

FINAL REPORT

**ANALYSIS OF INSTITUTIONAL POLICIES FOR RESPONDING
TO ALLEGATIONS OF SCIENTIFIC MISCONDUCT**

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EXECUTIVE SUMMARY

This report presents an analysis of the content of institutional policies for responding to allegations of scientific misconduct conducted for the Department of Health and Human Services' Office of Research Integrity (ORI). The report highlights policy best practices and reviews the various methods included in the policies for addressing the issues involved in responding to allegations of scientific misconduct. The results of this study will be used by ORI to assist institutions in making their scientific misconduct policies more efficient and effective.

Methodology

ORI selected for the study population 156 institutional policies that had already been reviewed and accepted by ORI as being in compliance with the regulation but were known to include provisions that go beyond the regulatory requirement. ORI also provided an initial draft of a policy review form that identified 18 topics generally addressed in scientific misconduct statements. The topics identified in the policy review form were:

- definition of scientific misconduct

confidential information, and retaliation or threat of retaliation against persons involved in the

and the use of committee members from the same or related disciplines (to that of the respondent).

Respondent and whistleblower rights. Scientific misconduct policies included in this analysis always included a discussion of respondent rights in some form. Respondent rights most often stated in policies include the right to comment on the inquiry report, right to comment on the investigation report, and various rights to notification related to the inquiry and investigation. Approximately half of the policies indicated that the respondent also had an obligation to the institution once an allegation of misconduct has been made. The five rights that are most often granted to whistleblowers in the policies reviewed are the right to notification related to the investigation, the right to be interviewed by the inquiry and/or investigation committee, the right to review and comment on his/her own interview summary, the right to comment on the investigation report and the right to notification related to the inquiry.

Inquiry and investigation. Issues related to the inquiry and investigation include appointing the inquiry or investigation committee; conducting the inquiry or investigation; the contents of the inquiry or investigation report; and, who makes the decision on whether an investigation is warranted/ misconduct occurred. Slightly over half of all reviewed policies use an ad hoc committee as the mechanism that is to be used to conduct the inquiry. A large majority of policies also use an ad hoc committee to conduct the investigation. Policies most often designate a senior institutional official as the person responsible for appointing the person or persons who will conduct the inquiry. In a University setting, the senior institutional official might be the President, Chancellor, Provost, the Vice President for Academic Affairs, or Vice President for Research. In an academic medical center or research institute, the senior official might be the institute's CEO or the hospital's Chief of Staff. The investigation committee is also often appointed by a senior institutional official. Sometimes it is the same official who appointed the inquiry committee, sometimes it is not. Fully half of all policies reviewed indicated that one or three persons would conduct the inquiry. Few stated more than 5 would be involved. Investigation committees also to be larger than inquiry committees. One-third of policies specified that the investigation committee would have at least 5 members.

About one-quarter of policies we reviewed discussed the role of an advisor to the respondent during the inquiry phase of a misconduct investigation. That number rose to 40% when discussing the investigation phase. There is a wide-range of positions taken by institutions on this issue with some policies stating that it was unnecessary for anyone to consult an attorney during the inquiry or investigation phase of the proceedings and others encouraging respondents to obtain legal counsel.

The authority for making the final decision on whether an investigation is warranted or whether misconduct occurred can be granted to the committee that conducts the

inquiry or investigation or can be given to an individual or committee outside of the review process that independently reviews the committee report and recommendations and makes a final decision. About a quarter of the policies reviewed allow the ad hoc committee that conducted the inquiry to make the final decision on whether an investigation is warranted. Another quarter of the policies give the responsibility to a single senior institutional official. The decision on whether misconduct has occurred is also most often the responsibility of a senior institutional official.

Other issues. Most policies reviewed designated a senior institutional official as the person responsible for deciding what sanctions should be imposed following a finding of scientific misconduct. Some policies indicated that the appropriate dean would make this decision, and in a few cases a board of trustees or directors of the institution is designated as responsible for making decisions on sanctions.

With regard to the specification of sanctions, almost three fourths of the policies reviewed indicate what types of sanctions may be administered by the institution. The most common type of sanction is termination of employment (for faculty or staff) or expulsion from the university (for students). Other sanctions that were frequently found in policies include a letter of reprimand and probation.

More than half of the policies reviewed indicate that the institution has an appeals process. The majority of these policies provide grounds for such appeals, which most frequently include failure on the part of the institution to follow appropriate procedures in the investigation and new evidence. Slightly less than half of the policies reviewed provide a time frame for filing appeals. In almost all of these cases, respondents were required to file an appeal either within the first 15 or 30 calendar days of being notified of the misconduct finding.

1. INTRODUCTION

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This report presents an analysis of the content of institutional policies for responding to allegations of scientific misconduct conducted for the Department of Health and Human Services' Office of Research Integrity (ORI). The report highlights policy best practices and reviews the various methods included in the policies for addressing the issues involved in responding to allegations of scientific misconduct. The results of this study will be used by ORI to assist institutions in making their scientific misconduct policies more efficient and effective.

1.1 BACKGROUND

Hundreds of institutions around the country receive research grant funds from the Public Health Service each year. Each institution that receives support for research or research training is required to establish a policy for responding to allegations of scientific misconduct. Regulations list specific requirements that these policies must address, and ORI is responsible for reviewing these policies to ensure they are in compliance with the regulation.

In reviewing policies adopted by institutions for responding to allegations of scientific misconduct in research, ORI has found that the policies vary considerably in the way they address the specific regulatory requirements. (The regulation, 42 CFR Part 50, is included in Appendix A of this report.) While many policies contain little more than a restatement of the regulations, others provide detailed procedures to address one or more of the regulatory requirements. As a result of their reviews, ORI began to distinguish between *compliant* policies and *effective* policies. A compliant policy is one that meets the minimal requirements set forth in the regulations but fails to provide the types of details that those responsible for responding to an allegation of scientific misconduct will need to address the issues arising during the course of an inquiry or investigation. For instance, the compliant policy may state that investigators have the authority to sequester records but will say nothing about the procedures for obtaining, securing, and returning those records. An effective policy, on the other hand, anticipates the issues that are likely to arise and provides guidance on how to handle them.

Developing effective policies for responding to allegations of scientific misconduct is important to institutions because although the probability of having to conduct an inquiry and investigation into an allegation of scientific misconduct is low, if a situation does arise, the consequences for the institution could be very large. The low probability of such an event occurring also means that those responsible for conducting an inquiry or investigation into an allegation of scientific misconduct will be inexperienced in that role, and will need the guidance an effective policy can give them.

This study has three purposes: (1) to determine the range of topics covered by policies for responding to allegations of scientific misconduct, (2) to ascertain the issues addressed under each topic, and (3) to highlight detailed procedures for addressing particular issues. Results from this study will be used by ORI to assist institutions that want to develop more effective policies for responding to allegations of scientific misconduct.

1.2 METHODOLOGY

ORI selected for the study population 156 institutional policies that had already been reviewed and accepted by ORI as being in compliance with the regulation but were known to include provisions that go beyond the regulatory requirement. (See Appendix B for a list of institutions whose policies were included in this review.) ORI also provided an initial draft of a policy review form that identified 18 topics generally addressed in scientific misconduct statements. The topics identified in the policy review form were:

-

Assessing the content of the institutional policies was approached systematically. CHPS assigned two staff members to this task. Both staff members reviewed the first 20 policies in a 'pilot test' of the review form. The purpose of this pilot test was to test the initial review form and assess the degree of inter-rater reliability. Inter-rater reliability refers to the consistency of results when two data gatherers use the same data collection instrument. In comparing the results of the two independent reviews of the first policies, CHPS found that the reviewers disagreed approximately 15% of the time and agreed 85% of the time. The statistic Cohen's kappa was used to determine if this degree of agreement actually represents reliability in completing the review forms. We calculated the statistic and determined that the statistic fell within the 95% confidence interval representing true reliability of the review process. However, the two reviewers did discuss the disagreements revealed by this analysis and agreed to appropriate interpretations of questions and possible answers. After the pilot test was complete, CHPS revised the collection forms and reviewer instructions based on pilot test results.

Once CHPS was assured of adequate reliability in the coding process, the remaining policies were dividing among the two reviewers. While the reviewers often discussed together different aspects of the policies and how to code them on the policy review form, many policies contained occasional ambiguities in wording and sentence structure that left assessments of content open to interpretation and, as a consequence, results cannot be viewed as exact.

Reviewers completed hardcopy review forms for the 156 policies included in the study. As mentioned above, the final review form contained 89 questions covering 18 topic areas. Questions on the review forms were in one of two formats:

- questions where only a single answer was expected; and,
- questions where the reviewer could chose more than one response.

For those questions where only a single answer was expected, the reviewer circled the response code for the correct answer. For instance, the first question asks whether the definition of scientific misconduct includes types of misconduct in addition to fabrication, falsification, and plagiarism. The possible responses are yes or no, with yes having a response code of '1' and no a response code of '2'. For those questions that could have multiple answers, each possible answer was identified with a letter of the alphabet and treated in the database as a separate question for which the answer is yes or no. For instance, the second question asks what other types of behavior are defined as misconduct by the policy and lists several possibilities. If a definition included additional items, the letters associated with those items were circled on the review form and this information was later entered into the database as a '1' for each item circled. Options not included on the initial review form but identified during the review process were added to the list of possible responses. As the review forms were being

completed, reviewers were mindful of text that provided detailed guidance or best practices and marked the text for possible inclusion in the final report.

Once the reviews were complete, a data entry clerk entered the data from the review form into an Excel spreadsheet. A number of consistency checks were conducted on the data in the completed database. If through these checks, inconsistent data were found, the data were corrected by first checking with the hardcopy policy review form to determine if the data had been entered incorrectly, and, if entered correctly, going back to the policy to review the information and determine how the hardcopy was incorrect. In addition, the distribution of the responses to each question was checked to ensure that no responses were outside of the defined range. After data entry and consistency checks, the database was used to prepare frequency tables of the responses to each question. The frequency tables are included in Appendix D of this report.

1.3 ORGANIZATION OF THE REPORT

The remaining chapters of this report discuss the findings from our analysis of policy contents. The 18 topic areas of the review form have been combined into 6 chapters as follows:

- Chapter 2: the definition of scientific misconduct;
- Chapter 3: the reporting and pursuing of allegations of scientific misconduct;
- Chapter 4: ensuring a fair and appropriate inquiry and investigation by maintaining confidentiality, avoiding conflicts of interest, and obtaining appropriate expertise;
- Chapter 5: the rights of the respondent, restoring the respondent's reputation when no finding of misconduct is made, and the role of the whistleblower;
- Chapter 6: inquiry and investigation procedures including appointing committee members, conducting the inquiry/investigation, and the content of inquiry/investigation reports;
- Chapter 7: other policy considerations including the imposition of sanctions, notification following a finding of misconduct, the appeals process, dealing with 'bad faith' allegations, and interim administrative actions.

2. DEFINITION OF SCIENTIFIC MISCONDUCT

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This chapter describes how institutions define scientific misconduct in their policies. Of specific interest is whether institutions define misconduct in terms other than fabrication, falsification, and plagiarism, and, if so, in what terms.

All but one policy contained a definition of scientific misconduct. In general, the policies reviewed used similar terminology and phrases when defining scientific misconduct. However, as indicated in Table 2-1, slightly more than half of the policies reviewed for this analysis contain a definition of scientific misconduct that goes beyond the standard definition of scientific misconduct used by ORI. (i.e., fabrication, falsification, and plagiarism or other practices that seriously deviate from those that are commonly accepted within the scientific community). Institutions also commonly included conduct such as a material failure to comply with governmental regulations, unauthorized use of confidential information, and retaliation or threat of retaliation against persons involved in the allegation or investigation of misconduct in their definitions of scientific misconduct.

