Black Hills State University
Policy for Responding to Allegations of Research and Academic Misconduct

Note about Adherence to South Dakota and Federal Policies

Research and academic misconduct not involving federal grants or other support is governed by this BHSU policy and will follow the requirements found in SD BOR policy 4.8.1. Sections of that policy are referenced in this policy for clarity where applicable.

Research misconduct involving Public Health Service (PHS) support is governed by the Public Health Service Policies on Research Misconduct, codified at 42 CFR Part 93, as revised by HHS in the Final Rule published September 17, 2024 (RIN 0937-AA12). Sections of Part 93 that apply are cited within this document for clarity where appropriate.

BHSU Policy for Responding to Allegations of Research and Academic Misconduct

I. Introduction

A. General Policy

Research or academic misconduct (hereinafter referred to as "research misconduct") is defined as the intentional, knowing, or reckless disregard of responsible and ethical conduct of research or the professional standards of scholarly activity. This includes:

1. Fabrication, falsification, or plagiarism in a) proposing, performing, or reviewing research, or b) in reporting research results, or c) in authoring, creating, or presenting original scholarly or creative artistic works;
2. Other practices that fraudulently or recklessly deviate from those that are commonly accepted within the academic community for proposing, conducting, or reporting research or for authoring, creating, or presenting original scholarly or creative artistic works; or
3. Other fraudulent activity involving the content or foundation of purportedly original research, scholarship, or creative artistic activities.

Research misconduct is entirely contrary to the interests of the mission of BHSU, the South Dakota Board of Regents, the Federal Government, the Public Health Service (PHS) and non-PHS funding agencies, and the integrity of the research and scholarly enterprise as a whole. BHSU shares responsibility with all these entities for preventing, detecting, and remediating research misconduct and commits to conducting fair, objective, timely, and thorough inquiries and investigations. Anyone found guilty of research misconduct is subject to disciplinary action by the University in accordance with SD BOR's Academic Misconduct policy 4.8.1.

Faculty, staff, and students may confidentially disclose what they believe to be misconduct to the Deciding Official, the BHSU President, to begin investigation as defined in BHSU and SD BOR policy. Individuals who have in good faith made an allegation of misconduct (complainant) will not be the object of retaliation. Retaliation against a complainant will itself constitute an act of misconduct.

B. Requirements for a Finding of Research Misconduct

A finding of research misconduct requires that:

1. There be a significant departure from accepted practices of the relevant research community; and
2. The misconduct be committed intentionally, knowingly, or recklessly; and
3. The allegation be proven by a preponderance of the evidence.

C. Scope

This policy applies to any individual who is employed by, is an agent of, or is affiliated by contract or agreement with, BHSU. BHSU institutional members may include, but are not

limited to, officials, tenured and untenured faculty, teaching and support staff, researchers, research coordinators, technicians, postdoctoral and other fellows, students, volunteers, subject matter experts, consultants, attorneys, or employees, as well as agents of contractors, subcontractors or sub-awardees (42 CFR §93.219).

This policy and associated procedures will be followed when an allegation of possible research misconduct is received by an institutional official. Particular circumstances in an individual case may dictate variation from the normal procedure deemed in the best interests of BHSU and PHS or non-PHS funding agencies. Any change from the procedures set forth in this policy must also ensure fair treatment to the subject of the inquiry or investigation. Any significant variation will be approved in advance by the Deciding Official of BHSU.

This statement of policy and procedures does not apply to authorship or collaboration disputes, nor to honest errors or to honest differences in interpretations or judgments of data, text, objects, or other scientific, scholarly, or creative artistic subject matter that are inherent in the scientific, scholarly, or creative artistic process. These are normally corrected by further research or scholarly debate or criticism. It also does not include violations of related policies or requirements, such as those governing the review or conduct of human-subjects research, disclosure or avoidance of financial conflicts of interest, grant administration requirements, or other matters generally applicable to institutional personnel. (SD BOR 4.8.1 § B.1.3)

This policy governs allegations of research misconduct received by BHSU on or after January 1, 2026. Allegations received before that date will be governed by the BHSU policy and version of 42 CFR Part 93 in effect at the time of receipt unless the institution and respondent elect in writing to apply the revised policy.

II. Definitions

A. *Allegation* means a disclosure of possible research misconduct through any means of communication and brought directly to the attention of an institutional or HHS official. (§93.202)

B. *Complainant* means an individual who in good faith makes an allegation of research misconduct, what some might commonly call a "whistleblower." (§ 93.206)

C. *Conflict of interest* means the real or apparent interference of one person's interests with the interests of another person, or an institution, where potential bias may occur due to prior or existing personal or professional relationships.

