-888-899-6092 call may be anonymous, but doing so may limit an employee's protection from retaliation and the University's ability to conduct a full investigation.

- ~~Report the conduct to the Internal Audit Department—suspected misconduct by the Internal Audit Department should be reported to the University President's Office.~~

- ~~Report the conduct to the department responsible for dealing with the conduct in question such as OEO, Campus Police, Risk Management, or HR as outlined in Section 6.1 herein.~~

~~Once an initial~~ report has been filed, an employee may amend the report if the employee becomes aware of new information. Supervisors should not investigate reports, but instead must notify the Internal Audit Department when a report of suspected misconduct is received. The Internal Audit Department coordinates all responses to reports of suspected misconduct regardless of reporting method.

~~Reports of suspected misconduct~~ should include the following information:

- ~~Name of employee filing the report (a report may be anonymous, but such action may limit an employee's protection from retaliation and the University's ability to conduct a full investigation.);~~
- ~~Address and telephone number where the employee prefers to be contacted;~~
- ~~A detailed description of the suspected misconduct. This should include the name(s) and department(s) of all those believed to be involved.~~
- ~~Dates or range of dates of suspected misconduct.~~
- ~~Any supporting evidence or material that may be available to the reporting employee. However, employees are not to investigate suspected misconduct on their own or remove University records from their proper location.~~

~~If~~ suspected misconduct is reported orally, the supervisor or University administrator receiving the report will document all information received at the time the report is made or as soon afterwards as possible.

~~All~~ reports regardless of reporting method are coordinated by the Internal

~~Audit Department. The Internal Audit Department will not accept complaints concerning allegations of suspected misconduct or retaliation that have been previously investigated or are currently being investigated by another University department.~~

~~5. False Information~~

~~An employee who knowingly gives false information or knowingly makes a false report of suspected misconduct or a subsequent false report of retaliation, or who knowingly provides false answers or information in response to an ongoing investigation will be subject to disciplinary action, up to and including dismissal, by the University.~~

~~6. Investigation of Suspected Misconduct~~

~~The Internal Audit Department will review and evaluate reports of suspected misconduct to determine if the report should be referred for further review and/or investigation. If such a determination is made, the Internal Audit Department will prepare a written report of the review. The University will act upon the Internal Audit Department's recommendations promptly. However, the timeliness of any investigation shall depend on the type and complexity of the report, the alleged act, and the type of investigation required. Time limitations for court actions or administrative proceedings are not delayed or interrupted during an investigation. In accordance with due process rights, the accused shall be notified that allegations of misconduct have been made and will be allowed to respond. The administrative department responsible for conducting the investigation will determine when it is appropriate to notify the accused. The employee reporting suspected misconduct may contact the Internal Audit Department for information on the timeline of the review or investigation.~~

~~**6.1.** Investigations will be conducted by the appropriate University department listed below in accordance with that department's investigation procedures. Allegations against any of the departments listed below will be investigated~~

by the administrator to whom the department head reports. A joint investigation may be conducted when more than one (1) area is involved:

- The University Division of Human Resources will investigate allegations related to violation of personnel policies.
- The University Office of Equal Opportunity will investigate any allegations of discrimination or sexual harassment.
- The University Department of Safety and Risk Services will investigate any allegations concerning safety or an unsafe work environment.
- The Internal Audit Department will investigate any allegations concerning the handling of University financial matters, documents, information, or equipment in accordance with "Dishonest or Fraudulent Activities" Policy 7205, UBP.
- The University Police Department will investigate any allegations concerning security or criminal activity.

If the employee reports suspected misconduct which personally affects the reporting employee in the workplace, the Internal Audit Department may consult the University Dispute Resolution (DR) Coordinator to determine whether to proceed under this policy or to transfer the matter, in whole or in part, to the DR Coordinator for proceedings under "Dispute Resolution" Policy 3220, UBP.

6.2. Great care must be taken in dealing with suspected misconduct to avoid the following:

- Inaccurate accusations.
- Violating any employee's right to due process.
- Making statements that could lead to claims of false accusation or other offenses.
- Alerting suspected individuals that an investigation is under way.

