

**CONSENT AGENDA**  
**Faculty Senate Meeting January 22, 2007**

**Instruction and Curriculum Policy Committee**

**CONSENT AGENDA ITEMS**

**Item 1**

**Approval of the Graduate Certificate in Reading Instruction**

**Projected effective date:** Spring 2007

**Description:** The Department of Language, Reading and Culture in the College of Education is proposing a Graduate Certificate in Reading Instruction. Students who complete the certificate will be qualified Reading Specialists, able to assist literacy learners of all ages. Graduates will understand the nature of the struggling reader and how to offer quality instruction, be familiar with theoretical bases for reading instruction and be experienced in tutoring struggling readers. The certificate requires at least 15 units of credit (no new courses), which will all be offered online, and a submitted videotape of the student's tutoring practice in several modes for review and feedback. The certificate will also be affiliated with the State of Arizona Endorsement in Reading.

**Justification:** An estimated 20 to 40 students are expected to participate in the program yearly. Reading instruction is a high priority in many communities that are struggling to bring their students' literacy skills up to the mandated standards of NCLB. The certificate program is based on the courses that make up the State of Arizona Reading Endorsement, which is based on the mandate of the legislature. The certificate and endorsement are part of the teachers' career ladder track to professional advancement.

**Approvals:**

**Undergraduate Council:** NA

**Graduate Council:** 3/21/06

**Administrative Review:** PMG 9/25/06, AD 10/02/06

**ICPC:** 12/13/06 10-0-0 with none absent

**Item 2**

**Approval of the name change of the Mel and Enid Zuckerman Arizona College of Public Health to the Mel and Enid Zuckerman College of Public Health as detailed in the proposal dated 05-05-2004.**

**Projected effective date:** Summer, 2007

**Description:** The College of Public Health was established in 1999 and renamed the Mel and Enid Zuckerman Arizona College of Public Health in 2002. The current name of the college not

only reflects the beneficence of the Zuckerman family in its commitment to promote health communities but also the tri-university collaboration within the Master of Public Health degree awarded by the University of Arizona. As of April 29, 2004, the tri-university collaboration was dissolved.

**Justification:** The Council on Education of Public Health took the benighted view that all five of the obligatory elements of faculty expertise must be present at the University of Arizona for accreditation of the Master of Public Health degree to be warranted. The Mel and Enid Zuckerman Arizona College of Public Health received an accreditation conditioned by that expectation. However, consultation among provosts brought agreement that the spirit of collaboration would continue without the cumbersome administrative structure of a tri-university college. The requested name change to the Mel and Enid Zuckerman College of Public Health reflects the restructuring solely as a college of the University of Arizona.

**Approvals:**

**Undergraduate Council:** 11/21/06

**Graduate Council:** 10/20/06

**Administrative Review:** PMG 12/6/06, AD 12/12/06

**ICPC:** 12/13/06 10-0-0 with none absent

**UHAP POLICY 2.13.09**  
**POLICY AND PROCEDURES FOR INVESTIGATIONS OF MISCONDUCT IN**  
**SCHOLARLY, CREATIVE, AND RESEARCH ACTIVITIES**  
**AT THE UNIVERSITY OF ARIZONA<sup>1</sup>**

*Approved by Faculty Senate February 3, 2003 and Adopted by President Likins April 4, 2003*

**I. INTRODUCTION**

A community of scholars and researchers has an obligation to itself and to the general public to exercise integrity and ethical behavior in scholarly and research activities. The primary responsibility for scholarly and research integrity rests with the individuals who perform research and undertake scholarship and other creative endeavors at The University of Arizona (hereafter "University"). Therefore, to ensure its obligations to the public, the community of researchers and scholars at the University, and to the state and federal governmental agencies involved in supporting, monitoring and partnering with the academic community, the University promulgates this Policy.

**A. SCOPE**

This Policy applies to all scholarship, research, and creative endeavors conducted at or for the University, whether by faculty, scientists, trainees, technicians, staff members, students, fellows, visiting scholars, guest researchers, consultants, or collaborators, and whether or not the research is funded. Even if the individual against whom an allegation of misconduct in scholarly, creative and research activities (hereafter simply "misconduct") is made ceases to be engaged in services or responsibilities at or for the University, this Policy may nevertheless apply to determine whether the individual engaged in misconduct while at the University. If allegations are made that involve scholarship, research, and creative endeavors conducted prior to commencing services at or for the University, the Policy may likewise be used to determine whether the individual against whom an allegation is made has committed prior misconduct that may warrant any sanction or alteration in the individual's status at the University.

**B. GUIDING PRINCIPLES AND PROCEDURAL GUIDELINES**

1. Researchers and scholars will maintain and further the highest standards of ethical practices in scholarship, research and creative endeavors. Individuals will exercise integrity in conducting research, recording and reporting results, take care in the execution of scholarship and research, and promote fairness in the recognition of the work of others.

2. Researchers and scholars will be responsible for the integrity of their own scholarship and research, and for the integrity of the scholarship and research conducted by those they supervise.

