Procedures for Responding to Allegations of Misconduct in Research and Scholarship

Supplemental to University Policy 309
Revised and effective September 21, 2015

1. Introduction

Integrity in research is the basis for the academic search for knowledge, and public trust in the integrity and ethical behavior of scholars must be maintained if research and other scholarly activities are to continue to play their proper role in our University and society. When an allegation of Research Misconduct occurs, UNC Charlotte will respond in accordance with University Policy 309, Responding to Allegations of Misconduct in Research and Scholarship, and a finding of Research Misconduct will occur only after careful inquiry and investigation. The objective of these Procedures is to provide a uniform framework for conducting inquiries and investigations and to provide appropriate protection for Complainants and Respondents while ensuring full compliance with all appropriate federal regulations.

2. Preliminary Assessment of Allegations

2.1. Preliminary Assessment

Allegations of Research Misconduct, as defined in University Policy 309, are made to the Research Integrity Officer (RIO), an official appointed by the Vice Chancellor for Research and Economic Development ("the Vice Chancellor"). Upon receiving an allegation, the RIO will immediately assess the allegation to determine whether there is sufficient evidence to warrant an inquiry, whether federal or other outside support or applications for funding are involved, and whether the allegation falls under the University Policy 309 definition of Research Misconduct. The assessment period should be brief, preferably concluded within one week.

2.2. Sequestration of the Research Records

If it is determined that an inquiry is warranted, the RIO will immediately notify the Respondent in writing and work with the Office of Legal Affairs and ITS to ensure that all original research records and materials relevant to the allegation are secured and sequestered. The sequestration of research records should take place before or concurrently with notification to the Respondent that an inquiry has been initiated. Such sequestration protects all parties involved, including the Respondent, and the RIO may consult with the Research Sponsor or other appropriate agencies or officials for advice and assistance in this regard. Where feasible and appropriate, the RIO will work with the affected laboratories and researchers to enable ongoing research to continue.

2.3. Federal Agency Notification

If federal funding is involved in the research, the appropriate federal agency will be immediately notified by the RIO if there is reason to believe that any of the following conditions exist:

- Public health or safety is at risk, including an immediate need to protect human or animal subjects;
- Federal agency resources, reputation, or other interests need protecting;
- There is a possible violation of civil or criminal law;
- Research activities should be suspended;
- Federal action may be needed to protect the interests of those involved in the Research Misconduct proceeding;
- The Research Misconduct proceeding may be made public prematurely; or
- The scientific community or public should be informed.

The RIO will continue to monitor the potential existence of these conditions throughout an inquiry or investigation proceeding.

2.4. Admission of Research Misconduct

The Respondent should be given the opportunity to admit that Research Misconduct occurred and that he or she committed the Research Misconduct. With the advice of the RIO and/or other appropriate University officials, the Vice Chancellor may terminate the University's review of an allegation that has been admitted, but if federal funding is involved, the University's acceptance of the admission and any proposed settlement must be approved by the federal Sponsor or oversight agency.

3. Conducting the Inquiry

3.1. Initiation and Purpose of the Inquiry

If the RIO determines that the allegation provides sufficient information and falls under the definition of Research Misconduct, he or she will immediately initiate the inquiry process. In initiating the inquiry, the RIO will clearly identify the original allegation and any related issues to be evaluated. The purpose of the inquiry is to make a preliminary evaluation of the available evidence and testimony of the Respondent, Complainant, and key witnesses to determine whether there is sufficient evidence of Research Misconduct to warrant an investigation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct definitely occurred or who was responsible. The findings of the inquiry must be set forth in an inquiry report, which will be forwarded to the

Vice Chancellor, who will consider the Committee's recommendation and determine whether an investigation is warranted.

3.2. Appointment of the Inquiry Committee

The RIO, in consultation with the Vice Chancellor and other University officials as appropriate, will appoint an Inquiry Committee and Committee chair. The Inquiry Committee will consist of at least three (3) individuals, including the Committee chair, who have the necessary expertise to evaluate the evidence and issues related to the allegation, interview the principals and key witnesses, and conduct the inquiry. At least one of the Committee members should be from the research community of the Respondent. Upon appointment of the Committee members, the RIO shall notify the Respondent in writing of such appointments. The Respondent has the right to object to the appointment of any Committee member based on bias or conflict of interest, and the RIO will consider any objections and will determine whether to replace or retain that member.