D. *Deciding Official* means the institutional official who makes final determinations on allegations of scientific misconduct and any responsive institutional actions. At BHSU, this individual is the President. (§ 93.218)

E. *Good-faith allegation* means an allegation made with the honest belief that scientific misconduct may have occurred. An allegation is not in good faith if it is made with knowledge of, reckless disregard for, or willful ignorance of facts that would disprove the allegation. (§93.214(a))

F. *Inquiry* means gathering information and initial fact-finding to determine whether an allegation or apparent instance of research misconduct warrants an investigation and follows the procedures in Sections V and VI below (§93.205; §§ 93.307 - 93.309)

G. *Institutional Record* means the complete record of all institutional actions relating to an allegation of research misconduct, including assessments, inquiries, investigations, evidence, interview transcripts or summaries, correspondence, and committee reports. (§ 93.220)

H. *Intentionally* means to act with the aim of carrying out the act. (§ 93.221)

I. *Investigation* means the formal development of a factual record and the examination and evaluation of that record that meets the criteria and follows the procedures of Sections VII – XI below. (§ 93.222; §§ 93.310 - 93.317)

J. *Knowingly* means to act with awareness of the act. (§ 93.223)

K. *ORI* means the Office of Research Integrity, the office within the U.S. Department of Health and Human Services (HHS) that is responsible for addressing research misconduct and research integrity activities related to U.S. Public Health Service-supported activities. (§ 93.225)

L. *PHS or Public Health Service* consists of the following components within HHS: the Office of the Assistant Secretary for Health, the Office of Global Affairs, the Administration for Strategic Preparedness and Response, the Advanced Research Projects Agency for Health, the Agency for Healthcare Research and Quality, the Agency for Toxic Substances and Disease Registry, the Centers for Disease Control and Prevention, the Food and Drug Administration, the Health Resources and Services Administration, the Indian Health Service, the National Institutes of Health, the Substance Abuse and Mental Health Services Administration, and any other components of HHS designated or established as components of the Public Health Service. (§ 93.229)

M. *PHS regulation* means the Public Health Service regulation establishing standards for institutional inquiries and investigations into allegations of research misconduct, which is set forth at 42 C.F.R. Part 93 entitled "Public Health Service Policies on Research Misconduct".

N. *PHS support* means PHS grants, contracts, or cooperative agreements or applications therefore. (§ 93.230)

O. *Recklessly* means to propose, perform or review research, or to report research results with indifference to a known risk of fabrication, falsification, or plagiarism.

P. *Research Integrity Officer* means the institutional official responsible for assessing allegations of research misconduct, determining when such allegations warrant inquiries, and overseeing inquiries and investigations. At BHSU, this individual is the BHSU Chief Research Officer (CRO). (§ 93.2233)

Q. *Research or scholarly record* means the record of data or results that embody the facts resulting from scientific inquiry or other scholarly pursuits. Data or results may be in physical or electronic form and include, but are not limited to, research or grant proposals, laboratory records (both physical and electronic), raw data, processed data, clinical records, progress reports, manuscripts, abstracts, theses, oral presentations, internal reports, and journal articles or other scholarly works, whatever their media of expression. (§ 93.236)

R. *Respondent* means the person against whom an allegation of research misconduct is directed or the person whose actions are the subject of the inquiry or investigation. There can be more than one respondent in any inquiry or investigation. (§ 93.237)

S. *Retaliation* means any action taken by an institution or an employee that adversely affects the employment or other institutional status of a) an individual who has, in good faith, made an allegation of research misconduct or of inadequate institutional response thereto or b) an individual who has cooperated in good faith with an investigation of such an allegation. (§ 93.238)

T. *Research misconduct* means fabrication, falsification, plagiarism, or other practices, committed intentionally, knowingly, or recklessly, that seriously deviate from practices commonly accepted within the scientific community for proposing, conducting, reviewing, or reporting research. It does not include honest errors, honest differences in interpretations or judgments of data, or differences in scientific opinion. (42 CFR 93.103; 93.210 - 93.219)

III. Roles, Rights, and Responsibilities

A. Research Integrity Officer

The BHSU President will appoint the Chief Research Officer to serve as the Research Integrity Officer who will have primary responsibility for implementation of the procedures set forth in this document. The Research Integrity Officer will be an institutional official who is well qualified to handle the procedural requirements involved and is sensitive to the varied demands made on those who conduct research, those who are accused of misconduct, and those who report apparent misconduct in good faith.

The Research Integrity Officer will appoint the inquiry committee and investigation panel under direction of the BHSU President and 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.

The Research Integrity Officer will address any potential, perceived, or actual personal, professional, or financial conflicts of interest between members of the committee, and the complainant, respondent, or witness(es); and will attempt to ensure that confidentiality is maintained. (§ 93.305(f)(1))

The Research Integrity Officer will assist the inquiry committee and the investigation panel and all institutional personnel in complying with these procedures and with applicable standards imposed by government or external funding sources. (§ 93.305(f)(2)) The Research Integrity Officer is also responsible for maintaining the complete institutional record and all sequestered evidence, including physical objects (regardless of whether the evidence is part of the institutional record) in a secure manner for seven years after completion of the proceeding. Or the completion of any HHS proceeding involving the research misconduct allegation, whichever is later; and for maintaining the confidentiality and the security of the files. (§ 93.318)

B. Complainant

The complainant is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with an inquiry or investigation.