~~7. Report of Investigation~~

~~7.1. When the investigation is completed, a confidential report of the investigation will be sent for appropriate action to the vice president responsible for the unit where the investigation was conducted or to the President for units that report to the President. If the investigation is conducted by the Internal Audit Department, the report will be filed in accordance with Internal Audit Department policies. The Internal Audit Department will notify the complainant when an investigation is completed.~~

~~7.2. If illegal activity appears to have occurred, the findings will be reported to the appropriate audit and law enforcement agencies. This will be coordinated with University Counsel and other appropriate University administrators.~~

~~8. Interference With or Retaliation for Reporting Suspected Misconduct~~

~~A University employee may not interfere or try to interfere with the right of another employee to report suspected misconduct and may not retaliate against an employee who has reported suspected misconduct. If an employee believes that retaliation or interference was threatened, attempted, or occurred, he or she may file a complaint with the Internal Audit Department. Employees reporting suspected interference with or suspected retaliation for reporting suspected misconduct by the Internal Audit Department may file a report with the President's Office. An employee may file a retaliation complaint only if he or she has previously reported suspected misconduct.~~

~~8.1. Retaliation is any adverse action taken against an employee who has reported suspected misconduct when business-related reasons do not exist for the action or the action is outside of regular practice. Some examples of retaliation are listed below:~~

- ~~• Giving unwarranted negative performance evaluations to the reporting employee.~~
- ~~• Moving the reporting employee frequently and/or to undesirable~~

- ~~locations, without legitimate business justification.~~
- ~~• Transferring the reporting employee, without legitimate business justification.~~
- ~~• Reprimanding the reporting employee, without legitimate business justification.~~
- ~~• Taking adverse salary actions against the reporting employee, without legitimate business justification.~~
- ~~• Suspending, demoting, or dismissing the reporting employee, without legitimate business justification.~~
- ~~• Creating a hostile work environment for the reporting employee.~~

~~Reporting suspected~~ misconduct does not exempt an employee from legitimate personnel action taken during the normal course of business.

~~•~~
If individuals believe that retaliation or interference was threatened, attempted, or occurred, they may file a complaint through channels identified in section 6 of this policy.

5. Confidentiality

Reports of suspected misconduct 8.2. ~~If the employee reports suspected retaliation, that personally affects the reporting employee in the workplace, the Internal Audit Department may consult the DR Coordinator to determine whether to investigate the retaliation report under this policy or to transfer the matter, in whole or in part, to the DR Coordinator for proceedings under "Dispute Resolution" Policy 3220, UBP.~~

~~8.3.~~ The Internal Audit Department will review and evaluate reports of suspected interference with or suspected retaliation against an employee for may be submitted anonymously through the University's on-line (UNM.ETHICSPPOINT.COM) or telephonic (UNM Compliance Hotline at 1-888-899-6092) reporting services. Reports of suspected misconduct will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation and the University's legal obligations. Making an anonymous report may limit an individual's protection from retaliation and the University's ability to conduct a full investigation.

The University will try to prevent disclosure of the identity of an individual reporting suspected misconduct, but may disclose if necessary or required by policy or law.

6. Reporting Suspected Misconduct

~~to decide if an investigation is justified. Subject to Section 8.2, the Internal Audit Department will refer the investigation to the~~

Individuals who know of or have a good faith reason to suspect misconduct should select the reporting method listed below that they are most comfortable with and that is most appropriate to the situation. They may report the suspected misconduct:

- To a direct supervisor or that supervisor's supervisor, unless there is knowledge or a good faith belief that the supervisor may be involved in the suspected misconduct. Supervisors may address issues brought directly to their attention as appropriate in their discretion, provided that the issues do not require a formal investigation or involve potential criminal activity or allegations of sexual misconduct, assault, or violence; see UAP 2740 ("Sexual Violence and Sexual Misconduct"). Issues related to sexual misconduct and civil rights should immediately be referred to the Office of Equal Opportunity. Supervisors should consult with departments that are subject matter experts in the areas addressed in the attached lists, as appropriate, for guidance in handling allegations of misconduct.
- To the appropriate department for investigation. If an employee alleges retaliation by the Internal Audit Department, the with jurisdiction over the issue raised. Exhibit A provides contacts for the responsible departments.
- Through the UNM Compliance Hotline at 1-888-899-6092.
- Through the on-line reporting system at: UNM.ETHICSPPOINT.COM.
- To the Main Campus or Health Sciences Center (HSC) Compliance Office. Suspected misconduct by such Compliance Office should be reported to the University President's Office will review and evaluate or the Chancellor of the HSC, as appropriate.

Once an initial report to decide has been filed, it may be amended if an the reporter becomes aware of new information. The Main Campus or HSC Compliance Office process all reports filed through the compliance hotline and internet-based reporting system.

Various policies in the University Administrative Policy Manual, Faculty Handbook, and Pathfinder provide reporting and investigation is justified. If an processes that may be accessed by any member of the University community. This policy will not supersede

those reporting and investigation mechanisms. This policy provides for an additional reporting mechanism that may be accessed if desired.

7. False Information or False or Inaccurate Accusations

•

Any member of the University community who knowingly gives false or materially inaccurate information; knowingly makes a false report of suspected misconduct or a subsequent false report of retaliation; or who knowingly provides false answers or information in response to an ongoing investigation may be subject to administrative action by the University including disciplinary action, up to and including termination from employment or expulsion from the University.

8. Investigation of Suspected Misconduct

When suspected misconduct is warranted reported as provided herein, the report will be referred to the appropriate department—office with jurisdiction over the alleged misconduct, which will conduct a preliminary review to determine whether the issue warrants a more in-depth investigation. The appropriate University department will conduct the investigation in accordance with that department’s investigation or procedures. A joint investigation may be conducted when more than one University department or office has jurisdiction over the issue(s) raised in the report.

Individuals tasked with investigating suspected misconduct shall do so fairly, objectively, thoroughly, and pursuant to the tenets of ethical behavior espoused in their profession.

If an individual believes in good faith that there is a conflict of interest between the investigating body and the issues being investigated or individuals involved or participating in the investigation, the Main Campus or HSC Compliance Office should be contacted for consultation. Should the Main Campus or HSC Compliance Office determine that a bona fide conflict of interest exists, they will help coordinate an alternative investigative process.

9. Report of Investigation

9. False or Inaccurate Accusations

It is important to protect individuals from false, unsubstantiated, or inaccurate accusations. Therefore, when a report of suspected misconduct or suspected retaliation is not substantiated, the file containing all documents relating to the report, review, or investigation will be sealed and delivered to University Counsel's office. The file will be stored for six (6) years after the date the file is sealed, after which time it may be destroyed.

Investigative reports are completed and distributed in accordance with the investigation

procedures of the department investigating the matter. In most cases, the department conducting the investigation should notify the reporter and the appropriate Compliance Office when the investigation has been completed. Some investigation processes are legally mandated or otherwise prescribed and may not comply with such notification procedures.

If, after investigation, it is determined that illegal activity may have occurred, the findings of the investigation will be reported to appropriate audit and law enforcement agencies in coordination with the University Counsel and other appropriate University administrators. Some departments that conduct investigations report directly to law enforcement agencies; such departments' investigation results will be deemed in compliance with this provision upon completion of the investigation.

10. Cooperation with Investigations

All members of the University community are expected to cooperate and not interfere with investigations. Individuals who hinder, obstruct, or otherwise interfere with an investigation may be subject to disciplinary action, up to and including termination from employment or expulsion from the University.

11. Disciplinary Action

All disciplinary action taken ~~as~~against a ~~result~~member of ~~investigation~~the University Community that is based on the findings of an investigation will be issued in accordance with ~~the personnel~~ policies contained in the University ~~Business~~Administrative

Policies and Procedures Manual, the terms of any collective bargaining agreements, and that apply to the individual being disciplined, the provisions of the Pathfinder, or the provisions of the Faculty Handbook, as appropriate.