Table 2-1
The Definition of Scientific Misconduct in Institutional
Scientific Misconduct Policies

	Number of <u>Policies</u>	Percent of <u>Policies</u>
Number of Policies Containing a Definition of Scientific Misconduct that Includes Types of Misconduct Other than Fabrication, Falsification, and Plagiarism	82	53%
Other Types of Behavior Most Often Defined as Scientific Misconduct:		
Material failure to comply with governmental regulations	52	33%
Unauthorized use of confidential information	39	25%
Retaliation or threat of retaliation against persons involved in the allegation or investigation of misconduct	25	16%
Improprieties of authorship	24	15%
Material failure to comply with non-governmental regulations applicable to research	16	10%

A few policies were fairly comprehensive in their definitions of scientific misconduct, incorporating several types of conduct, including those reported in Table 2-1, in their policies. One of the most comprehensive of such policies specifically delineated and then also defined several of the forms that misconduct can take:

- A. Falsification of data: ranging from fabrication to deceptive selective reporting of findings and omission of conflicting data, or willful suppression and/or distortion of data.*
- B. Plagiarism: The appropriation of the language, ideas, or thoughts of another and representation of them as one's own original work.*
- C. Improprieties of authorship: Improper assignment of credit, such as excluding others, misrepresentation of the same material as original in more than one publication, inclusion of individuals as authors who have not made a definite contribution to the work published; or submission of multi-authored publications without the concurrence of all authors.*
- D. Misappropriation of the ideas of others: an important aspect of scholarly activity is the exchange of ideas among colleagues. New ideas gleaned from such exchanges can lead to important discoveries. Scholars also acquire novel ideas during the process of reviewing grant applications and manuscripts. However, improper use of such information could constitute fraud. Wholesale appropriation of such material constitutes misconduct.*
- E. Violation of generally accepted research practices: Serious deviation from accepted practices in proposing or carrying out research, improper manipulation of experiments to obtain biased results, deceptive statistical or analytical manipulations, or improper reporting of results.*
- F. Material failure to comply with federal requirements affecting research: Including but not limited to serious or substantial, repeated, willful violations involving the use of funds, care of animals, human subjects, investigational drugs, recombinant products, new devices, or radioactive, biologic, or chemical materials.*
- G. Inappropriate behavior in relation to misconduct: Including inappropriate accusation of misconduct; failure to report known or suspected misconduct; withholding or destruction of information relevant to a claim of misconduct and retaliation against person involved in the allegation or investigation.*
- H. Deliberate misrepresentation of qualifications, experience, or research accomplishments to advance the research program, to obtain external funding, or for other professional advancement.*
- I. Misappropriation of funds or resources. For example, misuse of funds for personal gain."*

Another policy provided case examples with detailed explanations to help define practices that involve scientific misconduct. For example, to help define improprieties of authorship, the policy gave the example of a faculty advisor who revised a graduate student's thesis and submitted it for publication without informing the student. The advisor also listed herself as first author. The policy goes on to cite the American Psychological Association guidelines for authorship as well as to describe four elements that made the advisor's actions inappropriate. This policy also provided case examples and ensuing explanations to help describe:

- Grossly negligent data collection or analysis;
- Unauthorized use of confidential information;
- Forging of academic documents;
- Intentional misrepresentation of credentials; and,
- Intentionally or knowingly helping another to commit an act of misconduct or otherwise facilitating such acts.

There were two other policies worth noting for their unique approaches to the

3. REPORTING AND PURSUING ALLEGATIONS OF SCIENTIFIC MISCONDUCT

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This chapter describes the various policies that institutions follow with regard to the reporting and pursuit of allegations of scientific misconduct. The reporting of allegations will focus on the following issues:

- The obligation to report and the potential penalties the institution's members may face for failing to report scientific misconduct;
- Whether anonymous allegations will be accepted;
- The required format and content of allegations; and
- The institutional officials involved in receiving the initial allegation.

There are also four issues involved in the question of whether an allegation will be pursued or not. These four issues address what happens when:

- The whistleblower declines to make a formal allegation;
- The respondent leaves the institution;
- The respondent admits misconduct and signs a statement; and,
- The whistleblower insists on anonymity.

Many policies do not consider all of these issues. However when these issues are discussed in policies, there is often considerable variety in how the issues are approached.

3.1 OBLIGATION TO REPORT

Among the first issues that policies address is the question of whether the institution obligates its members to report scientific misconduct and if it does, what penalties are associated with the failure to report. In most cases, the reviewed policies did not explicitly state that members of the institution were obligated to report scientific misconduct. (See Table 3-1.) The few policies that do obligate members generally included a statement similar to the following within the definition of scientific misconduct:

“Misconduct in science and engineering means the condoning of the above practices, including failure to notify university authorities when there is clear evidence of misconduct, failure to cooperate in an investigation or inquiry under these procedures, and failure to comply with misconduct policies and procedures (e.g., unauthorized release of information about misconduct inquiries or investigations.)”

However, in a few policies the obligation to report was more explicitly stated. As in the following:

“All members of our academic community have the obligation to report potential misconduct and to cooperate in the investigation of such behavior.”

**Table 3-1
Obligation to Report Scientific Misconduct
In Institutional Scientific Misconduct Policies**

	Number of Policies	Percent of Policies
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Number of Institutions that Obligate Their Members to Report Scientific

inquiry. In this event the Complainant would be the University. There may also be instances where the University is the complainant because the identity of the complainant is unknown but the evidence of the misconduct is substantial.”

Our review found only 2 policies that explicitly stated the institution would not accept anonymous allegations. (Frequency tables – question 5.) One of the policies stated:

“Official allegations of misconduct shall be presented to the Vice Provost for Research in writing. Anonymous reports will not be accepted.”

**Table 3-2
The Treatment of Allegations by Institutions
As Stated in Scientific Misconduct Policies**

	<u>Number of Policies</u>	<u>Percent of Policies</u>
Number of Institutions Accepting Anonymous Allegations	26	17%
Form in Which an Institution Will Accept an Allegation:		
May be oral (i.e., either 'oral' or 'oral or written')	20	13%
Must be written (i.e., either 'written' or 'oral then written')	67	43%
Information Institutions Most Often Want Contained in an Allegation:		
Signature/identity of the whistleblower	20	13%
Description of misconduct	17	11%
Supporting documentation/evidence	16	10%
Number of Institutions in Which More Than One Individual Can Receive the Initial Allegation	48	31%
Number of Officials Allegation is Subsequently Reported to:		
One	51	33%
More than one	43	28%

3.3 FORM AND CONTENT OF ALLEGATIONS

oral one. In that written statement, the information that institutions required most often was the signature or identity of the whistleblower, a description of the misconduct, and supporting documentation or evidence. Some policies summarized the information required in a paragraph such as the following:

“Allegations of misconduct in science shall be initiated by a written statement from any individual, whether or not associated with the University, and filed with the Academic Dean. The allegation should be detailed and specific and accompanied by appropriate documents. Ideally, the allegation should be signed and dated by the individual making the charge.”

Other policies were more specific, containing a list of items to be included in the complaint such as:

- *“Indicate your name, office address, home address, and telephone numbers.*
- *Name the professional staff member(s) of the University against whom the complaint is being lodged. Provide titles, departments, addresses, and telephone numbers (if known).*
- *Name any other agency, organization, committee, or administrator, if any, to whom you previously submitted this complaint, and explain the current status of your proceedings with any such person or group.*
- *State your complaint clearly and completely. Explain why you feel there is sufficient reason to lodge the complaint, and list the specific actions, including the place(s) date(s) (if known) when the infraction occurred; the names office and home addresses and telephone numbers of witnesses and other documents or facts which you think support your allegation.*
- *Sign and date each page of the written complaint.”*

3.4 RECEIPT OF THE ALLEGATION

There is a lot of variety in how institutions approach the question of who allegations of misconduct should be reported to and how many individuals are informed of the initial allegation. Our review identified 14 different individuals or groups that are assigned the initial receipt of an allegation. (Frequency tables – question 8.) Most often specified is the appropriate dean, appropriate department head, or a senior institutional official. In a University setting, the senior institutional official might be the Provost, the Vice President for Academic Affairs, or Vice President for Research. In an academic medical center or research institute, the senior official might be the institute’s CEO or the

hospital’s Chief of Staff. Less often policies assign receipt of allegations to the institution’s research integrity officer, the supervisor of the respondent (or whistleblower) or to a faculty member of the whistleblower’s choice.

Fewer than one-third of the policies indicated that more than one person is empowered to accept an initial allegation of misconduct. Once the initial allegation has been made, the majority of the policies specify that the allegation must be subsequently reported to other institutional officials. Of those policies providing enough information to allow us to note the number of officials the allegation must subsequently be reported to, one-third subsequently reported the allegation to one additional official. In about 28% of the policies, more than one official received notice of the allegation after its initial receipt.

3.5 PURSUIT OF ALLEGATIONS

Table 3-3 presents a count of the number of policies that stated an allegation would be pursued even when the whistleblower declines to make a formal allegation, when the respondent leaves the institution, when the respondent admits misconduct occurred, and when the whistleblower insists on anonymity.

**Table 3-3
The Pursuit of Allegations in
Institutional Scientific Misconduct Policies**

	Number of Policies	Percent of Policies
Policy States Institution will Pursue Allegations if:		
Whistleblower declines to make a formal allegation	25	16%
Respondent leaves institution	51	33%
Respondent admits misconduct and signs statement	7	4%
Whistleblower insists on anonymity*	36	23%

*Provided pursuit of the allegation is feasible.

Many policies did not mention these possibilities or how the allegation would be treated should they occur. Examples of policies for addressing these situations include:

“If a person alerts a member of the Advisory Committee to a possible instance of misconduct but declines to pursue the issue when the Committee member recommends further action, the Committee member is obligated by knowledge of the alleged misconduct to report the allegation to the Dean, either directly or through the department or division director. The person bringing the matter to the attention of the Advisory Committee cannot be guaranteed anonymity since this person may be an important witness or source of information.”

“If the accused person is no longer a member of the [Institution’s] academic community, the requirements of written notice and an opportunity to answer to the charge of misconduct will be observed as far as is practical, but the failure of the accused to respond or to make himself available to those with investigatory responsibilities will not deter the inquiry and investigation.”

“If the respondent admits to misconduct, the respondent should be asked immediately to sign a statement attesting to the occurrence and extent of the misconduct. If the admission is made and PHS funds are involved, the Research Integrity Officer or institutional counsel may seek advice from ORI in determining whether there is a sufficient basis to close a case, after the admission is fully documented and all appropriate procedural steps are taken. If the case is closed the report should be forwarded to the deciding official with recommendations for appropriate institutional sanctions.”

One institution also stated that it would consider the amount of time that has passed since the misconduct occurred in determining whether it would pursue an allegation. The policy stated that:

“Because of the difficulties of assessing stale claims and the unfairness to the person against whom the allegation is made, allegations based on conduct which occurred seven years or more prior to the making of the allegation will not be inquired into under this policy unless the circumstances indicate that the alleged conduct was not discoverable earlier.”

4. ENSURING A FAIR AND APPROPRIATE INVESTIGATION

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In order to ensure a fair and appropriate investigation institutions must address three topics in their policies:

- Maintaining confidentiality;
- Avoiding conflicts of interest; and,
- Ensuring appropriate expertise is available to the inquiry and investigation.

4.1 MAINTAINING CONFIDENTIALITY

The reviewers examined policies to determine who is covered under the institutions' attempt to maintain confidentiality and to identify how policies specified confidentiality is to be maintained. The respondent and whistleblower were almost always mentioned as being covered by an institution's attempt to maintain confidentiality. Some policies went further and included the inquiry and investigation committee members as well. Some policies were vague in their description of who is covered and simply stated that *'all parties involved'* or *'all affected individuals'* would be covered. The following examples illustrate various options for describing who is generally covered under the element of confidentiality.

"All aspects of the misconduct in science procedures are intended to be kept confidential by all parties, including the complainant, respondent, staff, Panel and Committee members, and witnesses, to the extent possible and consistent with fair treatment of such persons, protection of the public health and safety, the need to carry out the Inquiry or Investigation, and legal requirements."

"Once an inquiry has been initiated the committee will make every effort to protect the privacy of those who in good faith have reported possible misconduct. At the same time, the committee will afford the respondent confidential treatment."

"The members of the committee will agree in writing to observe confidentiality of the proceedings and any information or documents reviewed as part of the inquiry."

"Each witness including the complainant and the respondent shall be warned to keep confidentiality."

The measures most often used by institutions to maintain confidentiality include limiting the number of persons involved or officials notified, limiting access to information about the proceedings, and requiring signed non-disclosure statements.

(See Table 4-1.) Less frequently used were requirements to exclude the identities of the respondent and/or whistleblower from committee reports. One policy included a

**Table 4-1
Maintaining Confidentiality In a
Scientific Misconduct Investigation**

	Number of <u>Policies</u>	Percent of <u>Policies</u>
Measures Most Often Used by Institutions to Maintain Confidentiality:		
Limiting number of persons involved/officials notified	25	16%
Limiting access to information about the proceedings	23	15%
Signed non-disclosure statements	22	14%
Reasons Most Often Given for Legitimately Violating Confidentiality:		
The need for information in the investigation	13	8%
It is in the public interest	8	5%
The requirements of law	6	4%

statement that individuals accused of misconduct be identified only by number in the committee deliberations or reports. The policy stated:

“To protect the anonymity of the individuals accused of misconduct, a numbering system will be adopted by the Ethics committee and numbers will be assigned by the committee chair. When possible, all deliberations and reports will use this number, taking care not to identify individuals unless absolutely necessary.”

While institutions will want to maintain confidentiality in the inquiry and investigation process, there are legitima

Another policy stated the possible consequences of violating confidentiality more forcefully:

“All those informed will be reminded of the importance of strict confidentiality during the investigation and the right to privacy for those under investigation. They will also be reminded that breach of [Institution] confidentiality is punishable by immediate termination.”