The complainant will have an opportunity to testify before the inquiry committee and the investigation panel, to review portions of the inquiry and investigation reports pertinent to his/her allegations or testimony, to be informed of the results of the inquiry and investigation, and to be protected from retaliation. Also, if the Research Integrity Officer has determined that the complainant may be able to provide pertinent information on any portions of the draft report, these portions will be given to the complainant for comment. (§ 93.300).

C. Respondent

The respondent will be informed of the allegations when an inquiry is opened and notified in writing of the final determinations and resulting actions. The respondent will also have the opportunity to be interviewed by, and present evidence to, the inquiry and investigation committees, to review the draft inquiry and investigation reports, and to have the advice of counsel.

The respondent is responsible for maintaining confidentiality and cooperating with the conduct of an inquiry or investigation. If the respondent is not found guilty of research misconduct, he or she has the right to receive institutional assistance in restoring his or her reputation. (§ 93.304)

D. Deciding Official

The Deciding Official will receive the inquiry and/or investigation report and any written comments made by the respondent or the complainant on the draft report. The Deciding Official will consult with the Research Integrity Officer or other appropriate officials and will determine whether to conduct an investigation, whether misconduct occurred, whether to impose sanctions, or whether to take other appropriate administrative actions [see section X].

Where PHS support is involved, the Deciding Official will report to ORI as required by regulation and keep ORI apprised of any developments during the course of the inquiry or investigation that may affect current or potential HHS funding for the individual(s) under investigation or that PHS needs to know to ensure appropriate use of Federal funds and otherwise protect the public interest. (§ 93.307 - 93.317)

IV. General Policies and Principles

A. Responsibility to Report Misconduct

All employees or individuals associated with BHSU shall report observed, suspected, or apparent research misconduct to the Deciding Official or Research Integrity Officer. If an individual is unsure whether a suspected incident falls within the definition of research misconduct, he or she may contact the BHSU Research Integrity Officer to discuss the suspected misconduct informally. If the circumstances described by the individual do not meet the definition of research misconduct, the Research Integrity Officer will refer the individual or allegation to other offices or officials with responsibility for resolving the problem.

At any time, an employee may have confidential discussions and consultations about concerns of possible misconduct with the Research Integrity Officer and will be counseled about appropriate procedures for reporting allegations.

B. Protecting the Complainant

Complainants must have confidence that they will not be subject to retaliation, if they are to bring forward observations of potential research misconduct. Accordingly, the Research Integrity Officer will monitor the treatment of all individuals who bring forward allegations of misconduct or of inadequate institutional response thereto, as well as those who cooperate in inquiries or investigations. The Research Integrity Officer will work with other university officials to ensure that these persons do not suffer any adverse changes in the terms and conditions of their employment, or in their status at the institution, as a result of retaliation. The Research Integrity Officer will review all instances of alleged retaliation for appropriate action.

Complainants should immediately report any alleged or apparent retaliation to the Research Integrity Officer. Also, the institution will protect the privacy of those who report misconduct in good faith to the maximum extent possible. For example, if the complainant requests anonymity, the institution will make an effort to honor the request during the allegation assessment or inquiry within applicable policies and regulations and state and local laws, if any. The complainant will be advised that if the matter is referred to an investigation panel and the complainant's testimony is required, anonymity may no longer be guaranteed. BHSU will undertake diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations and to protect these individuals from retaliation by respondents or other institutional members. (§ 93.106; § 93.300 (d); SD BOR 4.8.1. § C.15)

C. Protecting the Respondent

Inquiries and investigations will be conducted in a manner that ensures fair treatment to the respondent(s) in the inquiry or investigation and confidentiality to the extent possible without compromising public health and safety or thoroughly carrying out the inquiry or investigation. (§ 93.106; § 93.300 (e); SD BOR 4.8.1 § C.4)

Institutional employees accused of research misconduct may consult with legal counsel or a non-lawyer personal adviser (who is not a principal or witness in the case) to seek advice and may bring the counsel or personal adviser to interviews or meetings on the case.

D. Cooperation with Inquiries and Investigations

Institutional employees will cooperate with the Research Integrity Officer and other institutional officials in the review of allegations and the conduct of inquiries and investigations. Employees must provide relevant evidence to the Research Integrity Officer or other institutional officials on misconduct allegations.

E. Preliminary Assessment of Allegations

Upon receiving an allegation of research misconduct, the Research Integrity Officer will immediately assess the allegation to determine whether allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified; whether PHS or other federal agency support or applications for funding are involved; and whether the allegation falls under the definition of research misconduct. (§ 93.306(b)).