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<sup>1</sup>On May 17, 2005, the Department of Health and Human Services promulgated final regulations related to research misconduct and investigations of such misconduct. 42 CFR 50 and 93, PHS Policies on Research Misconduct; Final Rule, *Federal Register*. This Policy has been amended to comply with those requirements. Other substantive and grammatical changes resulted from review and recommendations by the UA Research Integrity Officer.

3. Researchers and scholars will keep timely, complete, thorough, and verifiable records, and will preserve those records as required by law and/or policy, acknowledging that all records of research conducted at the University remain the property of the University.

4. Anyone who witnesses or has reason to believe misconduct has occurred will report the alleged misconduct to the University Research Integrity Officer (hereafter "RIO"). If an individual is unsure whether a suspected incident falls within the definition of misconduct, as defined in paragraph C.4. below, then s/he will contact the RIO to discuss the suspected misconduct informally. If the circumstances or conduct do not meet the definition of misconduct, but may fall under the provisions of other University policies, then the RIO will refer the individual to appropriate University offices or officials with responsibility to resolve such matters.

5. University personnel assigned to address alleged charges of misconduct will do so in a fair and objective manner, respecting the rights of all involved.

6. All individuals involved in scholarly activities and research will avail themselves of educational activities or workshops within the University that are designed to inform the campus community of its obligations under this Policy, under other University policies related to research and scholarly activities, and under federal and state statutes, regulations, and guidelines for conducting research.

7. All University employees, whether paid or unpaid, will cooperate with the RIO and other institutional officials who review allegations and conduct Inquiries and Investigations. Employees are obligated to provide relevant evidence to the RIO and other institutional personnel charged with investigating allegations of misconduct upon reasonable request.

8. No one will make false allegations or bring bad faith or malicious charges against any individual, or retaliate against anyone who brings a good faith charge of misconduct, even if the allegation cannot be confirmed. An allegation made with reckless disregard for or willful ignorance of facts that would disprove the allegation is not a good faith allegation. Making false allegations or bringing bad faith or malicious charges also constitutes misconduct, which the University will address under existing policies. Individuals reporting misconduct are entitled to protection from reprisal for whistleblowing as described in other University policies, in a manner consistent with state and federal requirements.

9. Should it be necessary to extend any deadline beyond that which this Policy requires, the requesting party must request the extension from the RIO, citing the reason for the request. Extensions may be granted only for good cause. No extension will be granted if doing so will prolong the period between the initial Investigation and the transmittal of the final report from the Provost to the Respondent and the President. The RIO must document the reasons for granting any extension and notify Respondent of same.

10. The University recognizes that, when making an allegation of research misconduct, or when such an allegation has been made against a researcher, both the reputation of the complainant and the Respondent may be tarnished. Therefore, if at any stage of an

Investigation, either the RIO, VPR or Provost determines that the evidence presented does not meet the evidentiary standard to support a finding of misconduct or if, after an investigation, the Provost disagrees with a Committee's recommendations with respect to the misconduct, then the University, including the RIO, VPR and the Provost, will undertake diligent efforts to restore the reputations of persons alleged to have engaged in misconduct. They also will make diligent efforts to protect the positions and reputations of those persons who, in good faith, made those allegations.

### C. DEFINITIONS

1. **Complainant:** a person who in good faith makes an allegation of misconduct in scholarly, creative or research activity.

2. **Conflict of Interest:** the real or apparent interference of one person's interest with the interests of another person, where potential bias may occur due to prior or existing personal, professional or financial relationships. Generally, differences of professional opinion held in good faith and without prospect of financial gain should not be construed as conflicts of interest.

3. **Employee:** an individual who is employed by the Arizona Board of Regents/University under classifications "faculty," "classified staff," or "academic, administrative or service" professional, as those terms are defined in *The University Handbook for Appointed Personnel*, *The Arizona Board of Regents' Policy Manual*, and *The Classified Staff Human Resources Policy Manual*, whether the individual is paid or unpaid. *Employees* comprise student employees and graduate students, including instructors, or any individual who represents or acts on behalf of the University and whose actions may bind the University.

4. **Misconduct:** fabrication, falsification, or plagiarism in proposing, performing or reviewing scholarly, research or creative endeavors, or in reporting research results or the results of creative endeavors. Misconduct does not include honest error or differences in interpretation or judgments in evaluating research methods or results or differences of opinion.

- **Fabrication** is making up data or results and recording or reporting them.
- **Falsification** is manipulating research or scholarship materials, equipment, or processes, or changing or omitting data or results such that the scholarship or research is not accurately represented in the record.
- **Plagiarism** is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

5. **Findings of Misconduct** require that:

- There is a significant departure from accepted practices of the relevant research or scholarly community; *and*
- The misconduct is committed intentionally or knowingly or recklessly; *and*
- The allegation is proven by a preponderance of the evidence.