4.2 CONFLICT OF INTEREST

Generally, protecting against conflicts of interest in scientific misconduct investigations was an issue present in almost all policies, but addressed in various ways. In examining this issue, reviewers first noted if the policy specified criteria to be used to determine whether there is a conflict of interest. About 28% of policies specified criteria for determining whether a conflict of interest exists. (Frequency tables – question 21.) The criteria specified were fairly standard across policies and included such things as involvement in the research in question, relationships to the parties in the matter, having a personal interest or bias, or being a competitor of the accused. One policy using different criteria stated:

“The integrity of the inquiry and investigation process will be maintained by painstaking avoidance of real or apparent conflict of interest in that no individual or group, directly or indirectly associated with the conduct of the review, shall in fact or appearance, experience gain (material or otherwise) from its outcome.”

Policies utilized a number of measures to protect against conflicts of interest including use of outside experts, challenges by the respondent or whistleblower to committee membership, excluding members of the same organizational unit from inquiry or

Table 4-2
Protecting Against Conflicts of Interest in Scientific Misconduct Investigations

4.3 APPROPRIATE EXPERTISE

Availability of appropriate expertise is the final item discussed in this chapter. It is important to note that there are a number of different types of expertise an inquiry or investigation committee should have access to including scientists, lawyers, administrators, and subject matter experts. Our review found that 90 of 156 policies specified how appropriate expertise would be made available to the inquiry or investigation committees. (Frequency tables – question 27.) The three methods most often specified for making appropriate expertise available are listed in Table 4-3 and include the use of experts, which was included in one third of the institutional policies, the use of senior faculty and the use of committee members from the same or related disciplines (to that of the respondent).

Only a small number of policies actually specified how the institution would ensure that the expertise used is appropriate. The few policies that addressed this issue stated either that the committee membership would be reviewed by a senior administrator for appropriate expertise or that challenges by the respondent would be accepted. The following is an example of a policy that uses an administrator to ensure appropriate expertise is available:

“The Administrator will have the responsibility to review the qualifications of the members of the Misconduct in Research committee to ensure that necessary and appropriate expertise is secured to carry out a thorough and authoritative evaluation of the relevant evidence in an inquiry or investigation. ... If it is deemed necessary, the administrator will recommend to the President to select an expert from outside the university. The administrator will have the authority to recommend to the President the replacement or addition of members to the committee to ensure that the committee has no conflict of interest and that a sufficient level of expertise is maintained”

A policy that allows a respondent to challenge committee members based on expertise stated the following:

“The respondent will have the opportunity to challenge the appointment of proposed panel members and to suggest substitutes to the Dean for good cause shown. Good cause may include, but not be limited to, circumstances in which the respondent believes the proposed member(s) to be unqualified to review the allegations due to bias or lack of relevant expertise in the field in question.”

Table 4-3
Ensuring Appropriate Expertise is Available
to the Inquiry and/or Investigation

	<u>Number of Policies</u>	<u>Percent of Policies</u>
Methods Most Often Specified for Making Appropriate Expertise Available:		
Use of experts	52	33%
Use of senior faculty	43	28%
Committee members from same/related disciplines/expertise	19	12%
Methods Most Often Used for Ensuring Expertise is Appropriate:		
Committee membership reviewed by senior administrator for appropriate expertise	4	3%
Challenges by respondent	3	2%

5. RIGHTS OF THE RESPONDENT AND WHISTLEBLOWER

5. RIGHTS OF RESPONDENT AND WHISTLEBLOWER

This chapter describes the rights of the respondent and whistleblower during an investigation into scientific misconduct. The rights of the respondent are always specified more frequently and in more detail than the rights of the whistleblower.

5.1 RESPONDENT RIGHTS

Our review found that the scientific misconduct policies included in this analysis always included a discussion of respondent rights in some form. Table 5-1 presents the core list of the rights of respondents that were most often specified by the institutions. Generally, the policies included a number of these somewhere within the policy language. Sometimes policies used a format of listing them all in one place in the policy. Other times the format listed them at different points in the policy when a particular procedure or phase of the proceedings was being discussed (i.e., the rights of a respondent during an investigation hearing are discussed when the investigation hearing is described.)

**Table 5-1
Specifying the Rights and Obligations of Respondents
In Scientific Misconduct Policies**

	Number of <u>Policies</u>	Percent of <u>Policies</u>
Number of Institutions Specifying the Rights of the Respondent	156	100%
Respondent Rights Most Often Specified by the Institution:		
Comment on inquiry report	127	81%
Comment on investigation report	131	83%
Notification related to inquiry	112	72%
Notification related to investigation	97	62%
Right to counsel	83	53%
Interviewed during the investigation	82	53%
Present evidence	62	40%
Submit a written statement	53	34%
Number of Institutions Specifying the Obligations of the Respondent	84	54%

The following is an example from a policy that specified a detailed list of respondent rights with regard to the investigation's formal hearing:

"Thirty days or more prior to the board's formal hearing, the respondent shall:

- *Be sent a notice stating the place, time and date of the hearing;*
- *Be given notice that he/she shall have reasonable access to any relevant information in support of the inquiry report, with care to maintain confidentiality with respect to sources of the information;*
- *Be informed of significant new directions of investigation undertaken as a result of the emergence of additional information that justifies broadening the scope of the investigation beyond the initial allegation ;*
-

“If the allegation is judged not to be frivolous, or if any person in addition to the accuser and/or the immediate supervisor of the accused is consulted in connection with the informal inquiry, the accused individual shall be provided a copy of the signed and dated statement of the allegation and shall be accorded an adequate opportunity to respond to the allegation.

The accused person shall have the opportunity to challenge proposed panel members for good cause shown, including but not limited to circumstances in which the accused believes the members to be unqualified due to bias or lack of expertise.

[The accused person] shall have the opportunity to be heard and defend themselves against the allegation, including the presentation of additional relevant evidence and witnesses.

The accused and the accuser shall receive copies of the report to the Review Panel ... They shall have ten (10) calendar days to comment in writing on the findings of the inquiry. Their comments shall be added to the record.

The accused shall again [during the investigation] have the right to challenge proposed additions to the Review Panel for good cause shown.

If the investigation uncovers new evidence of misconduct, not previously alleged, the Hearing Director shall give the accused, in writing, an amended allegation.

The accused and the accuser shall receive copies of the [investigation] report of the Review Panel... They shall have ten (10) calendar days to comment in writing on the findings of the investigation. Their comments shall be added to the record of the investigation.

... shall notify the individual(s) [respondent(s)] that a written appeal can be direct to the Provost ... within ten (10) calendar days.

These procedures [for conducting hearings] shall provide the following basic rights:

Right to counsel.

Right to a record of the hearing.

Right to confront and cross-examine witnesses.

Notice reasonably in advance of the hearing of witnesses and documents.

Right to present witnesses and documents, and to testify.

Right to a reasonably prompt decision based on the evidence.

Right to a written statement of decision containing findings, conclusions, and the bases therefor.

Right to be present during hearing sessions for the Review Panel. This right shall not include the right to attend deliberative sessions of the Panel.”

While stating a very comprehensive list of rights, the above policy mentioned only two obligations of the respondent (and one is actually stated as a request, not an obligation):

“The accused individual(s) shall be requested to cooperate with the Review Panel... and,

In an appeal, the burden of proof is upon the individual making the appeal.”

Approximately half of the policies indicated that the respondent had an obligation to the institution once an allegation of misconduct has been made. The respondent obligations most often specified by the institution include:

- Furnish data required by the inquiry/investigation;
- General obligation to cooperate with the inquiry and investigation; and
- Maintain confidentiality.

For example,

“The respondent is obligated to cooperate in providing the material necessary to conduct the inquiry and will be so informed by the committee when the inquiry is initiated. Uncooperative behavior may result in immediate implementation of a formal

institution will take to restore the reputation of a respondent when no finding is made that an investigation is warranted or that misconduct occurred. (See Table 5-2 and frequency tables – question 73.)

The policies often differed in their approach to who is generally consulted about the steps taken to restore a respondent’s reputation. The three individuals most often consulted include the appropriate dean, respondent, or a senior institutional official, such as the Provost or Vice President for Academic Affairs. Table 5-2 shows the number of policies identified as consulting with these individuals in determining how to restore the respondent’s reputation. Table 5-2 also includes a brief list of the steps most often specified by institutions for restoring the reputation of respondents. Notifying individuals that may have become aware of the allegation is clearly the most frequent. However, making a public announcement and removing any reference to the allegation from the file of the respondent were used occasionally as well.

**Table 5-2
Restoration of a Respondent’s Reputation When
No Finding of Scientific Misconduct is Made**

	Number of <u>Policies</u>	Percent of <u>Policies</u>
Number of Policies that Mention Restoration of the Reputation of the Respondent	151	97%
Persons Most Often Consulted About Steps to be Taken to Restore a Respondent’s Reputation:		
Senior institutional official	24	15%
Dean	11	7%
Respondent	10	6%
Steps Most Often Specified for Restoring the Reputation of a Respondent:		
Notify/debrief any individuals who became aware of the allegation(s) in order to minimize rumors that may result from lack of information or misinformation	51	33%
Make a public announcement	22	14%
Remove any reference to the allegation from the personnel file of the respondent	20	13%
Notify the funding agency	20	13%

A policy that addressed the issue of the restoration of the rights of the respondent in a particularly detailed manner stated the following:

“If either an inquiry or investigation fails to substantiate the allegation of scientific misconduct, the Provost shall so inform all parties involved and stress that the original allegation should in no way influence the rights and privileges of the researcher(s) in

question or any aspects of his/her employment, position or status within the University. Additionally, the Provost shall send a formal letter to the individual(s) who was accused, emphasizing that the allegation of misconduct was unsubstantiated. Furthermore, neither the accused individual(s), nor any of his/her activities shall be subject to any future form of scrutiny, review or supervision resulting from an inquiry, or investigation, except that which is usual and normal for all individuals in comparable positions.”

5.3 THE WHISTLEBLOWER IN SCIENTIFIC MISCONDUCT POLICIES

Policies may also specify rights of the whistleblower during proceedings related to the investigation of scientific misconduct. Table 5-3 lists the five rights that are most often granted to whistleblowers in the policies reviewed. These are the right to notification related to the investigation, the right to be interviewed by the inquiry and/or

**Table 5-3
The Whistleblower in Scientific Misconduct Policies**

	<u>Number of Policies</u>	<u>Percent of Policies</u>
Rights Most Often Given by the Institution to the Whistleblower:		
Notification - investigation related	68	44%
Interviewed by inquiry/investigation committee	63	40%
Review and comment on own interview summary	41	26%
Comment on investigation report	37	24%
Notification - inquiry related	35	22%
Number of Policies that State:		
The whistleblower will be protected from retaliation	79	51%
Disciplinary actions will be taken against retaliators	29	19%
The institution will make diligent efforts to protect the position and reputation of a good faith whistleblower	138	89%

Indemnifying whistleblowers against losses that may occur because they made a good faith allegation of scientific misconduct is unusual. One institution’s policy, however, included the following statement related to the indemnification of whistleblowers:

“If a claim is filed externally with an administrative agency or in a court of law against the whistleblower because of the filing of an allegation under this policy, the University shall retain or authorize the retention of legal counsel to provide a defense and indemnify the whistleblower against any judgements resulting from such action, provided that the whistleblower filed such an allegation, or provided testimony related to such an allegation, in good faith and in connection with his/her employment or enrollment at the University.

If an allegation made in good faith results in loss of employment by the whistleblower, or so strains working relations that it is impractical for the whistleblower to continue his/her original position, the University shall make a good faith effort to find substantially equivalent employment elsewhere in the University.”

**6. INQUIRY AND INVESTIGATION IN SCIENTIFIC MISCONDUCT
POLICIES**

6. INQUIRY AND INVESTIGATION IN SCIENTIFIC MISCONDUCT POLICIES

Scientific misconduct policies generally discuss issues related to the inquiry and to the investigation in separate sections of the policy. However, both discussions tend to address the same types of issues. These include:

- Appointing the inquiry or investigation committee;
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“The Misconduct Policy Officer will then conduct an immediate, informal, discrete inquiry into allegations of misconduct in order to determine whether there is a substantial basis for initiating a formal investigation into the alleged misconduct.”