If the Research Integrity Officer (or another designated institutional official) determines that requirements for an inquiry are met, he or she must document the assessment, promptly sequester all research records and other evidence, and begin the inquiry. (§ 93.306(c)(2); § 93.305(a))

For allegations involving PHS support where the Research Integrity Officer or another designated institutional official determines that the requirements for an inquiry are not met, the Research Integrity Officer must keep sufficiently detailed documentation of the assessment to permit later review by ORI of the reasons why the institution did not conduct an inquiry. (§ 93.306(c)(3); § 93.318)

V. The Inquiry

A. Initiation and Purpose of the Inquiry

If, after the preliminary assessment, the Research Integrity Officer determines that the allegation provides sufficient information to allow specific follow-up, and falls under the definition of research misconduct, he or she will immediately initiate the inquiry process. In initiating the inquiry, the Research Integrity Officer should identify clearly the original allegation and any related issues that should be evaluated. The purpose of the inquiry is to make a preliminary evaluation of the available evidence and testimony of the respondent, complainant, and key witnesses to determine whether there is sufficient evidence of possible research misconduct to warrant a full investigation. The purpose of the inquiry is **not** to reach a final conclusion about whether misconduct definitely occurred or who was responsible. The findings of the inquiry must be set forth in an inquiry report. (§ 93.307(a) and 93.307(b)

B. Notice to the Respondent

At the time of, or before beginning, an inquiry, the Research Integrity Officer must make a good-faith effort to notify in writing the presumed respondent, if any. If the inquiry subsequently identifies additional respondents, the Research Integrity Officer must also notify them. Only allegations specific to a particular respondent are to be included in the notification to that respondent. If additional allegations emerge, the respondent(s) must be notified in writing of the additional allegations raised against them. (§ 93.307(c))

C. Sequestration of the Research Records

After determining that an allegation falls within the definition of research misconduct, the Research Integrity Officer must immediately secure all original research records and materials relevant to the allegation. For allegations involving PHS support, the Research Integrity Officer may consult with ORI for advice and assistance in this regard. (§ 93.305(a); §93.307(d))

D. Appointment of the Inquiry Committee

The Research Integrity Officer, under direction of the BHSU President and in consultation with other institutional officials as appropriate, will appoint an inquiry committee and committee chair within 5 days of the initiation of the inquiry. The inquiry committee shall consist of individuals who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to evaluate the evidence and issues related to the allegation, interview the principals and key witnesses, and conduct the inquiry. These individuals may be scientists, subject matter experts, administrators, lawyers, or other qualified persons, and they may be from inside or outside the institution. (§ 93.307(e); SD BOR 4.8.1 § C.4)

The Research Integrity Officer will also notify the respondent of the proposed committee membership within 5 days of the initiation of the inquiry. If, within 5 days of this notice, the respondent submits a written objection to any appointed member of the inquiry committee or expert based on bias or conflict of interest, the Research Integrity Officer will determine whether to replace the challenged member or expert with a qualified substitute.

E. Charge to the Committee and the First Meeting

The Research Integrity Officer will prepare a charge for the inquiry committee that describes the allegations and any related issues identified during the allegation assessment and states that the purpose of the inquiry is to make a preliminary evaluation of the evidence and testimony of the respondent, complainant, and key witnesses to determine whether there is sufficient evidence of possible research misconduct to warrant an investigation as required by this policy, or where PHS support or non-PHS agency support is involved, the pertinent regulations. The purpose is not to determine whether research misconduct definitely occurred or who was responsible, and the committee's work does not require a full review of the evidence related to the allegation. At the committee's first meeting, the Research Integrity Officer will review the charge with the committee, discuss the allegations, any related issues, and the appropriate procedures for conducting the inquiry, assist the committee with organizing plans for the inquiry, and

answer any questions raised by the committee. The Research Integrity Officer and institutional counsel will be present or available throughout the inquiry to advise the committee as needed.

F. Inquiry Process

The inquiry committee will normally interview the complainant, the respondent, and key witnesses and examine relevant research records and materials. Then the inquiry committee will evaluate the evidence and testimony obtained during the inquiry. After consultation with the Research Integrity Officer and institutional counsel, the committee members will decide whether there is sufficient evidence of possible research misconduct to recommend further investigation. The scope of the inquiry does not include deciding whether misconduct occurred or conducting exhaustive interviews and analyses.