3.3. Inquiry Process

The RIO will charge the Inquiry Committee with deciding whether there is sufficient evidence of possible Research Misconduct to recommend further investigation. To accomplish this charge, the Inquiry Committee will normally interview the Complainant, Respondent, and key witnesses, examine relevant research records and materials, and evaluate the evidence and interview summaries obtained during the inquiry. After consultation with the RIO and University counsel, the Inquiry Committee members will decide whether to recommend further investigation. This recommendation will not be a decision as to whether Research Misconduct occurred. The RIO will be available throughout the inquiry to advise the Inquiry Committee as needed.

3.4. Inquiry Report

The Inquiry Committee will prepare a report of its deliberations and findings, and submit the report and conclusions to the Vice Chancellor. The inquiry report will include the evidence reviewed by the Inquiry Committee, interview summaries, and the conclusions of the Inquiry Committee, as well as any other information that the Inquiry Committee deems relevant to include. The report will be complete within 60 calendar days of the initiation of the inquiry unless circumstances clearly warrant a longer period. If a longer period than 60 calendar days is necessary, the RIO will document the reasons for extending the inquiry.

If, upon review of the inquiry report and Committee conclusions, the Vice Chancellor decides not to proceed to an investigation, the RIO will notify both the Respondent and the Complainant, will release sequestered research records, and will collect all documents and written material associated with the inquiry for

appropriate disposition by the Office of Legal Affairs. The RIO will also inform funding or sponsoring agencies of the inquiry outcome if they have been previously notified of the inquiry.

3.5 Suspension or Delay of RPT Review Process

If an inquiry results in a recommendation to proceed with an investigation, and the Respondent is currently engaged in the Reappointment, Promotion and Tenure (RPT) review process, the Vice Chancellor should notify the Provost, who may temporarily suspend or delay that process in consultation with the Dean.

4. Conducting the Investigation

4.1. Purpose of the Investigation

If, upon review of the inquiry report and the Inquiry Committee conclusions, the Vice Chancellor determines that an investigation is warranted, the Vice Chancellor shall notify the Respondent of the investigation in writing that an investigation will be initiated. An investigation will be initiated within 30 days of the completion of the inquiry report. The purpose of the investigation is to explore in detail the allegations, to examine the evidence in depth, and to determine specifically whether Research Misconduct has been committed, by whom, and to what extent. The investigation will also determine whether there are additional instances of possible Research Misconduct that would justify broadening the scope of investigation beyond the initial allegations. This is particularly important where the alleged misconduct involves potential harm to human subjects or the general public, or if it affects research that forms the basis for public policy or public health practice. The findings of the investigation will be set forth in an investigation report, which will be submitted to and reviewed by the Vice Chancellor.

4.2. Suspension from Project

Pending conclusion of the investigation, the Vice Chancellor may suspend the Respondent from the project or activity in question, but only if the Vice Chancellor determines that serious harm to the Respondent or others would be threatened by the Respondent’s continuation of his or her duties. Any such suspension will not interrupt payment of salary.

4.3. Sequestration of the Research Records

The RIO will immediately sequester any additional pertinent research records that were not previously sequestered during the inquiry. This sequestration should occur before or at the time the Respondent is notified that an investigation has begun. The need for additional sequestration of records may occur for any

number of reasons, including the University's 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.

4.4. Appointment of the Investigation Committee

The RIO, in consultation with the Vice Chancellor and other appropriate University officials as appropriate, will appoint an Investigation Committee and Committee chair. The Investigation Committee should consist of at least five (5) individuals, including the Investigation Committee chair, who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to evaluate the evidence and issues related to the allegations, interview the principals and key witnesses, and conduct the investigation. These individuals may be faculty, administrators, subject matter experts, lawyers, or other qualified persons, and should include, if possible, the members of the Inquiry Committee. Upon appointment of the Investigation Committee members, the RIO shall notify the Respondent in writing of such appointments. The Respondent has the right to object to any appointed member of the Investigation Committee, and the RIO will consider any objections and will make the determination whether to replace or retain that member.