Sometimes policies give the responsibility of conducting the inquiry to a single official who may conduct the inquiry or may appoint others to do so. In one such policy, the responsibility of conducting the inquiry was given to the ‘appropriate dean’ by the

**Table 6-1
Appointing the Inquiry and Investigation Committees**

	<u>Number of Policies</u>	<u>Percent of Policies</u>
Mechanism Most Often Used to Conduct		
<i>Inquiry:</i> Ad hoc committee	83	53%
Standing committee	23	15%
One institutional official	20	13%
<i>Investigation:</i> Ad hoc committee	125	80%
Standing committee	17	11%
Subcommittee of standing committee	9	6%
Person Most Often Responsible for Appointing Person(s) to Conduct		
<i>Inquiry:</i> Senior institutional official	62	40%
Dean	20	13%
Standing committee on research integrity/ IRB, chair or committee member(s)	15	10%
<i>Investigation:</i> Senior institutional official	80	51%
Dean	23	15%
Chair of research committee/IRB	8	5%
Research integrity officer	8	5%
Number of Persons Most Often Involved in Conducting		
<i>Inquiry:</i> Three	58	37%
One	20	12%
Depends on the circumstances	19	12%
<i>Investigation:</i> Five	52	33%
Three	47	30%
Four	7	4%
Criteria Most Often Specified for Committee Membership		
<i>For the Inquiry Committee (when a committee is used):</i>		
Rank in organizational hierarchy	40	26%
Outside the institution	26	17%
Outside the department of the respondent	20	13%
Members of the standing misconduct committee	17	11%
<i>For the Investigation Committee:</i>		
Outside the institution	62	40%
Member of faculty	54	35%
Rank in organizational hierarchy	45	29%
Outside the department of the respondent	25	16%

“A member of the Ethics Committee receiving a statement of misconduct ... shall submit a written account of the matter to a Review Panel, consisting of the Committee Member receiving the statement and at least four other members of the Ethics Committee, one of whom shall serve as Panel Chair... The [Ethics Committee] Chairperson and the Committee member receiving the statement will determine the composition of the Review Panels, bearing in mind the paramount need to ensure that members of each review panel have no direct or indirect interest in the subject matter of the case or ties with any of the parties who may be involved. Of equal importance is the requirement that the persons selected to conduct the inquiry have the necessary expertise to conduct a thorough and well-informed evaluation of the validity of the allegations.”

committed research misconduct belongs; one individual who belongs to a department other than the one to which the person alleged to have committed research misconduct belongs; and one individual who is a member of the University Research Council.”

As the examples show, policies that go beyond the criteria stated in the model policy often specify criteria for membership on the inquiry committee such as rank in the organizational structure and position within or outside the institution or the department of the accused. While some policies want a committee member who is within the department of the accused, others state that being within the department of the accused disqualifies the individual. The same is true for the department of the whistleblower, although criteria based on the department of the whistleblower arises less frequently. Table 6-1 shows the criteria (not including the criteria stated in the model policy) that appear in the reviewed policies most frequently.

The same types of issues noted above as being addressed when discussing policies for appointing an inquiry committee are also addressed when appointing the investigation committee is discussed. In 81% of the policies reviewed, the investigation is conducted by an ad hoc committee. This committee is often appointed by a senior institutional official. Sometimes it is the same official who appointed the inquiry committee, sometimes it is not. One policy allows the accused to select one member of the investigation committee:

“If the inquiry report concludes that the allegation is substantive, the Chief Research Officer shall appoint and charge a three member investigative committee. Two of these shall be selected by the Chief Research Officer and the appropriate dean(s), and one shall be selected by the accused. In the case of a fully-affiliated faculty member, the three committee members shall be fully-affiliated faculty members. In other cases, at least two of the committee members shall be fully-affiliated faculty members.”

Investigation committees also tend to be larger than inquiry committees. One-third of policies specified that the investigation committee would have at least 5 members. In this example, the policy allows for at least five voting members and additional non-voting members as well:

“The Chair of the Research Integrity Committee will name at least five voting members of the Discovery Subcommittee [investigation committee], drawing from the pool of available faculty and staff members in the Research Integrity Committee. In addition, the Chair may appoint as many ad hoc voting members as may be needed to ensure appropriate expertise. The ad hoc members may be scientists, artists, musicians, or other scholars, subject matter experts, administrators, lawyers or other qualified persons including students, and they may be from inside or outside the University. The

Executive Secretary and the Research Integrity Committee's legal counselor will serve as non-voting ex officio members."

Criteria most often specified for committee membership (not including the criteria listed in the model policy) were that the individuals could be from outside the institution or members of the faculty. Policies also often included rank in the organization hierarchy and being outside the department of the respondent as criteria for committee membership. Examples of criteria specified in policies include:

"... at least three individuals [may be appointed] to that committee who were not on the inquiry committee... One member of the committee shall be a person with legal training and experience, and that person shall be the chair of the committee."

"Members of hearing committees will be of equal or greater rank to that of the accused and will receive appropriate training for their duties as members of the hearing committee."

One policy specified certain members for the committee if the research under investigation had been approved by the IRB or if externally funded research is involved:

"In instances where the research has been approved by the campus Institutional Review Board (IRB), a member of IRB should be appointed as an additional member. In instances where externally funded research is involved, the Vice President for Academic Affairs may also appoint a member of the [institution's] Foundation to serve as an ex officio member of the committee to represent the interests and legal obligations of the Foundation."

6.2 CONDUCTING INQUIRIES AND INVESTIGATIONS

We examined three issues associated with the conduct of inquiries and investigations: the authority granted to those who conduct an inquiry or investigation; the types of

authorities given to inquiry committees include the authority to decide whether an investigation is warranted (for 42% of policies) and to recommend (but not decide) whether an investigation is warranted (for 29% of the policies). Fifteen percent of policies also provided inquiry committees with the authority to sequester research data and records.

When discussing the authority of the person(s) conducting the inquiry, a policy might state that the conductor of the inquiry is “*empowered to secure appropriate expertise and resources*” or can determine “*the scope and extent of the inquiry.*” One policy included a fairly detailed descriptions of procedures for sequestering records:

**Table 6-2
Conducting Inquiries and Investigations**

	Number of Policies	Percent of Policies
Authority Most Often Given to Those Conducting the <i>Inquiry:</i> Fact finding	120	77%

“The documents and materials to be sequestered will include all of the original items (or copies if originals cannot be located) that may be relevant to the allegations. In addition to securing records under the control of the Respondent, the Provost may need to sequester records from other individuals, such as co-authors, collaborators, or Complainants. In order to protect the rights of the Respondent and all other involved individuals – as well as to enable the University and its representatives to meet their institutional, regulatory and legal responsibilities - a proper chain of custody must be ensured and maintained, with the originals kept intact and unmodified. A key step in this process is to have a dated receipt signed by the sequestering official and the person from whom an item is collected. A copy of the receipt should be given to the person from whom the items are taken. At the same time, in order to minimize unnecessary disruption of the involved individuals’ research programs, the sequestering official and each person from whom an item is taken shall note on the receipt whether the individual wants to receive a copy of that item. (It is recognized, however, that it may not always be appropriate to provide the requested copy, even if the item is capable of being copied.) The copy shall be returned to the requesting individual within ten days, a written explanation of the relevant circumstances – along with the expected delivery date – shall be transmitted in confidence to that individual. This explanation shall become a part of the Inquiry records. When the requested copy is delivered to the person from whom the original item had been taken, a dated receipt shall be signed by that person and the designated University official, with copies given to both individuals.”

Another policy gave the inquiry committee the authority for taking interim actions for the protection of federal funds or to withdraw submitted manuscripts that deal with the topic under investigations:

“In order to protect Federal funds, the Inquiry Committee will have the authority to suspend all research activities related to the case in question. All individuals working on the project will be assigned to other projects and no funds will be expended for purchase of supplies, services or equipment. The Inquiry Committee will have the authority to obtain materials and documentation deemed essential for its inquiry and to require the withdrawal of any submitted manuscripts dealing with the topic of the inquiry until a determination is made whether to go forward with an investigation.”

Investigation committees are also often given the authority to determine findings and recommend sanctions. Policies may give investigation committees the power to broaden the scope of the investigation *“if it appears warranted.”* One policy allows the investigation committee to *“examine all scientific and academic work with which the individual(s) was involved,”* while another allows the investigation committee to consider other types of professional misconduct:

“Other areas of professional misconduct (e.g., clinical practice, personnel supervision, personal interaction) may be investigated as well, if the Committee has reason to believe, or uncovers evidence, that a broader range of misconduct has occurred.”

One policy uniquely provided the authority to sequester witnesses to the investigation committee:

The misconduct officer shall have the authority to issue whatever orders governing such hearings as are necessary to preserve the confidentiality of the scientific and research information, documentation and other evidence which may be presented by the parties in the course of such hearing. This authority shall include, where necessary, the authority to sequester witnesses, close the hearing to other University personnel and the public at large and to seal written documents to prevent public disclosure...

6.2.2 Guidelines

We were able to identify guidelines for the conduct of the inquiry and investigation in over 80% of policies reviewed. (Frequency tables – question 39.) Typically, guidelines for the investigation were more extensive than those for the inquiry. We categorized 16 different types of guidelines for inquiries and 26 different types for investigations. (See the frequency tables in Appendix D.) The guidelines most often specified for the inquiry dealt with the rights of the respondent during the inquiry, the report distribution, how interviews were to be conducted, the sequestering of research records, and the recording of meetings. Guidelines for the investigation most often dealt with providing witnesses with transcripts of their interviews for comment, the recording of meetings and interviews, rules for accepting and considering evidence, the maintenance of confidentiality, how interviews are to be conducted, and the types of notification related to the investigation.

Examples of guidelines for the inquiry committee that go beyond what is specified in the model policy and are different from what is usually seen in policies include:

“The President shall refer the allegation to the [Committee] with the request that the Committee proceed with an informal Inquiry that is not subject to the rules of evidence. Confrontation and cross-examination of witnesses shall not be permitted. ... Witnesses shall be interviewed individually to preserve the confidentiality of proceedings.”

“An initial inquiry shall be conducted with due regard for the reputations of all the parties, and include, at a minimum, the following procedures: (a) all individuals contacted must agree to maintain confidentiality and shall review written copies of this policy, as well as all other written University policies which relate to faculty responsibilities in their ethical and scientific conduct. These documents will be provided

to all persons involved by the provost through the tenured faculty member conducting the inquiry; (b) the persons(s) making the allegation will be known only to the Dean(s) originally contacted, the Provost, and the individual conducting the inquiry...”

“If new evidence is brought to the attention of the Senior Administrator after the completion of the inquiry process but prior to the institution of a formal investigation, if any, ... the Senior Administrator may determine in his or her discretion that the matter be referred back to the individual(s) selected to conduct the inquiry or that new individual(s) be appointed to reopen the inquiry.”

“All parties to the case, including the inquiry committee itself, shall have the opportunity to present evidence, to call witnesses, and to examine or cross-examine them.”

Examples of guidelines for the investigation committee that are go beyond what is specified in the model policy and are different from what is usually seen in policies include:

“Hearings are confidential and may be declared closed by request of any of the Involved Parties. Written notification of hearing dates and copies of all relevant documents will be provided by the Provost in advance of scheduled meetings. At the option of the Committee, proceedings will be either tape-recorded or transcribed and will be made available to Involved Parties upon request.

“No determination that research misconduct has been committed shall be made until the researcher against whom the charge is made is: (a) served by certified mail (return receipt requested) with a copy of the specific charges filed against him/her; (b) provided with an opportunity to respond to the charges in writing...; provided with an opportunity for a hearing before the misconduct officer or his/her designee.

“The Dean shall, in turn, forward copies of the report to both the respondent and the complainant by Federal Express or certified mail within seven (7) days of its receipt.”

“The President may appoint an extramural committee of senior “disinterested” scientists and administrators to review the findings and recommendation of the Investigative Committee and to extend the investigation if the extramural committee deems necessary.”

6.2.3 Advisor/Attorney

About one-quarter of policies we reviewed discussed the role of an advisor to the respondent during the inquiry phase of a misconduct investigation. That number rose to 40% when discussing the investigation phase. (Frequency tables – questions 40 and

54.) There is a wide-range of positions taken by institutions on this issue. One policy stated it was unnecessary for anyone to consult an attorney during the inquiry or investigation phase of the proceedings:

“The inquiry and the investigation are not intended to be formal legal proceedings. Accordingly, the Institution does not consider it necessary for any party, including the Institution, to be represented by counsel during such proceedings. Counsel will not be permitted to attend the interviews or to respond to requests for information on behalf of their clients. However, principals may, at their own expense, obtain the advice of their counsel in connection with such proceedings.”

Another policy also viewed personal legal counsel as unnecessary, but did state a role for the University’s legal counsel:

“It is the intent of this policy that the inquiry and all other stages of the procedures be conducted in the spirit of confidential peer review, and without formal legal process and personal legal counsel. All parties should recognize that General Counsel always acts for the University and not as counsel for one of the other parties. The principal role of General Counsel is to advise the [Department Chair] on matters of procedure and to otherwise help as requested by the [Department Chair].”

At the other end of the spectrum, another policy encouraged respondents to obtain legal counsel:

“The faculty or staff member(s) against whom the allegation have been made shall be granted all due process rights during the proceedings and encouraged to obtain legal counsel. Legal principles that pertain to the investigation shall be stipulated in advance. The person against whom the allegation has been made will be allowed to be present, accompanied by one person of his or her choice, including legal counsel, during any testimony sessions. This advisor may confer with the person involved, and may observe the proceedings, but may not speak or raise objections of any kind or record the proceedings.”