G. Time for Completion

For inquiries involving PHS or other federal funding sources, the regulations governing the timeline of the grant agency will be followed. Generally, the inquiry must be completed within 90 calendar days of its initiation unless circumstances warrant a longer period. Should an inquiry exceed 90 days, the inquiry report must document the reasons for the delayed completion. (§ 93.307(h))

Inquiry of matters of conduct that were not undertaken pursuant to a grant, or if the funding agency does not specify timelines for completion of the inquiry, then the inquiry will be completed within 60 calendar days of its initiation, subject to reasonable variation as may be necessary under the circumstances. (SD BOR 4.8.1 § C.12)

VI. The Inquiry Report

A. Elements of the Inquiry Report

The committee shall prepare a written inquiry report that states the names, professional aliases, and positions of the respondent and complainant; a description of the allegations; if applicable, a list of PHS or other federal agency support (e.g. grant numbers, contacts, publications listing PHS or other federal agency support, or grant applications); the names and titles of the committee members, and and the names and titles of experts, if any; a summary of the inquiry process used, including a timeline and procedural history; a list of the research records reviewed; an inventory of sequestered research records and other evidence and a description of how sequestration was conducted; summaries of any interviews and transcripts of any transcribed interviews; any scientific or forensic analysis conducted; a description of the evidence in sufficient detail to demonstrate whether an investigation is warranted or not; the committee's determination as to whether an investigation is recommended; the basis on which any allegation(s) do not merit an investigation and whether any other actions should be taken if an investigation is not recommended; any institutional actions implemented, including communications with journals or funding agencies; and any comments on the inquiry report by the respondent or the complainant. The report must also disclose if there is any potential evidence of honest error or difference of opinion. Institutional counsel will review the report for legal sufficiency. (§ 93.307(g); § 93.309)

B. Comments on the Draft Report by the Respondent and the Complainant

The Research Integrity Officer will provide the respondent with a copy of the draft inquiry report for comment and rebuttal and will provide the complainant, if he or she is identifiable in the report, with portions of the draft inquiry report that address the complainant's role and opinions in the investigation.

1. Confidentiality

   The Research Integrity Officer may establish reasonable conditions for review to protect the confidentiality of the draft report.

2. Receipt of Comments

   Within 14 calendar days of their receipt of the draft report, the complainant and respondent will provide their comments, if any, to the inquiry committee. Any comments that the complainant or respondent submits on the draft report will become part of the final inquiry report and record. Based on the comments, the inquiry committee may revise the report as appropriate. (§ 93.307(g)(3))

C. Inquiry Decision and Notification

1. Decision by Deciding Official

   The Research Integrity Officer will transmit the final report and any comments to the Deciding Official, who will make the determination of whether findings from the inquiry provide sufficient evidence of possible research misconduct to justify conducting an investigation. The inquiry is completed when the Deciding Official makes this determination

2. Notification

   The Research Integrity Officer will notify both the respondent and the complainant in writing of the Deciding Official's decision of whether to proceed to an investigation and will remind them of their obligation to cooperate in the event an investigation is opened. The Research Integrity Officer will also notify all appropriate institutional officials of the Deciding Official's decision.

   Respondents must be provided with a copy of the final inquiry report, a copy of BHSU's Research Misconduct policy, and if applicable, a copy of, or reference to the federal code responsible for regulation of research misconduct procedures for the appropriate federal agency(ies) (in cases involving PHS support a copy of 42 CFR Part 93 must be provided or referenced). (§ 93.308(a))

   The complainant may be provided with relevant portions of the final inquiry report. If notice is provided to one complainant in a case, to the extent possible, notice must be provided to all complainants in the case. (§ 93.308(b))

D. Time Limit for Completing the Inquiry Report

The inquiry committee will normally complete the inquiry and submit its report in writing to the Research Integrity Officer no more than 55 calendar days following inquiry

initiation, unless the Research Integrity Officer approves an extension for good cause. If the Research Integrity Officer approves an extension, the reason for the extension will be entered into the records of the case and the report. The respondent also will be notified of the extension. The entire inquiry process, initiation through Deciding Official decision, must be completed within 60 days, unless federal funding is involved, as referenced in section V.G. above.

VII. The Investigation

A. Purpose of the Investigation

In cases where the Deciding Official determines that research misconduct may have occurred based on the final report of the inquiry committee, the case shall proceed to an investigation. The purpose of the investigation is to explore in detail the allegations, to examine the evidence in depth, and to determine, by a preponderance of the evidence, whether research misconduct occurred, who was responsible, and the seriousness of the misconduct. The investigation will also determine whether there are additional instances of possible misconduct that would justify broadening the scope beyond the initial allegations. The findings of the investigation will be set forth in an investigation report. Where the allegation of research misconduct involves PHS support, the investigation will be initiated and conducted in accordance with 42 CFR §§ 93.310 - 93.317.