4.5. Charge to the Investigation Committee and First Meeting

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

- Describes the allegations and related issues identified during the inquiry;
- Identifies the Respondent;
- Informs the Investigation Committee that it must conduct the investigation as prescribed in paragraph 4.6 below;
- Defines Research Misconduct;
- Informs the Investigation Committee that it must evaluate the evidence and testimony to determine whether, based on a preponderance of the evidence, Research Misconduct occurred and, if so, the type and extent of it and who was responsible;
- Informs the Investigation Committee that in order to determine that the Respondent committed Research Misconduct it must find that a preponderance of the evidence establishes that: (1) Research Misconduct, as defined in University Policy 309, occurred (the Respondent has the burden of proving by a preponderance of the evidence any affirmative defenses raised, including honest error or a difference of opinion); (2) the Research Misconduct is a significant departure from accepted practices of the relevant research community; and (3) the Respondent committed the Research Misconduct intentionally, knowingly, or recklessly; and
- Informs the Investigation Committee that it must prepare or direct the

preparation of a written investigation report. In addition, if (Public Health Service (PHS) funding is involved, the investigation report must meet the requirements of 42 CFR 93.313.

The RIO will convene the first meeting of the Investigation Committee to review the charge, the inquiry report, and the prescribed procedures and standards for the conduct of the investigation, including the necessity for confidentiality and developing a specific investigation plan. The Investigation Committee will be provided with a copy of University Policy 309 and, if PHS funding is involved, a copy of Code of Federal Regulations (CFR) Part 93. The RIO will be available throughout the investigation to advise the Investigation Committee as needed.

4.6. Investigation and Hearing Process

Early in the course of the investigation the Investigation Committee will discuss the allegation in confidence with the Respondent and all persons with whom he or she has collaborated in relation to the work under review, including witnesses identified by the Respondent. Throughout the investigation the Investigation Committee will be sensitive to the effects of the proceedings on the Respondent, protecting his or her rights, and avoiding disclosure except to individuals who need to be involved in the investigation. The hearings will be closed to the public unless the Respondent and the Investigation Committee agree that they may be open. All conduct of the hearing is under the charge of the chair. The Respondent will have the right to counsel, to present the testimony of witnesses and other evidence, to confront and cross-examine witnesses, and to examine all documents and other evidence. The Respondent’s counsel, if any, shall be limited to providing advice to the Respondent and may not speak for or represent the Respondent at the hearing. The Investigation Committee will consider only such evidence as is presented at the hearing. The Investigation Committee will use its judgment in deciding what evidence presented is fair and reliable and in doing so is not bound by the rules of evidence. All interviews will be transcribed by a court reporter, and transcripts will be provided to interviewees for correction and included in the record of the investigation. The Investigation Committee must diligently pursue all significant issues and leads discovered that are determined relevant to the investigation, including evidence of any additional instances of possible Research Misconduct. The investigation should be completed within 120 days of its initiation, including conducting the investigation and preparing the report of findings. However, if the RIO determines that the investigation will not be completed within this 120-day period, he or she should document the reasons for the delay.

4.7. Investigation Report

The Investigation Committee and RIO are responsible for preparing a written report of the investigation that:

- Describes the nature of the allegation of Research Misconduct, including identification of the Respondent;
- Describes and documents related grants or contracts, pending applications, and publications;
- Describes the specific allegations of Research Misconduct considered in the investigation;
- Identifies and summarizes the research records and evidence reviewed and identifies any evidence taken into custody but not reviewed; and
- Includes a statement of findings for each allegation of Research Misconduct identified during the investigation.

Each statement of findings should:

- Identify the person(s) responsible for the Research Misconduct.
- Identify whether the Research Misconduct was falsification, fabrication, or plagiarism, and whether it was committed intentionally, knowingly, or recklessly;
- Summarize the facts and the analysis that support the conclusion and consider the merits of any reasonable explanation by the Respondent, including any effort by the Respondent to establish by a preponderance of the evidence that he or she did not engage in Research Misconduct because of honest error or a difference of opinion;
- Identify any current funding support or pending applications the Respondent has with federal agencies; and
- Identify whether any publications need correction or retraction.

If the Respondent is found to have engaged in Research Misconduct, the report must include the actual text or an accurate summary of the Respondent's explanation of the misconduct presented during the investigation.