In 30% of the policies reviewed, the policies stated that an attorney can act as an advisor to the respondent during the inquiry phase. During the investigation phase, 49% of institutions stated that the respondent can be advised by an attorney. (Frequency tables – questions 41 and 55.) The extent to which an attorney can participate in these situations is often limited, however, and the respondent may have to give notice that an attorney will be present. For example,

“The complainant and respondent each may have an attorney present at all meetings, interviews and other proceedings with the Research Integrity Inquiry Panel(RIIP) to act

as his/her advisor. The attorney will not be permitted to actively participate in the proceedings, and will be required to channel all his/her communications with the Committee on Research Integrity, RIIP, and/or any members thereof through the Office of the Vice Chancellor and the General Counsel.”

“Legal counsel or attorneys for any party will not be permitted in the room during the hearing.”

“If the respondent wishes to have an advisor present during the interview with the panel, notice of the advisor’s participation should be submitted to the panel at least 48 hours prior to the interview.”

“The investigation is not an adversarial proceeding and the respondent does not have the right to have an attorney present when interviewed by the Committee or during the interview of other witnesses.”

One policy offers respondents an advisor who is not an attorney, but who will provide guidance to respondents during the investigation:

“At the beginning of the investigation, the accused person will be given the chance to

- 3 all relevant sponsored research projects by pertinent identifiers, such as title, [University] account number, sponsor contract number, sponsor, principal investigator, and any other pertinent details*
- 4. the specific allegations reviewed*
- 5. the specific charge to the Inquiry Panel*
- 6. description of evidence examined and procedures, as well as measures taken to assure the security of the evidence during the Inquiry*
- 7. list of persons interviewed and a summary of each interview*
- 8. copies of pertinent documents upon which determinations were based*
- 9. documentation of reasons for exceeding fifty-day (50) period, if necessary*
- 10. determination and basis of determination*
- 11. suggestions to the VPR [Vice President for Research] (if the allegation does not merit Investigation, but is considered to be a misdeed, the Inquiry Panel may recommend remedial action)*
- 12. additional information as requested by the VPR or felt necessary by the Panel, such as mitigating factors or indications of related allegations which may require attention.”*

Policies with less comprehensive approaches use lists like the following for specifying the inquiry report contents:

“A detailed report of the inquiry shall be prepared. It shall identify by name and title, members of the Inquiry Committee and any experts providing testimony in the case. A clear statement of the allegations shall be included. All resources, documents, research records, dates, interviews and other information pertinent to the case shall be referenced. A conclusion shall be stated clearly and sufficient details shall be provided to substantiate whether there is a need for an investigation.”

Some policies also require that the inquiry report include a finding of whether the allegations were made in bad faith if the inquiry panel decides that an investigation is not warranted.

All but eight policies specified content for the investigation report. (Frequency tables – question 58.) Items most often specified included recommendations and sanctions, rationale for conclusions reached, investigation policies and how and from whom information was obtained, findings, and the respondent’s comments on the investigation report. (See Table 6-3.)

A good example of comprehensive list of the contents of the investigation report is the following:

“The report will state: (a) the name and title of the members of the Hearing Panel, the Discovery Subcommittee [investigation committee], the Screening Subcommittee [inquiry committee], and the respondent; (b) the allegation; (c) the extent and source of any external funding; (d) a summary of the procedures followed by the Screening Subcommittee and the Discovery Subcommittee as well as by the Hearing Panel; (e) a description of any departures from the prescribed procedures and the reasons for them; (f) the names of persons providing testimony and summaries of the testimony; (g) summaries of the evidence; (h) the Panel’s decision; (i) the Panel’s reasons for its decision; (j) recommendations about whether any other actions should be taken; and (k) if the research in question was funded by an external agency, any additional information required by that agency. The report may contain minority opinions written by members of the Panel. A summary of the hearing will be part of the report, along with any documentary evidence deemed appropriate by the Panel. “

Other examples of items to be included in the investigation report are:

“... a detailed report of any scientific errors which may have been identified during an inquiry or investigation (regardless of whether or not evidence of scientific misconduct occurred)...”

“...the investigating committee shall have the option of commenting in its report on the degree of the offense. The degree of the sanction will be in relation to the degree of the offense.”

“When evidence is not presented to the panel, it shall note whether the party charged claims that it was destroyed prior to the investigation or whether it was withheld under a claim of confidentiality or privilege. The panel shall indicate whether it accepts the explanation offered by the party charged for the non-production of evidence, and the extent to which the unavailable evidence affected its ability to make a finding on whether research misconduct has been committed.”

“...accuracy and reliability of the whistleblower”

Table 6-3

A few policies state what recommendations may result from the initial inquiry when others will make the final determination on whether an investigation is warranted. For example,

“Three basic recommendations may follow from this initial inquiry: (1) the allegations are without merit; or (2) no culpable conduct was committed but serious scientific errors were discovered, necessitating appropriate corrective action; or (3) the allegations have sufficient substance to warrant further investigation. The President, in consultation with the Chairman of the Faculty, shall review the recommendation and supporting rationale of the Inquiry Committee and decide whether to request a complete investigation ... or take any other appropriate action pursuant to the Institute policies or contractual agreements.”

One policy required that inquiry committee members attend all sessions before they are allowed to participate in the making the final decision:

“Members of the Review Panel are required to attend all sessions: only those who have attended all sessions can participate in formal decision at Stages One [inquiry] and Two [investigation].”

About one-third of the policies specify that the decision on whether misconduct has occurred is the responsibility of a senior institutional official. Another third did not explicitly designate anyone as being responsible for this decision. (Frequency tables – question 56.) The ad hoc committee that conducted the investigation makes the final decision on whether misconduct occurred in just 17% of the policies reviewed. The appropriate dean is responsible in another 8% of policies.

There were some interesting variations on the issue of how the decision of whether misconduct occurred is made in some policies. For instance, one policy stated that “

Table 6-4
Responsibility for Final Decisions in Inquires and Investigations

Who Most Often Decides Whether	<u>Number of Policies</u>	<u>Percent of Policies</u>
<i>An Investigation is Warranted:</i>		
Ad hoc committee that conducts the inquiry	38	24%
Senior institutional official	38	24%
The standing committee on scientific misconduct	21	13%
<i>Misconduct Has Occurred:</i>		
Senior institutional official	50	32%
Ad hoc committee that conducts the investigation	27	17%
Dean	12	8%

7. OTHER POLICY CONSIDERATIONS

7. OTHER POLICY CONSIDERATIONS

In addition to the specific subject areas discussed in prior sections of this report, there were several other components of institutions' scientific misconduct policies that were reviewed for this study. These included:

- Sanctions imposed for scientific misconduct;
- Notifications following a finding of misconduct;
- The appeals process in misconduct investigations;
- Bad faith' allegations; and,
- Interim administrative actions that may be taken.

This chapter of the report discusses each of these components.

7.1 SANCTIONS IMPOSED FOR SCIENTIFIC MISCONDUCT

There are several issues that policies might address with regards to sanctions imposed on individuals found to have engaged in scientific misconduct, including:

- Who decides what sanctions will be imposed;
- Whether and what types of sanctions are specified; and,
- Whether and what types of factors are used to determine the sanctions to be imposed.

As shown in Table 7-1, the majority of policies reviewed designated a senior institutional official as the person responsible for deciding what sanctions should be imposed following a finding of scientific misconduct. Some policies indicated that the appropriate dean would make this decision, and in a few cases a board of trustees or directors of the institution is designated as responsible for making decisions on sanctions.

With regard to the specification of sanctions, almost three fourths of the policies reviewed indicate what types of sanctions may be administered by the institution. The

most common type of sanction is termination of employment (for faculty or staff) or

- *Probation*
- *Suspension*

- *Salary reduction*

- *Rank reduction*

-

notified include editors of publications and ORI/Federal agencies. A few policies

- The entity to whom appeals are made; and,
- The timing of appeals.

As shown in Table 7-3, more than half of the policies reviewed indicate that the institution has an appeals process. The majority of these policies provide grounds for such appeals, which most frequently include failure on the part of the institution to follow appropriate procedures in the investigation and new evidence. One policy provided fairly comprehensive and specific language in its policy, stating that,

“Grounds for appeal include, but are not limited to, new unconsidered evidence not previously available, recommended sanctions not in keeping with the findings, conflict of interest not previously known among those involved in the Investigation, failure to disclose to the Respondent in a timely manner evidence considered supportive of the allegation, failure to consider relevant information proffered by the person who was the subject of the allegation, prejudicial lapses in providing the Respondent due process as defined by the Procedures and failure to follow these Procedures.”

**Table 7-3
The Appeals Process in Scientific Misconduct Investigations**

	<u>Number of Policies</u>	<u>Percent of Policies</u>
Number of Institutions with an Appeals Process	87	56%
Grounds for an Appeal Most Often Specified in Scientific Misconduct Policies:		
Failure to follow appropriate procedures in the investigation	47	30%
New evidence	26	17%
Arbitrary, capricious or erroneous decision making	17	11%
Inappropriate disciplinary action	17	11%
To Whom an Appeal is Most Often Made:		

For those policies that specified to whom an appeal is to be made, most indicated that appeals are made to a senior institutional official. Only a small number of policies reported that a special appeals committee is formed. A few policies stated that the person to whom an appeal is made depends on who the respondent is. For example, one institution differentiated that *faculty members* make appeals to a particular faculty committee and *academic staff members* make appeals to an academic assembly. Another institution stated that *faculty respondents* should appeal to a faculty review board and that *graduate students* should appeal to a graduate school review body. As shown in Table 7-4, almost two-

Slightly less than half of the policies reviewed provide a time frame for filing appeals. In almost all of these cases, respondents were required to file an appeal either within the first 15 or 30 calendar days of being notified of the misconduct finding.

7.4 'BAD FAITH' ALLEGATIONS

Scientific misconduct policies were reviewed to determine whether there is language that warns individuals against making 'bad faith' allegations against a respondent, whether there are criteria for determining whether an allegation was made in 'bad

Table 7-4
Scientific Misconduct Policies and ‘Bad Faith’ Allegations

	<u>Number of Policies</u>	<u>Percent of Policies</u>
Number of Policies that Warn Against Making ‘Bad Faith’ Allegations	101	65%
Number of Policies that Specify Criteria for Determining that an Allegation was Made in ‘Bad Faith’	31	20%
Number of Policies that Specify Disciplinary Actions to be Taken Against Persons who Make ‘Bad Faith’ Allegations	5	3%

Those policies that specified disciplinary actions for individuals that make ‘bad faith’ allegations were also fairly vague, stating that “*administrative action*” or “*disciplinary action*” may be taken, which includes “*termination*” and “*suspension*” at some institutions. One policy specifically stated that such individuals would be:

“...severely dealt with and may be subject to dismissal as well as criminal and/or civil legal action.”

Another institution stated that a finding of “*malicious conduct*” would be reported in the whistleblower’s personnel file and communicated to the person’s supervisor.

7.5 INTERIM ADMINISTRATIVE ACTIONS

Another issue that policies might address is whether and what administrative actions may be taken in the interim during an investigation of scientific misconduct. As indicated in Table 7-5, more than half of the policies reviewed specify interim administrative actions. Most often, individuals or entities are notified that an investigation is occurring. In some instances, the research is suspended and/or those

Table 7-5
Interim Administrative Actions in Scientific Misconduct Policies

	Number of <u>Policies</u>	Percent of <u>Policies</u>
Number of Policies that Specify Interim Administrative Actions that May be Taken	91	58%
Interim Administrative Actions Most Often Specified by the Institution:		

APPENDIX A

REGULATORY REQUIREMENTS FOR SCIENTIFIC MISCONDUCT POLICIES

REGULATORY REQUIREMENTS FOR SCIENTIFIC MISCONDUCT POLICIES

42 C.F.R. Part 50--Policies of General Applicability

Subpart A--Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science

Sec.

Inquiry means information gathering and initial factfinding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

Institution means the public or private entity or organization (including federal, state,

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

50.103 Assurance--Responsibilities of PHS awardee and applicant institutions.

(a) *Assurances.* Each institution that applies for or receives assistance under the Act for any project or program which involves the conduct of biomedical or behavioral research must have an assurance satisfactory to the Secretary that the applicant:

(1) Has established an administrative process, that meets the requirements of this Subpart, for reviewing, investigating, and reporting allegations of misconduct in science in connection with PHS-sponsored biomedical and behavioral research conducted at the applicant institution or sponsored by the applicant; and

(2) Will comply with its own administrative process and the requirements of this Subpart.

(b) *Annual Submission.* An applicant or recipient institution shall make an annual submission to the OSI as follows:

(1) The institution's assurance shall be submitted to the OSI, on a form prescribed by the Secretary, as soon as possible after November 8, 1989, but no later than January 1, 1990, and updated annually thereafter on a date specified by OSI. Copies of the form may be requested through the Director, OSI.

(2) An institution shall submit, along with its annual assurance, such aggregate

(3) Takes immediate and appropriate action as soon as misconduct on the part of employees or persons within the organization's control is suspected or alleged.

(4) Informs, in accordance with this subpart, and cooperates with the OSI with regard to each investigation of possible misconduct.