B. Notification of Funding Agencies

If the misconduct involves PHS or non-PHS agency support, the Deciding Official will notify pertinent funding agencies, or ORI if PHS support is involved, in writing of the decision to begin an investigation within 30 days of determining that an investigation is warranted and provide a copy of the inquiry report containing all of the elements described in this policy at section VI.A. (§ 93.307(g); § 93.309)

C. Notice to the Respondent

The Research Integrity Officer will notify the respondent in writing of the allegation(s) within a reasonable amount of time after determining that an investigation is warranted, but before the investigation begins. (§ 93.310(c))

1. Written notice will be provided to the respondent of any allegation(s) of misconduct not addressed during the inquiry or in the initial notice of investigation within a reasonable amount of time of deciding to pursue such allegation(s). (§ 93.310(c)(1))

2. If additional respondents are identified during the investigation, the Research Integrity Officer must notify them of the allegation(s) and provide them with an opportunity to respond consistent with the investigation procedures described herein. (§ 93.310(c)(2))

3. While an investigation into multiple respondents can convene with the same investigation panel members, a separate investigation report and research misconduct determination is required for each respondent. (§ 93.310(c)(3))

D. Appointment of the Investigation Panel

Within 15 calendar days after receipt of an inquiry report, the BHSU President, in consultation with the Research Integrity Officer and other institutional officials as appropriate, will appoint a special panel of three persons, two individuals with expertise in the discipline or practices involved in the allegations and one attorney, to conduct a formal investigation hearing and to make a determination as to whether or not the respondent (s) engaged in research or academic misconduct. All three members of the hearing panel shall be impartial and have no conflicts of interest. Individuals appointed to the investigation panel may also have served on the inquiry committee. The BHSU President or the Research Integrity Officer, under direction of the BHSU President, will notify the respondent of the proposed panel membership. The respondent will have 5 days in which to challenge any member of the panel on the basis of a serious conflict of interest by providing a written objection to any appointed member of the investigation panel or expert identifying specific facts or circumstances that establish a conflict of interest as defined herein. In the event of a challenge, the BHSU President will review the evidence produced by the respondent, together with other information as may be material, and will determine whether the allegations suggest a conflict of interest whose seriousness might compromise the impartiality of the panel's deliberations. The BHSU President's resolution of the challenge will not be subject to appeal. (SD BOR 4.8.1 § C.7)

E. Sequestration of the Research Records

The Research Integrity Officer will immediately sequester any additional pertinent research records that were not previously sequestered during the inquiry stage. This sequestration should occur before or at the time the respondent is notified that an investigation has begun. The need for additional sequestration of records may occur for any number of reasons, including the institution's decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured. The procedures to be followed for sequestration during the investigation are the same procedures that apply during the inquiry. (§ 93.310(d))

F. Charge to the Panel and the First Meeting

1. Charge to the Panel

The Research Integrity Officer will define the subject matter of the investigation in a written charge to the panel that describes the allegations and related issues identified during the inquiry, defines research misconduct, and identifies the name of the respondent. The charge will state that the panel is to a) take reasonable steps to ensure impartial and unbiased investigation to the maximum extent practicable; and will b) use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes evaluation of all records and other evidence, including

testimony of the respondent, complainant, and key witnesses, and c) determine whether, based on a preponderance of the evidence, research misconduct occurred and, if so, to what extent, who was responsible, and its seriousness.

The Research Integrity Officer will also inform the panel that in order to determine that the respondent committed research misconduct, it must find that a preponderance of the evidence establishes that the respondent committed the research misconduct intentionally, knowingly, or recklessly.

During the investigation, if additional information becomes available that substantially changes the subject matter of the investigation or would suggest additional respondents, the panel will notify the Research Integrity Officer, who will determine whether it is necessary to notify the respondent of the new subject matter or to provide notice to additional respondents.

2. The First Meeting

The Research Integrity Officer, with the assistance of institutional counsel, will convene the first meeting of the investigation panel to review the charge, the inquiry report, and the prescribed procedures and standards for the conduct of the investigation, including the necessity for confidentiality and for developing a specific investigation plan. The investigation panel will be provided with a copy of these instructions and, where PHS funding is involved, the PHS regulation 42 CFR Part 93.

G. Investigation Process

The investigation panel will be appointed and the investigation process initiated within 30 days of the completion of the inquiry, if findings from that inquiry provide a sufficient basis for conducting an investigation.

The investigation will normally involve examination of all documentation, including, but not necessarily limited to, relevant research records, computer files, proposals, manuscripts, publications, correspondence, memoranda, and notes of telephone calls. Whenever possible, the panel should interview the complainant(s), the respondents(s), and other individuals who might have information regarding aspects of the allegations. Any exhibits shown to the interviewee during the interview must be numbered and referred to by that number in the interview. Interviews of the respondent and witnesses should be recorded or transcribed. While the respondents must not be present during the witnesses' interviews, the respondents must be provided with transcripts of the interviews. All other interviews should be transcribed, audio or video recorded, or summarized. Summaries or transcripts of the interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigatory file. (§ 93.310(g))

H. Time for Completion

1. Investigations of matters of conduct that were not undertaken pursuant to a grant, or if the funding agency does not specify timelines for completion of an investigation, must be completed within 120 calendar days from the date the BHSU President appoints the panel to conduct the formal investigation, subject to reasonable variation as may be necessary under the circumstances. (SD BOR 4.8.1 § C.12)