6. ***Inquiry***: a process involving preliminary information-gathering and preliminary fact-finding by the RIO when someone makes an allegation of misconduct under this Policy, which the RIO believes is sufficiently credible and specific to identify potential evidence of misconduct and to determine whether an allegation of misconduct under this Policy warrants an Investigation.

7. ***Investigation***: a process to formally develop a factual record and to examine that record leading to a decision: 1) either to make a recommendation that misconduct occurred, which may include a recommendation for other appropriate actions, as well as possible administrative actions; or 2) not to make a finding of misconduct.

8. ***Preponderance of Evidence***: that quality of evidence which, when fairly considered, produces the stronger impression, and has the greater weight, and is more persuasive regarding the truth than the evidence presented in opposition. Any fact required to be proven under this Policy shall be proven by a preponderance of the evidence.

9. ***Pre-inquiry***: an initial assessment by the RIO of an allegation of misconduct presented by a Complainant that might warrant further Inquiry.

10. ***Respondent***: the person or persons against whom allegations of misconduct are directed and who is the subject of a misconduct Inquiry or Investigation.

11. ***Research***: all scholarly basic, applied, and demonstration research and creative endeavors.

## II. PROCEDURAL OVERVIEW

### A. RESEARCH INTEGRITY OFFICER

The Vice President for Research (VPR), in consultation with the President, under the provisions of shared governance, will appoint the RIO, who will have primary responsibility to implement the procedures set forth in this Policy. The RIO will assist the Inquiry Panel and, if necessary, the *ad hoc* Investigative Committee and other personnel to carry out this Policy. S/he will implement any applicable standards imposed by compliance entities or government or external funding sources. As part of this assistance, the RIO will be responsible for evaluating whether applicable federal or state regulations mandate further investigation of allegations of misconduct. The RIO will notify research sponsors when the University initiates a formal Investigation in accordance with applicable law and regulations. Likewise, the RIO will notify research sponsors in the event that an Investigation, once initiated, is terminated prematurely, together with the basis for that decision.

The RIO is responsible, at any stage of an Inquiry or Investigation, for complying with reporting requirements imposed by the research sponsor and for taking appropriate interim action to protect its funds or funds provided by third parties, including federal funds.

In the case of federal sponsorship, the RIO also is responsible to ensure that the University fulfills the purposes for which the federal financial support has been provided, including, among other things, any required reporting to the Office of Research Integrity (hereafter "ORI") of the Department of Health and Human Services, the National Science Foundation, or any other applicable agency. In particular, the RIO will notify the appropriate federal agency at any stage of an Inquiry or Investigation if: 1) there is an immediate health or safety hazard; 2) there is an immediate need to protect federal resources; 3) the allegation involves a matter of public health (*e.g.*, a clinical trial); 4) there is a reasonable belief that a criminal violation has occurred that must be reported within 24 hours of obtaining the information; 5) there is an immediate need to protect the interests of the Complainant or of the Respondent, or any co-investigators or associates; or 6) it is probable that the alleged incident is going to be publicly reported.

The RIO will report anticipated delays in the investigation process and will notify the appropriate funding agency or agencies of the outcome of a formal Investigation. Any Inquiry Panel or *ad hoc* Investigative Committee appointed under this Policy will apprise the RIO of information the Panel or Committee receives related to any of these reporting requirements.

## **B. ALLEGATIONS OF MISCONDUCT**

Anyone with a good faith belief that a person subject to this Policy has engaged in misconduct under this Policy should submit a detailed, written report to the RIO. Should the RIO believe that s/he has a conflict of interest with respect to the allegation, then the RIO will refer the Complainant to the Provost, who will appoint a substitute RIO to carry out the duties set forth below. If a Complainant makes a verbal report of misconduct, then the RIO should request the Complainant to make a written report. If the Complainant makes the report verbally and refuses to make a written report, then the RIO, if persuaded of the seriousness of the allegation(s), will prepare a written report. The RIO will inform the Complainant of current University and ABOR policy on *Protection of Employees from Retaliation for Whistleblowing*.

## **C. ANONYMOUS ALLEGATIONS**

Members of the University community may contact the RIO at any time to ask questions about misconduct or complaint procedures without disclosing their names and without filing an allegation. However, because of the inherent difficulty in investigating and resolving allegations from unidentified persons, the University discourages individuals from making anonymous allegations about misconduct.

The University will respond reasonably to all allegations of misconduct under this Policy. To determine the appropriate response to an anonymous allegation, the University will weigh the following factors:

- The source, specificity and nature of the information provided;
- The seriousness of the alleged conduct;
- The objectivity and credibility of the source of the report;

- Whether other individuals potentially can be identified who were privy to the alleged misconduct; and
- Whether those individuals are willing to pursue the matter.

If based upon these factors it is reasonable for the University to investigate the matter, then the RIO will proceed in the same manner as with allegations by a known Complainant.