Once the work of the Investigation Committee is complete, the RIO will make the investigation report available to the Respondent for comment, and pertinent portions will also be made available to the Complainant for comment. The allegations and findings of the investigation will be made available to all affected parties for comment. In distributing the report, or portions thereof, to the various parties, the RIO will inform the recipients of the confidentiality under which the report is made available and may establish reasonable conditions to ensure such confidentiality, such as a confidentiality agreement. The investigation report with comments from the Respondent, Complainant, and/or other affected parties as attachments will be sent to the Vice Chancellor through the RIO, and will include the Investigation Committee's recommendations for what actions should be taken. In reaching its conclusions, the Investigation Committee will use a "preponderance of the evidence" standard.

4.8. University Review and Decision

4.8.1. The Vice Chancellor will make the final determination whether to accept the investigation report, its findings, and the recommended University actions. If the determination varies from that of the Investigation Committee, the Vice Chancellor will explain in detail the basis for rendering a decision different from that of the Investigation Committee. The Vice Chancellor's explanation should be consistent with the definition of Research Misconduct, the University's policies and procedures, and the evidence reviewed and analyzed by the Investigation Committee. The Vice Chancellor may also return the report to the Investigation Committee with a request for further fact-finding or analysis. The Vice Chancellor's determination, together with the Investigation Committee's report, constitutes the final investigation decision.

4.8.2. When the Vice Chancellor makes a determination on the case, he or she will notify the RIO, who will notify both the Respondent and the Complainant of the decision in writing.

4.8.3. The Respondent may appeal the Vice Chancellor's determination to the Chancellor or designee, solely on the grounds that the determination was the result of one or more procedural errors. Such appeal must be submitted in writing, no later than ten days after the RIO notifies the Respondent of the Vice Chancellor's determination, along with any evidence of such alleged error(s). The Chancellor or designee shall notify the Respondent, Complainant, Vice Chancellor, and RIO of his or her decision in writing no later than sixty (60) days. The decision of the Chancellor or designee shall be final. No further appeals are permitted.

4.8.4. Once a determination is final, either by the Vice Chancellor or by the Chancellor or designee on appeal, the Vice Chancellor shall inform the Sponsor of the final determination, and shall include the explanation, if any, of the basis for rendering a decision different from that of the Investigation Committee, as set forth in 4.8.1 above, After informing the Sponsor, the Vice Chancellor will determine whether law enforcement agencies, professional societies, professional licensing boards, editors of journals in which falsified reports may have been published, collaborators of the Respondent in the work, or other relevant parties should be notified of the outcome of the case. The Vice Chancellor is responsible for ensuring compliance with all notification requirements of Sponsors.

5. Reporting to Federal Sponsors

5.1. While University Policy 309 applies to all research at UNC Charlotte regardless of the Sponsor (or lack thereof), the federal government requires that the following guidelines apply to federally funded research. If a federal research sponsor has a federally appointed oversight agency, such as the Office of Research Integrity (ORI) for research sponsored by the Public Health Service or

NSF's Office of Inspector General (OIG) for research sponsored by the National Science Foundation, the correspondence and other activities described below will be directed to the appropriate oversight agency. For the purposes of this Section 5, the term "Sponsor" will refer to either the funding agency or the oversight agency, as appropriate.

5.2. The University's decision to initiate an investigation must be reported in writing to the Sponsor on or before the date the investigation begins. The Sponsor must also be notified of the final outcome of the investigation and must be provided a copy of the investigation report within 120 days of the initiation of the investigation, as well as a description of any sanctions taken by the University. Any significant variations from the provisions of the University's policies and procedures should be explained.

5.3. The RIO will promptly advise the Sponsor of any developments during the course of an investigation which disclose facts that may affect current or potential federal funding for the Respondent or that the Sponsor needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.

5.4. If an investigation involves research or proposed research supported by the Sponsor and the University plans to terminate an inquiry or investigation for any reason without completing all relevant requirements of the Sponsor's regulations, the RIO will submit a report of the planned termination to the Sponsor, including a description of the reasons for the proposed termination.

5.5. If the University determines it will not be able to complete the investigation in 120 days, the RIO will submit to the Sponsor a written request for an extension that explains the delay, reports on the progress to date, estimates the date of completion of the report, and describes other necessary steps to be taken.