(d) *Inquiries, Investigations, and Reporting--Specific Requirements.* Each applicant's policies and procedures must provide for:

(1) Inquiring immediately into an allegation or other evidence of possible misconduct. An inquiry must be completed within 60 calendar days of its initiation unless circumstances clearly warrant a longer period. A written report shall be prepared that states what evidence was reviewed, summarizes relevant interviews, and includes the conclusions of the inquiry. The individual(s) against whom the allegation was made shall be given a copy of the report of inquiry. If they comment on that report, their comments may be made part of the record. If the inquiry takes longer than 60 days to complete, the record of the inquiry shall include documentation of the reasons for exceeding the 60-day period.

(2) Protecting, to the maximum extent possible, the privacy of those who in good faith report apparent misconduct.

(3) Affording the affected individual(s) confidential treatment to the maximum extent possible, a prompt and thorough investigation, and an opportunity to comment on allegations and findings of the inquiry and/or the investigation.

(4) Notifying the Director, OSI, in accordance with 50.104(a) when, on the basis of the initial inquiry, the institution determines that an investigation is warranted, or prior to the decision to initiate an investigation if the conditions listed in 50.104(b) exist.

(5) Notifying the OSI within 24 hours of obtaining any reasonable indication of possible criminal violations, so that the OSI may then immediately notify the Department's Office of Inspector General.

(6)

(7) Undertaking an investigation within 30 days of the completion of the inquiry, if findings from that inquiry provide sufficient basis for conducting an investigation. The investigation normally will include examination of all documentation, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Whenever possible, interviews should be conducted of all individuals involved either in making the allegation or against whom the allegation is made, as well as other individuals.

(15) Notifying the OSI of the final outcome of the investigation.

50.104 Reporting to the OSI.

(a)(1) An institution's decision to initiate an investigation must be reported in writing to the Director, OSI, on or before the date the investigation begins. At a minimum, the notification should include 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. Information provided through the notification will be held in confidence to the extent permitted by law, will not be disclosed as part of the peer review and Advisory Committee review processes, but may be used by the Secretary in making decisions about the award or continuation of funding.

(2) An investigation should ordinarily be completed within 120 days of its initiation. This includes conducting the investigation, preparing the report of findings, making that report available for comment by the subjects of the investigation, and submitting the report to the OSI. If they can be identified, the person(s) who raised the allegation should be provided with those portions of the report that address their role and opinions in the investigation.

(3) Institutions are expected to carry their investigations through to completion, and to pursue diligently all significant issues. If an institution plans to terminate an inquiry or investigation for any reason without completing all relevant requirements under 50.103(d), a report of such planned termination, including a description of the reasons for such termination, shall be made to OSI, which will then decide whether further investigation should be undertaken.

the request is granted, the institution must file periodic progress reports as requested by the OSI. If satisfactory progress is not made in the institution's investigation, the OSI may undertake an investigation of its own.

(6) Upon receipt of the final report of investigation and supporting materials, the OSI will review the information in order to determine whether the investigation has been performed in a timely manner and with sufficient objectivity, thoroughness and competence. The OSI may then request clarification or additional information and, if necessary, perform its own investigation. While primary responsibility for the conduct of investigations and inquiries lies with the institution, the Department reserves the right to perform its own investigation at any time prior to, during, or following an institution's investigation.

(7) In addition to sanctions that the institution may decide to impose, the Department also may impose sanctions of its own upon investigators or institutions based upon authorities it possesses or may possess, if such action

comply with its assurance and the requirements of this subpart may result in enforcement action against the institution, including loss of funding, and may lead to the OSI's conducting its own investigation.

APPENDIX B

**LIST OF SCIENTIFIC MISCONDUCT POLICIES
REVIEWED FOR THIS ANALYSIS**

**LIST OF SCIENTIFIC MISCONDUCT POLICIES
REVIEWED FOR THIS ANALYSIS**

Advanced Bioscience Laboratories Inc., Basic Research Program
Alabama State University
Albert Einstein College of Medicine of Yeshiva University
Allegheny Health, Education and Research Foundation
American Nurses Foundation
Ashland University
Auburn University
Baptist Cancer Institute
Bloomsburg University
Boston College
Brigham Young University
California Institute of Technology
California Pacific Medical Center Research Institute
California Polytechnic State University
California School of Professional Psychology
California State University San Marcos
Cedars-Sinai Medical Center
Center for Blood Research, Inc.
Charlotte-Mecklenburg Hospital Authority
Children's Hospital of Philadelphia
College of William and Mary
Colorado School of Mines
Colorado State University
Columbia University's Health Sciences Campus (Faculties of Medicine and Dental and Oral Surgery)
Cook County Hospital
Cornell University Medical College and Cornell University Graduate School of Medical Sciences
Duke University
Duquesne University
Eastern Virginia Medical School
Edinboro University of Pennsylvania
Elizabeth General Medical Center
Florida Hospital
Florida Institute of Technology
Fort Valley State College
Foundation for Blood Research
Frostburg State University
Georgetown University
Georgia Southern University
Gonzaga University
Grambling State University
Gustavus Adolphus College

Houston Advanced Research Center
Henry M. Jackson Foundation for the Advancement of Military Medicine
Hughes Institute
Indiana University - Purdue University at Indianapolis
Iowa State University
J. David Gladstone Institutes
Jackson State University
James Madison University
Jarvis Christian College
John Wayne Cancer Institute
Johns Hopkins University School of Hygiene and Public Health.
Johns Hopkins University School of Medicine
Kentucky State University
Kenyon College
Kessler Medical Rehabilitation Research and Education Corporation
La Jolla Institute for Allergy and Immunology
La Jolla Institute for Experimental Medicine
Lehigh University
Lindsley F. Kimball Research Institute
Lockheed Martin Energy Research Corporation, Oak Ridge National Laboratory
Long Island University
Louisiana State University-School of Medicine in Shreveport
Medical College of Georgia
Medical College of Ohio
Methodist College
Miami University
Michigan State University
Monell Chemical Senses Center
Morehead State University
Murray State University
National Jewish Medical and Research Center
National Opinion Research Center
New York College of Podiatric Medicine and the Foot Clinics of New York
New York University
North Carolina Central University
Oakland University
Oakwood Hospital and Medical Center
Ohio State University
Olive View - University of California Los Angeles Education and Research Institute
Oregon Health Sciences University
Pennsylvania State University
Pomona College
Research Foundation-The City University of New York
Rose Medical Center
Rosewell Park Cancer Institute
Salk Institute for Biological Studies

Sam Houston State University
Sinai Hospital
SmithKline Beecham
Southern Methodist University
St. Cloud State University
St. Francis Hospital and Medical Center
St. John's University
St. Jude Children's Research Hospital
St. Vincent's Medical Center of Richmond
State University of New York at Stony Brook
State University of New York College at Fredonia
Teachers College, Columbia University
Texas A & M University-Kingsville
The Aaron Diamond AIDS Research Center (The Rockefeller University)
The Burnham Institute
The Children's Hospital
The Cleveland Clinic Foundation
The Cooper Institute for Aerobics Research
The Miriam Hospital
The University of Illinois
The University of Northern Iowa
The University of Utah
The University of Vermont
Thomas Jefferson University
Towson State University
Universidad Central Del Caribe
University at Buffalo State University of New York
University of Alabama at Birmingham
University of Alabama in Huntsville
University of Alaska Fairbanks
University of California Los Angeles
University of Central Florida
University of Chicago
University of Cincinnati
University of Colorado at Boulder
University of Connecticut Health Center
University of Hawaii
University of Houston
University of Indiana
University of Maine
University of Maryland Eastern Shore
University of Medicine and Dentistry of New Jersey
University of Miami
University of Minnesota
University of Missouri
University of Nebraska at Omaha

University of New Mexico
University of North Texas
University of Notre Dame
University of Oklahoma
University of Oregon
University of Puerto Rico-Humacao Campus
University of Rochester Medical Center
University of Scranton
University of Southern Mississippi
University of Texas M.D. Anderson Cancer Center
University of the District of Columbia
University of Washington
University of Wisconsin-Madison
Vermont Alcohol Research Center
Villanova University
Virginia Commonwealth University
Washington University
West Virginia University
Western Carolina University
Winston Salem State University
Woods Hole Oceanographic Institution
Wright State University
Xavier University

APPENDIX C
POLICY REVIEW FORM

POLICY REVIEW FORM

Name of Institution _____

DEFINITION OF SCIENTIFIC MISCONDUCT

Does the definition of scientific misconduct include types of misconduct in addition to fabrication, falsification, plagiarism or 'other practices that seriously deviate from those that are commonly accepted within the scientific community...?'

- Yes
- No

What other types of behavior are defined as misconduct by the policy? (Check all that apply.)

- Arbitrary or biased selection of data
- Reckless or grossly negligent data collection or analysis
- Improprieties of authorship
- Intentional misrepresentation of credentials
- Unauthorized use of confidential information
- Sabotage or deliberate interference with the work of others
- Material failure to comply with governmental regulations
- Other _____

REPORTING OF ALLEGATIONS

Does the institution obligate all its members to report scientific misconduct?

- Yes
- No

Does the institution specify penalties for not reporting scientific misconduct?

- Yes
- No

Will the institution accept anonymous allegations?

- Unspecified
- Yes
- Yes, with conditions
- No

In what form will the institution accept an allegation?

- Unspecified
- Oral

- Written
- Oral or written
- Oral then written

What information does the institution want an allegation to contain? (Check all that apply)

- Unspecified
- Addressed, but not specified in detail
- Name of respondent(s)
- Description of misconduct
- Research involved
- When misconduct occurred
- Where misconduct occurred
- Names of witnesses
- Funding source
- Supporting documentation/evidence
- Other _____

Who does the institution assign the initial receipt of an allegation to? (Check all that apply)

- Principal investigator

PURSUING THE ALLEGATION

Will the institution pursue an allegation if the whistleblower provides the information but declines to make a formal allegation?

- Unspecified
- Yes
- No

What measures are specified by the institution to maintain confidentiality? (Check all that apply.)

- Confidentiality/non-disclosure statements
- Reminding all participants of the confidentiality obligation
- Limiting number of persons involved
- Limiting number of officials notified
- Conducting meeting in private
- Limiting access to information about the proceedings
- Other _____

What reasons do institutions give for legitimately violating confidentiality? (Check all that apply.)

- The right of the accused to confront his accuser
- The requirements of law
- The need for information in the investigation
- It is in the public interest
- The allegation was maliciously motivated
- Situations where there is significant risk to public safety or health
- Other _____

Does the institution specify penalties for violating confidentiality?

- Yes
- No

What are the penalties? _____

CONFLICTS OF INTEREST

Does the institution specify the criteria that should be used in determining whether there is a conflict of interest?

- Yes
- No

What criteria does the institutions use in determining the existence of a conflict of interest? (Check all that apply.)

- Involvement in the misconduct
- Professional relationship
- Personal relationship
- Financial relationship
- Competitor
- Other _____

How does the institution protect against conflicts of interest? (Check all that apply.)

- Signed statements
- Challenges by respondents
- Challenges by whistleblowers
- Members of same organizational unit are excluded from process
- Use of outside experts
- Other

Who does the conflict of interest provision apply to? (Check all that apply.)

- Unspecified
- Person to whom the allegation is initially made
- Person appointing the inquiry committee
- Members of the inquiry committee
- Person who decides whether an investigation is warranted
- Person appointing the investigation committee
- Members of the investigation committee
- Person who decides whether misconduct occurred and/or imposes sanctions
- Person who hears an appeal
- Witnesses
- Other

Does the institution specify penalties for failing to reveal a conflict of interest?

- Yes
- No

If penalties are specified, what are they? _____

APPROPRIATE EXPERTISE

Does the institution specify how appropriate expertise (as committee members or as advisors to the inquiry or investigation committees) will be available? (Check all that apply.)

- Unspecified
- Committee members from same discipline
- Committee members from related disciplines
- Use of experienced researchers
- Use of senior faculty
- Use of experts from other institutions
- Other _____

How does the institution ensure that the expertise is appropriate? (Check all that apply.)

APPOINTING INQUIRY COMMITTEE

What mechanism is used to conduct the inquiry?

- One institutional official
- Ad hoc committee
- Standing committee
- Subcommittee of standing committee
- Other _____

Who appoints the conductor of the inquiry?

- Vice President for Research
- Dean
- Research Integrity Officer
- Department Head
- Laboratory Director
- Principal Investigator
- Other _____

How many persons are involved in the conduct of the inquiry?

- One
- Two
- Three
- Four
- Five or more
- Other _____

If a committee is used, is the membership specified?

- Yes
- No

What criteria are used to specify committee membership? (Check as many as apply.)

- Inside the department of the accused
- Outside the department but inside the institution
- Outside the institution
- Field of expertise
- Rank in the organizational hierarchy
- Research experience
- Reputation
- Other _____

CONDUCT OF INQUIRY

Is the authority of the inquiry committee specified?

- Yes
- No

If specified, what authority is given to the inquiry committee? (Check all that apply.)