#### **D. PRE-INQUIRY BY THE RESEARCH INTEGRITY OFFICER**

Upon receipt of a written or verbal complaint of misconduct under this Policy, the RIO will conduct a Pre-inquiry to determine whether a possible violation of Policy exists. The Pre-inquiry must be completed within 30 days of receipt of the complaint. If the RIO believes that the allegation does not constitute a violation of this Policy, then the RIO may dismiss the matter without further inquiry. The RIO will notify the Complainant and Respondent, if appropriate, in writing of this decision. If the complaint appears to raise issues other than misconduct under this Policy that other University offices could address more appropriately, then the RIO will refer the Complainant to those offices for consultation.

Although the University has a duty to consider all complaints of misconduct under this Policy, when complaints relate to misconduct that allegedly occurred more than 6 years prior to the allegation, the RIO will take the staleness of the allegation into consideration when determining whether to initiate an Inquiry.

#### **E. NOTIFICATION; PRESERVATION OF EVIDENCE AND THE RESEARCH RECORD**

1. Notification of Respondent, VPR, Respondent's Dean, Department Head and Chair of UCEC.

Upon receipt of allegations reasonably evidencing misconduct, the RIO will immediately notify the Respondent, VPR, Respondent's Dean, Department Head, and the Chair of the University Committee on Ethics and Commitment (UCEC) in writing of the alleged violation of this Policy, including the specific allegations raised by the Complainant.

2. Preservation of Evidence and the Research Record.

The RIO will promptly take all reasonable and practical steps to obtain custody of the research records and other relevant evidence deemed necessary to conduct an Inquiry or Investigation contemplated by this Policy, inventory the records and evidence, and sequester them in a secure manner in accordance with established procedures for sequestering evidence of misconduct. If the research records or evidence encompass scientific instruments shared by a number of users, then 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.

The RIO will prepare a list of all original research records and materials relevant to the allegation in the presence of or with the assistance of Respondent, if possible. Respondent will cooperate with the RIO to obtain and preserve that evidence. In a case where the Respondent is unwilling or unable to cooperate, the RIO will preserve the evidence without the Respondent's assistance. The RIO will note Respondent's unwillingness or inability to cooperate and will also note any other impediments to constructing the record of the Inquiry or Investigation.

The RIO will note the destruction, absence, or Respondent's failure to provide records adequately documenting the questioned research as evidence of misconduct where the RIO establishes by a preponderance of the evidence that Respondent intentionally, knowingly or recklessly: 1) had research records and destroyed them; 2) had the opportunity to maintain the records but did not do so; or 3) maintained the records and failed to produce them in a timely manner, and determines that Respondent's conduct constitutes a significant departure from accepted practices of the relevant research community.

The RIO will maintain all laboratory notebooks, computer files, research and funding records, and other materials in a secure environment for the duration of the process. This includes computers, computer programs and the contents of computers belonging to, leased by or under the control or jurisdiction of the University, wherever located. The RIO will make copies of this potential evidence available on Respondent's written request so that, if appropriate and possible, the Respondent may continue his or her scholarship, research or creative endeavors. The RIO also will maintain files of all documents and evidence gathered in the course of any Inquiry or Investigation, and will maintain the security and confidentiality of those files, to the extent permitted by law.

### **III. INFORMAL RESOLUTION**

If at any time the University and the Respondent conclude that charges of misconduct under this Policy may be resolved in a manner satisfactory to the University, the research sponsor and the Respondent, then the University may enter into an appropriate agreement, subject to the approval of the Provost, in consultation with the VPR, and where appropriate, subject to the required approval of ORI or other appropriate agency. In such instances, the resolution must address the interests of all affected parties.

### **IV. INQUIRY**

#### **A. PURPOSE OF THE INQUIRY**

The purpose of the Inquiry is to gather information and make preliminary findings of fact when the RIO believes an allegation of misconduct is sufficiently credible and specific to identify potential evidence of misconduct, and to determine whether an allegation of misconduct under this Policy warrants an Investigation.

## **B. INQUIRY PROCESS**

If the RIO determines that the complaint merits further investigation after completing the pre-inquiry, then s/he will request that the Chair of the UCEC appoint an Inquiry Panel to conduct an Inquiry as set forth below. The Chair of the UCEC will appoint an Inquiry Panel composed of three UCEC members. In the event that a member of the UCEC does not have expertise in a discipline relevant to the Inquiry, then the Chair, in consultation with the RIO, may appoint an *ad hoc* member of the Inquiry Panel with such expertise. No member of the Inquiry Panel will have either a real or apparent conflict of interest in conducting the Inquiry. If a panel member has a conflict of interest, then the Chair of the UCEC will excuse that member and appoint a substitute.

The Inquiry will consist of information-gathering and fact-finding to determine whether an allegation of misconduct under this Policy warrants an Investigation. The Inquiry ordinarily will include interviews of the Complainant, the Respondent, and any other individuals (witnesses) possessing relevant information. The interviews must be recorded or transcribed, and thereafter provided to the witness for correction. The recording or transcript of such interviews shall be included with the record of the Inquiry and Investigation, if one ensues. The Inquiry Panel also will review any supporting documentation. The Inquiry, including preparing the written report, must be completed within sixty (60) calendar days after the UCEC Chair receives notice of the allegations, unless circumstances clearly warrant a longer period.