2. For investigations involving PHS or other federal funding sources, the regulations governing the timeline of the grant agency will be followed. Generally, all aspects of such an investigation must be completed within 180 days of its beginning, including conducting the investigation, preparing the draft investigation report for each respondent, providing the draft report to each respondent for comment, and transmitting the institutional record including the final investigation report and decision by the Deciding Official to ORI or other relevant funding agency. If the responsible parties are unable to complete the investigation in 180 days, an extension must be requested of ORI or the funding agency in writing and must include the circumstances or issues warranting additional time. If ORI (or another relevant funding agency) grants an extension, it may require periodic progress reports be submitted by the Deciding Official. If an investigation exceeds 180 days, the investigation report must include the reasons for exceeding the 180-day period. (§ 93.311; § 93.312; §93.316)

VIII. The Investigation Report

A. Elements of the Investigation Report

The final report must describe the policies and procedures under which the investigation was conducted, describe how and from whom information relevant to the investigation was obtained, state the findings, and explain the basis for the findings. The report will include the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct. (§ 93.313)

Additionally, the final report will:

1. Identify the composition of the investigation panel;

2. Describe the specific allegations of research misconduct and identify the respondent;

3. Document all PHS or other federal agency support, including the numbers of any grants that are involved, publications listing PHS or other federal grant support, manuscripts submitted but not accepted for publication, PHS or other federal funding applications, contracts, progress reports, presentations, posters, or other research records that allegedly contained the falsified, fabricated, or plagiarized material; Identify an inventory of sequestered research records and other evidence, except records the institution did not consider or rely on, and a description of how any sequestration was conducted during the investigation. The inventory must include manuscripts and funding proposals that were considered or relied on during the investigation.

4. Include transcripts of all interviews conducted, as well as any scientific or forensic

analyses conducted;

5. Include a statement of findings for each allegation of research misconduct identified during the investigation. Each statement of findings must: (1) identify whether the research misconduct was falsification, fabrication, or plagiarism, and whether it was committed intentionally, knowingly, or recklessly; (2) summarize the facts and the analysis that support the conclusion and consider the merits of any reasonable explanation by the respondent, including any effort by respondent to establish by a preponderance of the evidence that he or she did not engage in research misconduct because of honest error or a difference of opinion; (3) identify the specific PHS support; (4) identify whether any publications need correction or retraction; (5) identify the person(s) responsible for the misconduct; and (6) list any current support or known applications or proposals for support that the respondent has pending with PHS and non-PHS federal agencies.

B. Comments on the Draft Report

1. Respondent

   The Research Integrity Officer will provide the respondent with a copy of the draft investigation report for comment and rebuttal. The respondent will be allowed 30 calendar days to review and comment on the draft report. The respondent's comments will be attached to the final report. The findings of the final report should take into account the respondent's comments in addition to all the other evidence.

2. Complainant

   The Research Integrity Officer will provide the complainant, if he or she is identifiable in the report, with those portions of the draft investigation report that address the complainant's role and opinions in the investigation. The complainant will be allowed 7 calendar days to review and comment on the draft report. The report should be modified, as appropriate, based on the complainant's comments.

3. Institutional Counsel

   The draft investigation report will be transmitted to the institutional counsel for a review of its legal sufficiency. The counsel will be allowed 30 calendar days to review and comment on the draft report. Comments should be incorporated into the report as appropriate.

4. Confidentiality

   In distributing the draft report, or portions thereof, to the respondent and complainant, the Research Integrity Officer will inform the recipient(s) of the confidentiality under which the draft report is made available and may establish reasonable conditions to ensure such confidentiality. For example, the Research Integrity Officer may request the recipient(s) to sign a confidentiality statement or to come to his or her office to review the report.

C. Institutional Review and Decision

The Deciding Official is responsible for making a final determination of research misconduct findings after receiving the final draft of the investigation panel's report from the Research Integrity Officer. This determination must be conveyed in a written decision that 1) states whether or not the institution found research misconduct, 2) if so, identifies who committed the misconduct; and 3) describes relevant institutional actions taken or to be taken. (§ 93.314; SD BOR 4.8.1 §C.9)

D. Decisional Basis

Based on a preponderance of the evidence, the Deciding Official will make the final determination whether to accept the investigation report, its findings, and any recommended institutional actions. The Deciding Official's explanation should be consistent with the definition of research misconduct, the institution's policies and procedures, and the evidence reviewed and analyzed by the investigation panel. The Deciding Official may also return the report to the investigation panel with a request for further fact-finding or analysis. If the determination varies from that of the investigation panel, The Deciding Official will explain in detail the basis for rendering a decision different from that of the investigative panel in the written decision.

The Deciding Official's written determination, together with the investigation panel's report, constitutes the final investigation report.

E. Notifications

When a final decision on the case has been reached, the Research Integrity Officer will notify both the respondent and the complainant of the outcome in writing. In addition, the Deciding Official will determine whether law enforcement agencies, professional societies, professional licensing boards, editors of journals in which falsified reports may have been published, collaborators of the respondent in the work, or other relevant parties should be notified of the outcome of the case. The Research Integrity Officer is responsible for ensuring compliance with all notification requirements of funding or sponsoring agencies.