- Interview witnesses
- Access institutional records
- Sequester research data and records
- Set time and date of meetings
- Determine who may attend meetings
- Determine the role of advisors
- Recommend whether an investigation is warranted
- Decide whether an investigation is warranted
- Suspend work on a grant
- Request withdrawal of a manuscript
- Request withdrawal of a grant application
- Fact finding
- Others _____

What guidelines are specified for the conduct of the inquiry? (Check all that apply.)

- None
- Hearsay evidence is accepted
- Interviews are conducted in separate and private sessions.
- Meetings are recorded.
- Research records and data are sequestered.
- Witnesses are provided with transcripts of their interviews for comment.

Are lawyers permitted to serve as advisors?

Unspecified

Yes

No

Who decides whether an investigation is warranted?

Unspecified

Who appoints the investigation committee?

- Vice President for Research
- Dean
- Research Integrity Officer
- Department Head
- Laboratory Director
- Principal Investigator
- Other _____

How many members are on the investigation committee?

- One
- Two
- Three
- Four
- Five or more
- Other _____

Is the membership of the investigation committee specified?

- Yes
- No

What criteria are used to specify committee membership? (Check as many as apply.)

- Inside the department of the accused
- Outside the department but inside the institution
- Outside the institution
- Field of expertise
- Rank in the organizational hierarchy
- Research experience
- Reputation
- Unbiased
- Other _____

How many members of the inquiry committee may serve on the investigation committee?

- Unspecified
- None
- One
- Two
- Three or more
- The inquiry committee becomes the investigation committee.

The inquiry committee becomes the investigation committee plus other individuals

CONDUCT OF THE INVESTIGATION

Is the authority of the investigation committee specified?

- Yes
 No

If specified, what authority is given to the investigation committee? (Check all that apply.)

- Interview witnesses
 Access institutional records
 Sequester research data and records
 Set time and date of meetings
 Determine who may attend meetings
 Determine the role of advisors
 Recommend a finding and sanctions
 Suspend work on a grant
 Request withdrawal of a manuscript
 Request withdrawal of a grant application
 Others _____

What guidelines are specified for the conduct of the investigation? (Check all that apply.)

- None
 Hearsay evidence is accepted
 Interviews are conducted in separate and private sessions.
 Meetings are recorded.
 Research records and data are sequestered.
 Witnesses are provided with transcripts of their interviews for comment.
 Witnesses must represent themselves, but they may have advisors
 Others _____

What is the role of an advisor to the respondent during the investigation? (Check as many as apply.)

- Unspecified
 Advise his client
 Advise and represent his client
 Attend meetings with his client

____ Other _____

Are lawyers permitted to serve as advisors?

____ Unspecified

____ Yes

____ No

- Unspecified
- The institutional official who conducts the investigation
- The investigation committee
- The standing committee on scientific misconduct.
- The research integrity officer
- The Dean
- The Vice President for Research
- Provost
- President
- Other _____

Does the institution specify sanctions that may be imposed if misconduct is found?

- Yes
- No

What sanctions are specified? (Check as many as apply.)

- Letter of reprimand
- Training
- Supervised activity
- Removal from project
- Placed on probation
- Suspension
- Reduction in salary/rank
- Revocation of tenure
- Termination of employment
- Debarment from submitting proposals
- Correction/retraction of literature/proposals
- Withholding/retracting degree
- Failing grade
- Other _____

Does the institution specify the factors used in determining sanctions?

- Yes
- No

What factors do institutions specify for determining sanctions? (Check all that apply.)

- Seriousness of misconduct
- Impact of misconduct
- Scope of misconduct
- Pattern or isolated event
- Deliberateness of misconduct
- Other _____

Does the institution specify who will be notified when a finding of misconduct is made?

- Yes
- No

Who does the institution specify should be notified of a misconduct finding? (Check all that apply.)

- Persons involved in responding to the allegation
- Department Head
- Editors
- Co-authors
- Collaborators
- Licensing boards
- Professional societies
- Previous employers
- Law enforcement
- Funders/sponsors
- Other _____

APPEAL PROCESS

Does the institution have an appeals process?

- Yes
- No

Does the institution specify the grounds for an appeal?

- Yes
- No

What grounds for an appeal are specified by the institution? (Check all that apply.)

- Failure to follow appropriate procedures in the investigation
- Arbitrary and capricious decision making
- Conflicts of interest previously unknown
- New evidence
- Lapses in due process
- Inappropriate disciplinary action
- Other _____

Who is the appeal made to?

- Dean
- Vice President for Research
- Provost

President
 Other _____

How soon after the respondent is notified of the misconduct finding must an appeal be filed?

15 calendar days
 30 calendar days
 45 calendar days
 60 calendar days
 Other _____

RESTORATION OF REPUTATION OF RESPONDENT

Does the institution's policy mention restoration of the reputation of the respondent?

Yes
 No

Who is consulted about steps that should be taken to restore the reputation of a respondent against whom a finding of misconduct was not made? (Check all that apply.)

Unspecified
 Respondent
 Department Head
 Dean
 Vice President for Research
 President
 Other _____

Does the institution specify steps to be taken to restore the reputation of a respondent?

Yes
 No

What steps does the institution specify for restoring the reputation of a respondent? (Check all that apply.)

Notify all persons involved in the process of the result
 Remove any reference to the allegation from the personnel file of the respondent
 Notify funding agency
 Make a public announcement
 Consult with the respondent
 Other _____

WHISTLEBLOWER

Does the institution specify the role of the whistleblower in a misconduct case?

- Yes
- No

What rights does the institution give to the whistleblower?

- Interviewed by inquiry/investigation committees
- Present evidence to the inquiry/investigation committees
- Suggest witnesses to the inquiry/investigation committees
- Comment on inquiry report
- Comment on investigation report
- Appeal decision not to open an investigation
- Appeal no misconduct finding
- Other _____

Does the institution mention protection of the whistleblower from retaliation?

- Yes
- No

Does the institution specify steps to be taken to protect the whistleblower?

- Yes
- No

No

Does the institution specify a process for restoring the reputation of good faith whistleblowers?

Yes

No

Does the institution warn against making “bad faith

APPENDIX D

**FREQUENCY DISTRIBUTION OF RESPONSES
TO REVIEW FORM QUESTIONS DEFINITION OF SCIENTIFIC MISCONDUCT**

**FREQUENCY DISTRIBUTION OF RESPONSES TO REVIEW FORM
QUESTIONS DEFINITION OF SCIENTIFIC MISCONDUCT**

Q1: Does the definition of scientific misconduct include types of misconduct in addition to fabrication, falsification, plagiarism or 'other practices that seriously deviate from those that are commonly accepted within the scientific community...?'

Response	Number of Policies	Percent of Policies
Yes	82	53
No	74	47
Total	156	100

Q2: What other types of behavior are defined as misconduct by the policy? (Check all that apply.)

Response	Number of Policies	Percent with Response
----------	-----------------------	--------------------------

REPORTING OF ALLEGATIONS

Q3. Does the institution obligate all its members to report scientific misconduct?

Response

Number of Policies

Q7. What information does the institution want an allegation to contain? (Check all that apply.)

Response	Number of Policies	Percent with Response
Respondent identifying information	7	21
Description of misconduct	17	50
Research involved	1	3
When misconduct occurred	3	9
Where misconduct occurred	3	9
Names of witnesses	2	6
Funding source	1	3
Supporting documentation/evidence	16	47
Signature/identity of whistleblower	20	59
Date of allegation	6	18
Others to whom complaint has been submitted	1	3
		% of Total

Q8. Who does the institution assign the initial receipt of an allegation to? (Check all that apply.)

Response	Number of Policies	Percent with Response
Principal investigator	3	2
Department head	38	26
Research integrity officer	22	15
Dean	40	27
Senior institutional official	37	25
Chairman, misconduct/integrity committee	20	13
Supervisor of complainant	3	2
Supervisor of respondent	12	8
Director of research/academic group	25	17
Administrator	14	9
Faculty member of complainant's choice	8	5
Ombudsman	3	2
Executive/advisory board	4	3
Legal counsel	1	1
		% of Total
Response Specified	149	96
Unspecified	7	4
Total	156	100

Q9. Is the allegation subsequently reported to other institutional officials?

Response	Number of Policies	Percent of Policies
Unspecified	48	31
Yes	108	69
No	0	0
Total	156	100

Q10. How many officials is the allegation subsequently reported to?

Response	Number of Policies	Percent with Response
One	51	52

Q14. Will the institution pursue an allegation if the whistleblower insists on anonymity?

Response	Number of Policies	Percent of Policies
Unspecified	119	76
Yes, provided it is feasible	36	23
No	1	1
Total	156	100

MAINTAINING CONFIDENTIALITY

Q15. Who is covered by the institution’s attempt to maintain confidentiality? (Check all that apply.)

Response	Number of Policies	Percent with Response
Respondent(s)	94	73
Whistleblower(s)	90	70
Witnesses	8	6
Inquiry committee members	41	32
Investigation committee members	42	33
Attorneys	1	1

Q17. What measures are specified by the institution to maintain confidentiality? (Check all that apply.)

Response	Number of Policies	Percent with Response
Signed non-disclosure statements	22	34
Reminding all participants of the confidentiality obligation	9	14
Limiting number of persons involved/officials notified	25	39
Conducting meetings in private	9	14
Limiting access to information about the proceedings	23	36
Involved persons must come into the RIO's office to view relevant reports/evidence	1	2
Respondent and complainant names will not be identified in inquiry or investigation reports	2	3
		% of Total
Response Specified	64	41
Unspecified	92	59
Total	156	100

Q19.

D-9

For questions labeled "Check all that apply"; the percentages are calculated based on the number of policies specifying a response.

Q22. What criteria does the institution use in determining the existence of a conflict of interest? (Check all that apply.)

Response

Number of
Policies

Q24. Who does the conflict of interest provision apply to? (Check all that apply.)

Response	Number of Policies	Percent with Response
Person to whom the allegation is initially made	33	24
Person appointing the inquiry committee	18	13
Members of the inquiry committee	128	91
Person who decides whether an investigation is warranted	16	11
Person appointing the investigation committee		

APPROPRIATE EXPERTISE

Q27. Does the institution specify how appropriate expertise (as committee members or as advisors to the inquiry or investigation committees) will be available? (Check all that apply.)

Response	Number of Policies	Percent with Response
Committee members from same/related discipline/expertise	19	21
Use of experienced researchers/scientists	12	13
Use of senior faculty	43	48
Use of experts	52	58
Use of legal counsel	9	10
Use of administrators with appropriate expertise	1	1
Ad hoc members added to the standing committee	3	3
External investigation committee to review and provide comments on the findings, conclusions and recommendations of the internal investigation committee	2	2
		% of Total
Response Specified	90	58
Unspecified	66	42
Total	156	100

Q28. How does the institution ensure that the expertise is appropriate? (Check all that apply.)

Response	Number of Policies	Percent with Response
Challenges by respondent	3	43
Challenges by whistleblower	0	0
Committee membership reviewed by senior administrator for appropriate expertise	4	57
		% of Total
Response Specified	7	4

RIGHTS OF RESPONDENTS

Q29. Does the institution specify the rights of the respondent?

Response	Number of Policies	Percent of Policies
Yes	156	100
No	0	0
Total	156	100

Q30. What rights of the respondent does the institution specify? (Check all that apply.)

Response	Number of Policies	Percent with Response
Presumption of innocence	10	6
Right to counsel	83	53
Present witnesses	32	21
Present evidence	62	40
Cross-examine witnesses	36	23
Interviewed during inquiry	43	28
Interviewed during investigation	82	53
Access to all evidence compiled against him	50	32
Comment on inquiry report	127	81
Comment on investigation report	131	84
Appeal decision to conduct an investigation	4	3
Attend all inquiry committee meetings	3	2
Attend all investigation committee meetings	8	5
Challenge committee members/experts	49	31
Appeal misconduct finding	51	33
Notification related to allegation	30	19
Notification related to inquiry	112	72
Notification related to investigation	97	62
Discuss allegation/inquiry/investigation with administration	12	8
Confidentiality	14	9
May elect whether to participate during the investigation hearings	1	1
Submit a written statement	53	34
Notification of procedure	22	14

Review testimony for comment or revision

May be reimbursed for legal fees if found not-guilty	2	1
		% of Total
Response Specified	156	100
Unspecified	0	0
Total	156	100

Q31. What obligations does the institution impose on respondents? (Check all that apply.)

Response	Number of Policies	Percent with Response
Submit to interviews by the inquiry committee	1	1
Submit to interviews by the investigation committee	2	2
Furnish data or records requested by the inquiry/investigation committee	45	54
General obligation to cooperate with inquiry/investigation	45	54
Maintain confidentiality	12	14
Respondent must give the inquiry or investigation committee chairperson at least twenty-four hours notice of the intent to have legal counsel or an advisor present	1	1
Respondent must conduct him/herself in an ethical manner	1	1
		% of Total
Response Specified	84	54
Unspecified	72	46
Total	156	100

APPOINTING INQUIRY COMMITTEE

Q32. What mechanism is used to conduct the inquiry?