## **C. FINDINGS, CONCLUSIONS, RECOMMENDATIONS; NOTIFICATIONS**

### **1. Investigation Required.**

The Inquiry Panel will prepare a written report that: describes the Inquiry process used and the evidence reviewed; summarizes the relevant interviews conducted; and sets forth the Inquiry Panel's findings, conclusions, and recommendations. The written report will assess whether sufficient evidence exists to warrant a formal Investigation. An Investigation will be warranted if: 1) a reasonable basis exists to conclude that the allegation falls within the definition of misconduct; and 2) preliminary information-gathering and preliminary fact-finding from the Inquiry indicate that the allegation may have substance.

The Chair of the Inquiry Panel will provide the Respondent with a complete copy of the preliminary report and also will provide the Complainant a copy of that portion of the report directly related to the evidence s/he presented. The Respondent and Complainant may comment on the preliminary report in writing within 5 days of receiving his/her copy. All written comments will become part of the final Inquiry report. The Panel Chair will provide the final Inquiry report, together with any comments, to the RIO.

Within ten (10) days of receiving the Inquiry Panel's report indicating sufficient evidence to warrant a formal Investigation, or if the RIO separately determines that applicable regulations require an Investigation notwithstanding the Inquiry Panel's recommendation to the contrary, then the RIO will notify the Respondent, the Complainant, the President, the Provost, the VPR, the Dean of the college in which the Respondent holds his or her primary appointment, and

Respondent's Department Head, that the University will appoint an *ad hoc* Investigative Committee to initiate an Investigation.

If PHS funding is involved, then the RIO will notify ORI within thirty (30) days of receiving a report recommending an Investigation or after the RIO determines that an Investigation should take place. The RIO will provide ORI with the Respondent's name and position; a description of the allegations; the PHS support, including for example, grant numbers, grant applications, contracts, and publications listing such support; the basis for recommending that the alleged actions warrant an Investigation; and any comments on the report that the Respondent or Complainant makes.

## 2. Investigation Not Required.

If the RIO determines that, based on the Inquiry Panel's findings and his or her own separate assessment, the charge does not warrant an Investigation, then s/he will notify the Respondent and Complainant in writing of the decision within seven (7) days. The RIO will direct that any reference to the charge in the alleged Respondent's personnel file be removed promptly. If the Inquiry Panel does not find any cause for further Investigation, but determines that the allegations raise issues that another University office should address, then the Panel may recommend that the RIO refer the Complainant to that office.

After the RIO has circulated his or her decision not to initiate an Investigation, the Inquiry Panel Chair will send all materials gathered relating to the charge, together with the Panel's recommendation and any written comments, to the RIO, who will secure and preserve the records for at least seven (7) years.

## V. INVESTIGATION

### A. PURPOSE OF THE INVESTIGATION

The purpose of an investigation is to formally develop a factual record and examine that record to determine whether or not misconduct occurred, or to make a recommendation that it did not occur, and may include a recommendation for other appropriate actions, including administrative actions.

### B. *AD HOC* INVESTIGATIVE COMMITTEE

If the RIO determines that an Investigation is necessary, then the University will establish a 9-member *ad hoc* Investigative Committee (the "Committee"), as follows: The RIO will appoint four (4) faculty members who, in the RIO's judgment, have the appropriate expertise to carry out a thorough and authoritative evaluation of the relevant evidence. The RIO will select an additional two (2) members from names offered upon a recommendation from the Dean of the college in which Respondent holds his or her primary appointment, who are familiar with or have training in the research or scholarly discipline, or who are familiar with or have training in the ethical and financial rules applicable to the particular research, scholarly work or other creative endeavors covered by the allegation. The Provost will appoint one (1) additional faculty

member who either is familiar with or has training in the research or scholarly discipline or is familiar with or has training in the ethical and financial rules applicable to the particular research, scholarly work or other creative endeavors covered by the allegation, who will serve as Chair of the Committee. Members of the Inquiry Panel may not serve on the *ad hoc* Investigative Committee. After consulting with the other Committee members, the Chair of the Committee will select two (2) additional Committee members who have appropriate expertise to carry out a thorough and authoritative evaluation of the relevant evidence. The two additional members ordinarily should be members of the general faculty of the University or another University under the jurisdiction of the Arizona Board of Regents (ABOR). In unusual circumstances, outside scholars or persons with expertise in other areas may be included on the Committee where warranted by the nature of the field or allegations. The Committee may seek additional consultation from individuals outside of the ABOR system who have demonstrated expertise in the discipline or area of research or scholarship that is the subject of the Investigation.

No member will serve on the Committee if s/he has a conflict of interest. The RIO will notify the Respondent immediately of the names of the individuals who have been selected to serve on the Committee. The Respondent may make a written request to the RIO to disqualify a Committee member alleged to have a conflict of interest; however, the RIO will make the final decision related to a member's participation.