5.6. When Sponsor funding or applications for funding are involved and an admission of Research Misconduct is made, the RIO will contact the Sponsor for consultation and advice. Normally, the Respondent will be asked to sign a statement attesting to the occurrence and extent of misconduct. When the case involves PHS funds, the University cannot accept an admission of Research Misconduct as a basis for closing a case or not undertaking an investigation without prior approval from the Sponsor.

6. University Administrative Actions

6.1. A finding of Research Misconduct requires that the following conditions be met:

- There be significant departure from accepted practices of the relevant research community;

- The misconduct be committed intentionally, or knowingly, or recklessly; and
- The allegation be proven by a preponderance of evidence.

If the Vice Chancellor determines that the alleged misconduct is substantiated by the findings, he or she will consider the Investigation Committee's recommendations and in consultation with the RIO, the appropriate dean, and the Provost, will determine the appropriate action(s) to be taken in accordance with UNC Charlotte policies and procedures.

6.2. The actions may include, but are not limited to:

- Withdrawal or correction of all pending or published abstracts and papers emanating from the research where research misconduct was found;
- Removal of the responsible person from the particular project, letter of reprimand, or special monitoring of future work;
- Restitution of funds as appropriate;
- Initiation of steps leading to possible probation, suspension, salary reduction, rank reduction or termination of employment, or appropriate student disciplinary proceedings, where applicable.

7. Other Considerations

7.1. Termination of Employment Prior to Completing Inquiry or Investigation

The termination of the Respondent's University employment, by resignation or otherwise, before or after an allegation of Research Misconduct, will not preclude or terminate the misconduct inquiry or investigation procedures. If the Respondent, without admitting to the misconduct, elects to resign his or her position prior to the initiation of an inquiry, but after an allegation has been reported, or during an inquiry or investigation, the inquiry or investigation will proceed. If the Respondent refuses to participate in the process after resignation, the Investigation 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 Investigation Committee's review of all the evidence.

7.2. Restoration of the Respondent's Reputation

If the University finds no misconduct, and the Sponsor or other affected federal agency concurs, the RIO will undertake reasonable efforts to restore the Respondent's reputation, after consulting with the Respondent. Depending on the particular circumstances, the RIO should consider 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, or expunging all reference to the Research Misconduct allegation from the Respondent's personnel files. Any institutional actions to restore the Respondent's reputation must first be approved by the Vice Chancellor.

7.3. Protection of the Complainant and Others

Regardless of whether the University or Sponsor determines that Research Misconduct occurred, the RIO will undertake reasonable efforts to protect Complainants who made allegations of Research Misconduct in good faith and others who cooperate in good faith with inquiries and investigations of such allegations. Upon completion of an investigation and consultation with the Complainant, the Vice Chancellor will determine what steps, if any, are needed to restore the position or reputation of the Complainant. The RIO is responsible for implementing any steps the Vice Chancellor approves. The RIO will also take appropriate steps during the inquiry and investigation to prevent any retaliation against the Complainant. The provisions of University Policy 803, Reporting and Investigation of Suspected Improper Activities and Whistleblower Protection, shall apply.

7.4. Allegations Not Made in Good Faith

The Vice Chancellor will determine whether the Complainant's allegations of Research Misconduct were made in good faith. If at any point, it is determined that an allegation was not made in good faith, the Vice Chancellor will determine whether any administrative action should be taken against the Complainant.

7.5. Interim Administrative Actions

University officials will take interim administrative actions, as appropriate, to protect federal funds and ensure that the purposes of the federal funding are carried out. When alleged research misconduct introduces a potential information security incident, the Vice Chancellor shall contact Information and Technology Services (ITS), in accordance with the ITS Standard for Managing Information Security Incidents and Guideline for Reporting Information Security Incidents.

8. Record Retention

After completion of a case and all ensuing related actions, the RIO will collect all materials used in the investigation and will prepare a complete file, including the records of any inquiry or investigation and copies of all documents and other materials furnished to the RIO or Committees. The RIO will transfer the file to the Office of Legal Affairs, where it will be kept for at least three (3) years after completion of the case. For cases involving PHS funding, and unless custody has been transferred to the U.S. Department

of Health and Human Services or ORI has advised in writing that the records no longer need to be retained, records of Research Misconduct proceedings must be maintained in a secure manner for seven (7) years after completion of the proceeding or the completion of any PHS proceeding involving the Research Misconduct allegation. To the extent required by law or applicable federal regulation, the Sponsor will be given access to the records upon request.