Response	Number of Policies	Percent with Response
One institutional official	20	13
Ad hoc committee	83	54
Standing committee	23	15
Subcommittee of standing committee	8	5
One institutional official and subcommittee of standing committee	1	1
More than one institutional official	3	2
Depends on the circumstances	17	11
Response Specified	155	% of Total 99

Q34. How many persons are involved in the conduct of the inquiry?

Response	Number of Policies	Percent with Response
One	21	16
Two	9	7
Three	58	45
Four	8	6
Five or more	15	12
Depends on the circumstances	17	13
		% of Total
Response Specified	128	82
Unspecified	28	18
Total	156	100

Q35. If a committee is used, is the membership specified?

Response	Number of Policies	% Using Committee
Yes		

Q36. What criteria are used to specify committee membership? (Check as many as apply.)

Response	Number of Policies	Percent with Response
Inside the department of the respondent	10	13
Inside the department of the complainant	3	4
Outside the department of the respondent	20	26
Outside the department of the complainant	13	17
Outside the institution	26	34
Rank in the organizational hierarchy	40	52
Research experience	5	6
Appropriate administrator	10	

Q38. If specified, what authority is given to the inquiry committee? (Check all that apply.)

Response	Number of Policies	Percent with Response
Interview witnesses	59	42
Access institutional records	4	3
Sequester research data and records	24	17
Recommend whether an investigation is warranted	45	32
Decide whether an investigation is warranted	66	46
Fact finding	120	85
Consult legal counsel	16	11
Consult experts/secure necessary and appropriate expertise	24	17
Notify appropriate individuals/parties of the initiation of an inquiry	1	1
Impose interim administrative actions	2	1

Q39. What guidelines are specified for the conduct of the inquiry? (Check all that apply.)

Response	Number of Policies	Percent with Response
Hearsay evidence is accepted	1	1
Interviews are conducted in separate and private sessions	37	30
Meetings are recorded	19	15
Research records and data are sequestered	20	16
Witnesses are provided with transcripts of their interviews for comment	10	8
Witnesses must represent themselves, but they may have adviso		

Q40. What is the role of an advisor to the respondent during the inquiry? (Check all that apply.)

Response	Number of Policies	Percent with Response
Advise his client	33	87
Advise and represent his client	1	3
Attend meetings with his client	30	79

CONTENT OF INQUIRY REPORT

Q43. Is the content of the inquiry report specified?

Response	Number of Policies	Percent of Policies
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APPOINTING THE INVESTIGATION COMMITTEE

Q45. What mechanism is used to conduct the investigation?

Response	Number of Policies	Percent with Response
Ad hoc committee	125	81
Standing committee	17	11
Subcommittee of standing committee	9	6
Depends on circumstance	4	3
		% of Total
Response Specified	155	99
Unspecified	1	1
Total	156	100

Q46. Who appoints the investigation committee?

Response	Number of Policies	Percent with Response
Senior institutional official	80	55

Q47. How many members are on the investigation committee?

Response

Number of
Policies

Q49. What criteria are used to specify committee membership? (Check as many as apply.)

Response	Number of Policies	Percent with Response
Inside the department of the respondent		

CONDUCT OF THE INVESTIGATION

Q51. Is the authority of the investigation committee specified?

Response	Number of Policies	Percent of Policies
Yes	149	96
No	7	4

Q53. What guidelines are specified for the conduct of the investigation? (Check all that apply.)

Response	Number of Policies	Percent with Response
How, and by whom, interviews can be conducted	18	13
Rules for accepting/considering evidence	26	19
Meetings/interviews are recorded	62	46
Research records and data are sequestered	12	9
Witnesses are provided with transcripts of their interviews for comment	68	50
Witnesses must represent themselves, but they may have advisors	16	12
Distribution of the report	8	6
Quorum must be present to conduct any business of the committee	1	1
Investigation committee to consult with legal counsel/ have counsel present at hearings	7	5
Timeliness	5	4
Separate findings and conclusions to be made for each count of the allegation	1	1
Respondent rights		

Q54. What is the role of an advisor to the respondent during the investigation? (Check as many as apply.)

Response	Number of Policies	Percent with Response
Advise the respondent	43	68
Advise and represent the respondent	11	17

CONTENT OF INVESTIGATION REPORT

Q57. Is the content of the investigation report specified?

Response	Number of Policies	Percent of Policies
Yes	140	90
No	16	10
Total	156	100

Q58. What content do institutions specify for the investigation report? (Check all that apply.)

Response

SANCTIONS

Q59. Who decides what sanctions will be imposed?

Response	Number of Policies	Percent with Response
The institutional official who conducts the investigation	0	0
The ad hoc investigation committee that conducts the investigation	4	3
The standing committee on scientific misconduct	0	0
Research integrity officer	2	2
Dean	15	13
Senior institutional official	85	71
Board of Trustees/Directors	5	4
Director of research/academic unit	4	3
Human Resource Director	1	1
Committee Advisory Board	3	3
		% of Total
Response Specified	120	77
Unspecified	36	23
Total	156	100

Q60. Does the institution specify sanctions that may be imposed if misconduct is found?

Response	Number of Policies	Percent of Policies
Yes	114	73
No	42	27
Total	156	100

Q61. What sanctions are specified? (Check as many as apply.)

Response	Number of Policies	Percent with Response
Letter of reprimand	62	54
Training	0	0
Probation	52	46
Removal from project	46	40
Suspension	48	42
Reduction in salary/rank	42	37
Revocation of tenure	3	3
Termination of employment/Expulsion from university	99	87
Debarment from submitting proposals	3	3
Correction/retraction of literature/proposals	39	34
Failing grade	1	1
Imposition of fine	26	23
Withhold/retract any degrees or awards that were a direct result of research under investigation	3	3
Report placed on individual's record	1	1
Postponement or denial of promotion or advancement	1	1
Cancel proposed presentations	1	1
Restriction on future research activities	50	44
Alteration of duty	5	4
		% of Total
Response Specified	114	73
Unspecified	42	27
Total	156	100

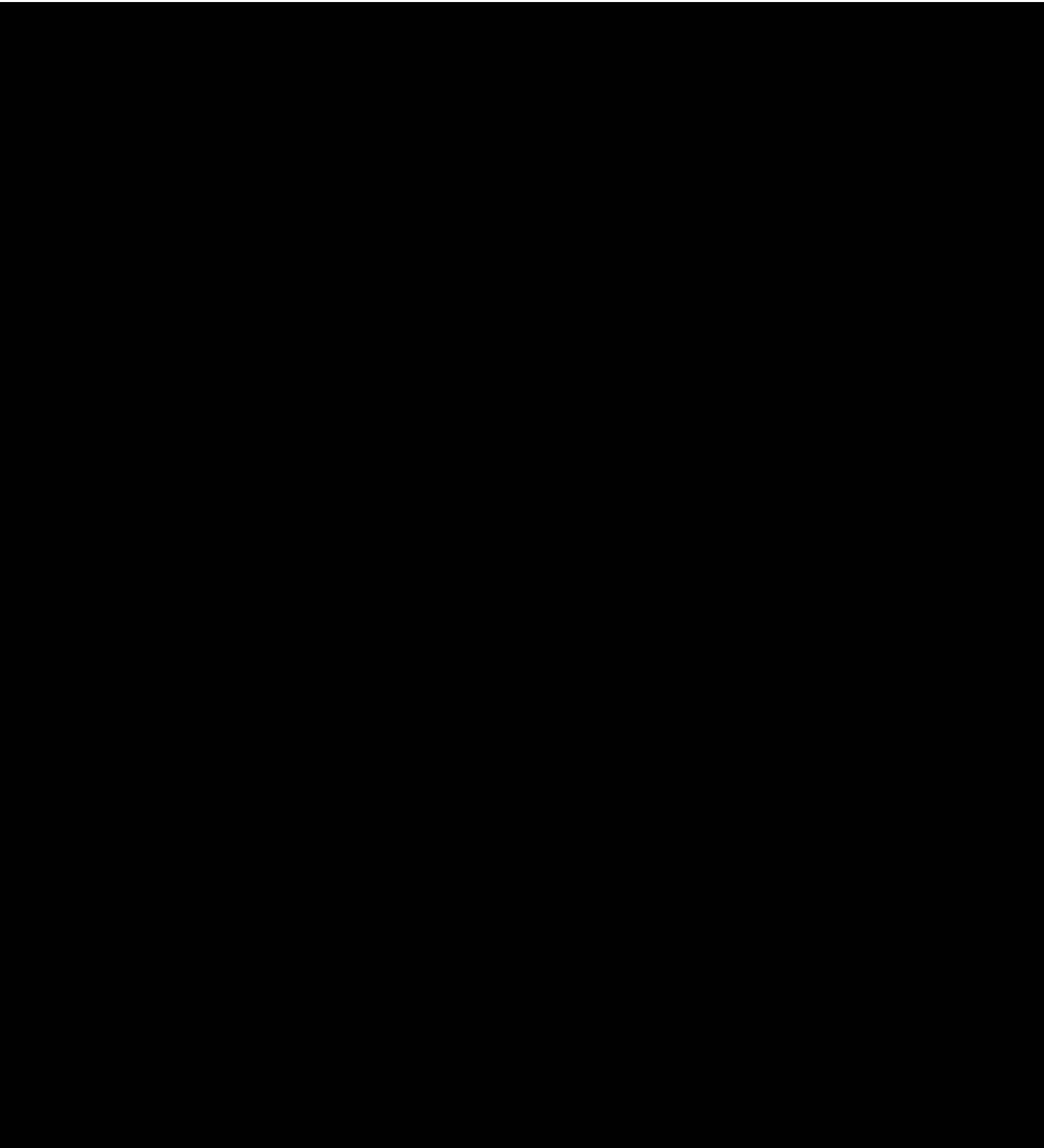
Q62. Does the institution specify the factors used in determining sanctions?

Response	Number of Policies	Percent of Policies
Yes	28	18
No	128	82
Total	156	100

Q63. What factors do institutions specify for determining sanctions? (Check all that apply.)

Response	Number of Policies	Percent with Response
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Q65. Who does the institution specify should be notified of a misconduct finding? (Check all that apply.)



Q68. What grounds for an appeal are specified by the institution? (Check all that apply.)

Response	Number of Policies	Percent with Response
Failure to follow appropriate procedures in the investigation	47	89
Arbitrary, capricious or erroneous decision making	17	32
Conflicts of interest previously unknown	8	15
New evidence	26	49
Inappropriate disciplinary action	17	32
Findings not supported by the evidence	4	8

% of Total

Q70. How soon after the respondent is notified of the misconduct finding must an appeal be filed?

Response	Number of Policies	Percent with Response
15 or less days	36	55
16-30 calendar days	24	37
31-45 calendar days	1	2
46-60 calendar days		

Q72. Who is consulted about steps that should be taken to restore the reputation of a respondent against whom a finding of misconduct was not made? (Check all that apply.)

Response	Number of Policies	Percent with Response
Respondent	10	21
Department head	2	4
Dean	11	23
Senior institutional official	24	51
Respondent's peers	1	2
Research integrity officer	2	4
Director of research/academic unit	2	4
Responsible administrator	2	4
		% of Total
Response Specified	47	30
Unspecified	109	70
Total	156	100

Q73. Does the institution specify steps to be taken to restore the reputation of a respondent?

Response	Number of Policies	Percent of Policies
Yes	75	48
No	81	52
Total	156	100

**Q74. What steps does the institution specify for restoring the reputation of a respondent?
(Check all that apply.)**

Response	Number of Policies	Percent with Response
Remove any reference to the allegation from the personnel file of the respondent	20	28

Q76. What rights does the institution give to the whistleblower? (Check all that apply.)

Response	Number of Policies	Percent with Response
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Q78. Does the institution specify steps to be taken to protect the whistleblower?

Response

Number of Policies

Percent of Policies

Q83. Does the institution mention restoration of the reputation of good faith whistleblowers?

Response	Number of Policies	Percent of Policies
Yes	138	89
No	18	11
Total	156	100

Q84. Does the institution specify a process for restoring the reputation of good faith whistleblowers?

Response	Number of Policies	Percent of Policies
Yes	10	6
No	146	94
Total	156	100

Q85. Does the institution warn against making “bad faith” allegations?

Response	Number of Policies	Percent of Policies
Yes	101	65
No	55	35
Total	156	100

Q86. Does the institution specify the criteria for determining that an allegation was made in “bad faith”?

Response	Number of Policies	Percent of Policies
Yes	31	20
No	125	80
Total	156	100

Q87. Does the institution specify disciplinary actions that will be taken against persons who make “bad faith” allegations?

Response	Number of Policies	Percent of Policies
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INTERIM ADMINISTRATIVE ACTION

Q88. Does the institution specify what interim administrative actions may be taken?

Response	Number of Policies	Percent of Policies
Yes	91	58
No	65	42
Total	156	100