### **C. PRELIMINARY STEPS TO THE INVESTIGATION**

The Investigation shall determine the responsible persons and the seriousness of the misconduct. If an Investigation reveals additional instances of possible misconduct, or if other Respondents are identified during the Pre-Inquiry or Inquiry, then the RIO will decide whether to broaden the scope of the Investigation beyond the original allegation or whether s/he should initiate a new and distinct Inquiry. The Committee immediately will notify the Respondent in the event that the scope of the Investigation changes from the initial allegations. Any additional allegations will be specified in writing. At the Respondent's request, the Investigation will include a hearing at which evidence is introduced and witnesses are subject to direct and cross-examination. The Respondent must submit a written request for a hearing to the Chair of the Committee within fifteen (15) days of receiving notice that the University initiated an Investigation. The Investigation, including a hearing, if one is requested, and an Investigation report, should be completed within 120 days of the Committee's first meeting. The RIO, with the sponsoring agency's concurrence, must approve any extension to the 120-day period.

When requested by the Committee, the RIO will immediately secure any additional pertinent records that were not secured previously during the Inquiry. The Committee has the right and duty to access, secure, and preserve any relevant University document, record or tangible object, however maintained, and by whomever held. This includes computers, computer programs, and the contents of computers belonging to, leased by or under the control or jurisdiction of the University, wherever located. (Paragraph I.B.3.)

If the RIO reasonably believes that anyone would suffer serious harm if an individual involved in the matter continued his or her duties, then the RIO will request the VPR or the Provost, as appropriate, to take interim administrative actions, including but not limited to

suspending individuals from participating further in the research project in question. Any such suspension will proceed under applicable personnel rules of the University and will not interrupt payment of salary.

#### **D. FORMAL INVESTIGATION PROCESS**

The Committee will begin its formal Investigation within thirty (30) days from receipt of the Inquiry report and recommendations from the RIO, who will charge the Committee regarding its obligations under this Policy.<sup>2</sup> If Respondent requests a formal hearing, then the VPR will appoint a representative to act on behalf of the University at the hearing, and the hearing will begin not later than forty-five (45) days after the formal Investigation begins. During the Investigation, the Committee may consider all evidence it receives and will use its judgment in deciding what evidence is fair, relevant, and reliable. The Committee is not bound by formal rules of evidence applicable to courts of law.

The Committee may schedule a meeting with the Respondent to discuss the allegations in confidence, and schedule meetings with all relevant persons with whom the Respondent has collaborated. The Committee may conduct its interviews either by written questions or in person. Personal witness interviews either will be recorded or transcribed verbatim by a court-reporter, which recording or transcript thereafter will be provided to the witness for correction. The recording or transcript of such interviews will be included with the formal Investigation record. The Respondent has the right to respond in writing to the allegations, to appear before the Committee, and to provide names of any additional people with whom the Committee should meet to discuss the allegations. If the Respondent chooses not to participate in the Investigation, then the Committee will proceed in his or her absence.

If the Respondent requests a hearing, then the Chair of the Committee will notify all parties of the scheduled hearing date at least thirty (30) days in advance of the hearing. For good cause shown, upon request of the Respondent or the University representative or on the Chair's own initiative, the Chair may reschedule or continue the hearing to another time. No fewer than ten (10) days before the scheduled hearing date, the University representative and the Respondent will exchange lists of witnesses and copies of documents to be introduced at the hearing. This 10-day rule does not limit the Committee's right to question the parties and witnesses directly during the hearing.

The hearing will include opening statements by the University representative and Respondent, direct and cross-examination of witnesses, and closing arguments. The Respondent has a right to present testimony of witnesses, to cross-examine witnesses, and to present evidence, including documentary evidence. The University bears the burden of proving the fact of misconduct to the Committee by a preponderance of the evidence; Respondent has the burden of proving any affirmative defenses, such as "honest error," or mitigating circumstances, by the same standard of proof.

Any University employee called to testify at a hearing is expected to testify and any University employee or University office with access to relevant documents is expected to

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<sup>2</sup> See attached time line for hearing procedures.

produce them to the requesting party. If necessary, the Committee may compel the attendance and testimony of any University employee or student during an Investigation, except the Respondent. The Committee will make every reasonable effort to protect the Respondent and Complainant from third party inquiries about the Investigation; however, the Committee will inform Respondent of the identity of all witnesses the Committee contacts.

#### **E. RECORD OF THE INVESTIGATION**

The Committee will keep a written transcript or an audio-recording of the hearing, if Respondent requests one, or of any meetings at which it receives evidence or interviews witnesses. The University will provide the Respondent with a free copy of the transcripts or audio-recordings upon request. In addition to maintaining these transcripts or audio-recordings, the Committee will make and keep accurate and complete records, including originals or legible and complete photocopies, of all documents or records it obtains. The Committee will maintain a record of the manner in which such documents and evidence have been handled, in accordance with procedures established by the University for handling evidence of investigations under this Policy. The RIO will preserve the evidence of each Investigation for a minimum of seven (7) years in such a manner that it is not subject to unauthorized use or tampering.

#### **F. REPORT OF THE INVESTIGATION**

At the conclusion of the Investigation, the Committee will prepare a written report indicating the process of the Investigation, the Committee's findings, conclusions, and recommendations for an appropriate course of action. Specifically, the report will find whether or not either the Respondent or others engaged in misconduct in violation of this Policy, and with respect to each allegation, the facts and reasons for each of the findings and conclusions. The report will include adequate steps to meet the University's obligations to funding agencies, if any, to third parties affected by the violations, *e.g.*, Journals, and also may include recommended sanctions.

Within five (5) working days of completing its preliminary report, the Committee will provide the Respondent a complete copy of such report and will provide the Complainant a copy of that portion of the report directly related to the evidence that individual submitted. The Respondent may respond to the preliminary report either verbally to the Committee or in writing within thirty (30) days of receiving his/her copy. The Committee will add, as an appendix to the final report, any written response the Respondent submits.

The Committee will send its final report, including any comments Respondent submits to the preliminary report, to the RIO for transmission to the VPR, and to the Provost within five (5) days of completing the final report.

#### **G. RESOLUTION AND OUTCOME**

The Provost will consider the Committee's recommendations and, in consultation with the VPR, produce a written decision as promptly as possible, but no later than 120 days from the date the Investigation began, addressed to the Respondent. The Provost has the prerogative to

accept, reject or modify all or any part of the Committee report, conclusions, and recommendations based upon a preponderance of the evidence. The Provost will submit the decision to the President describing the Investigation and the basis for the decision, and will provide a copy of the decision to the Respondent, the Respondent's Dean and Department Head.

In the event the Committee concludes that misconduct occurred in violation of this Policy and the Provost concurs, then the Provost will determine whether to notify other agencies or affected parties regarding the outcome of the matter. The Provost, in consultation with the VPR and the Dean of the college in which the Respondent holds his or her primary appointment, and the Respondent's Department Head, will impose appropriate sanctions, up to and including termination, in accordance with established University and ABOR policies.

## **H. RECONSIDERATION**

A Respondent who is dissatisfied with the Provost's decision may request reconsideration of the decision by filing a written request with the Provost not later than fifteen (15) days following receipt of the decision. Any request for reconsideration must be based on one or more of the following grounds:

- irregularities in the proceedings, including any abuse of discretion or misconduct by the Committee or the RIO that deprived the Respondent of a fair and impartial hearing;
- newly discovered material evidence that with reasonable diligence could not have been presented to the Committee for consideration; or
- the decision is not justified by the evidence or is contrary to law.

If the Respondent requests reconsideration, then the Provost will issue a final decision within twenty (20) days of receiving that request, and will provide a copy of the final decision to the Respondent, the Respondent's Dean and Department Head. If Respondent makes no request for reconsideration, then the Provost's decision becomes final at the expiration of the fifteen-day period during which s/he could have requested reconsideration.

## **VI. NOTIFICATION OF OFFICE OF RESEARCH INTEGRITY**

At the conclusion of the proceedings under this Policy, the Provost will provide a copy of the Investigation Report (with attachments, appendices and appeals), along with the final decision, including findings and conclusions, and a statement of any administrative actions taken, to the ORI, if Respondent was supported by PHS grants.

## **VII. LEGAL REPRESENTATION**

At his or her expense, the Respondent may employ and be accompanied by legal counsel during any interviews or meetings with the Inquiry Panel and *ad hoc* Investigative Committee. If the Respondent requests a formal hearing, then the Respondent is entitled, at his or her expense, to assistance or representation by an attorney at the hearing. The Respondent must inform the Chair of the Committee of such assistance or representation not less than fifteen (15) days before

the scheduled hearing, at which time the University representative also is entitled to assistance or representation by an attorney at the hearing.

The General Counsel, or his or her designee, will advise the RIO, the Inquiry Panel, and the Investigative Committee on procedural and legal matters. The Inquiry Panel and Investigative Committee, through their respective Chairs, shall have the right to approach the Office of the General Counsel for permission to obtain independent counsel.

## **VIII. CONFIDENTIALITY/PRIVACY CONSIDERATIONS**

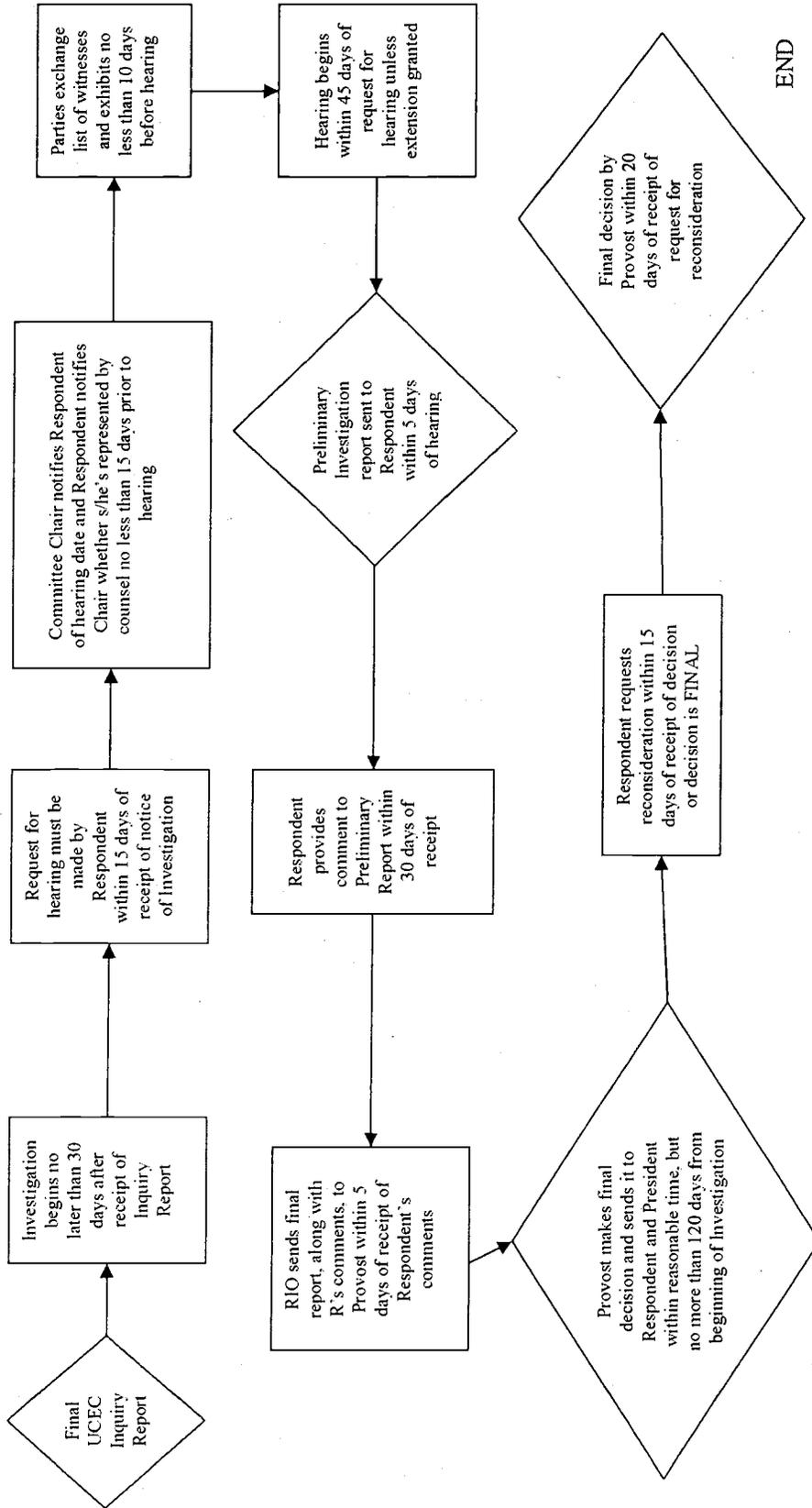
To the extent possible, consistent with fair and thorough procedures, and as allowed by law, University and ABOR Policy, disclosure of the names of persons involved in the Inquiry and Investigation processes, including the identity of the Respondent and the Complainant, will be given only to those who have a legitimate need to know. In addition, the Inquiry Panel and *ad hoc* Investigative Committee may request a recipient of confidential information to sign a confidentiality statement or to come to the Committee offices to review information that should not be copied or openly distributed.

## **IX. FURTHER ADMINISTRATIVE ACTION**

Notwithstanding the results of any Investigation or disciplinary proceeding following a finding of misconduct within the University, the United States may, in its sole discretion, take additional action related to the same or different facts and allegations. Action taken by the United States may or may not be based upon the University Investigation and findings and is beyond the purview of the University. Members of the University community will cooperate with any federal or relevant external Investigation.

VG:Policy and Procedures for Investigations of Misconduct in Scholarly, Creative, and Research Activities 11-10-06.doc

# Research Misconduct Investigation Hearing Process/Timelines



## ***UA's Strategic Goals and Priorities:***

- 1. Build a World-Class and Diverse Academic Community at the Forefront of Discovery***
- 2. Increase Student Engagement, Achievement, Retention, Diversity and Graduation Rates***
- 3. Extend the Concept of the Land-Grant University***
- 4. Achieve a Strong Financial Foundation***

# **OUTCOMES**

- **Information and Inspiration**
- **Senate Resolutions**
- **Policy Recommendations**

**"President Shelton's five missions for UA"**

**A home to those who are working to solve society's most complex problems.**

**A central catalyst for economic development and workforce training.**

**A university that welcomes a rich diversity of students and offers them an education that will last a lifetime.**

**A proving ground and showcase of academic excellence.**

**A source of intense pride and inspiration for Tucson and the state of Arizona.**