F. Time Limit for Completing the Investigation

An investigation should ordinarily be completed within 120 days of its initiation, with the initiation being defined as the date the BHSU President appoints the investigation panel. This includes conducting the investigation, preparing the report of findings, making the draft report available to the subject of the investigation for comment, submitting the report to the Deciding Official for approval, and submitting the report to the SD BOR and to the appropriate funding agency if required (e.g. involvement of PHS-supported research must report to ORI 42 CFR § 93.316). For investigations involving PHS or other federal funding sources, the regulations governing the timeline of the grant agency will be followed, as described in Section VII.H. above.

G. Maintaining Records

The Research Integrity Officer must maintain and, upon request, provide to SD BOR or the funding agency the institutional record and all sequestered evidence in accordance with SD BOR policy 4.8.1 and, if applicable, 42 CFR § 93.318. Unless custody has been transferred to HHS or ORI has advised in writing that the records no longer need to be retained, records of research misconduct proceedings must be maintained in a secure manner for seven (7) years after completion of the proceeding or the completion of any HHS proceeding involving the research misconduct allegation. The Research Integrity Officer is also responsible for providing any information, documentation, research records, evidence or clarification requested by ORI to carry out its review of an allegation of research misconduct or of the institution's handling of such an allegation.

IX. Requirements for Reporting to ORI

A. Notification of an Investigation

When a research misconduct investigation involves PHS funding or applications for funding, an institution's decision to initiate an investigation must be reported in writing to ORI as described in Section VII.B. above.

B. Notification of Final Outcome

ORI must be notified of the final outcome of the investigation and must be provided with a copy of the institutional record. The institutional record must be consistent with 42 CFR § 93.220 and be logically organized.

C. Institutional Record

The institutional record comprises the records that the institution compiled or generated during the research misconduct proceeding, except records the institution did not consider or rely on. These records include, but are not limited to:

1. Documentation of the assessment as required by § 93.306(c).
2. If an inquiry is conducted, the inquiry report and all records (other than drafts of the report) considered or relied on during the inquiry, including, but not limited to, research records and the transcripts of any transcribed interviews conducted during the inquiry, information the respondent provided to the institution, and the documentation of any decision not to investigate as required by § 93.309(c).
3. If an investigation is conducted, the investigation report and all records (other than drafts of the report) considered or relied on during the investigation, including, but not limited to, research records, the transcripts of each interview conducted pursuant to § 93.310(g), and information the respondent provided to the institution.
4. Decision(s) by the Institutional Deciding Official, such as the written decision from the Institutional Deciding Official under § 93.314.
5. The complete record of any institutional appeal consistent with § 93.315.
6. A single index listing all the research records and evidence that the institution

compiled during the research misconduct proceeding, except records the institution did not consider or rely on.

7. A general description of the records that were sequestered but not considered or relied on.

D. Variations from Established Policies and Procedures

Any significant variations from the provisions of the institutional policies and procedures must be explained in any reports submitted to ORI.

E. Respondent Admits to Misconduct or Settlement Reached

The Research Integrity Officer must notify ORI in advance if the institution plans to close a research misconduct proceeding at the assessment, inquiry, investigation or appeal stage on the basis that the respondent has admitted to committing research misconduct or a settlement with the respondent has been reached (§ 93.317(a).

1. The individual making the admission will be asked to sign a statement attesting to the occurrence and extent of misconduct. The statement must specify the falsification, fabrication, and/or plagiarism that occurred, and which research records were affected. The admission statement must meet all requirements for a research misconduct finding under Section I.B. of this policy and 42 CFR 93.103 and must be provided to ORI before the institution closes its research misconduct proceeding. The institution must also provide a statement to ORI describing how it determined that the scope of the misconduct was fully addressed by the admission and confirmed the respondent's culpability (§ 93.317(b).

2. After consultation with ORI on the basis for closing a case where the respondent has admitted to committing research misconduct, BHSU will cooperate with any request by ORI to conduct an oversight review of the institution's handling of the case. BHSU must comply with any action directed by ORI under § 93.317(c)

F. Institutional Appeals

1. If a respondent appeals an institution's finding(s) of research misconduct or institutional actions, BHSU must promptly notify ORI. (§ 93.315(a))

2. If BHSU has not transmitted its institutional record prior to the appeal, the institutional record will be submitted after the appeal is concluded. The Research Integrity Officer must ensure that the complete record of appeal is included in the institutional record. (§ 93.315(b))

3. If the institutional record has been submitted prior to the appeal, the Research Integrity Officer must provide a complete record of the appeal once the appeal is concluded. ((§ 93.315(c))

G. Other Circumstances

The Research Integrity Officer will notify ORI at any stage of the inquiry or investigation if in accordance with 42 CRF 93.205(g)(1-6) any of the following conditions exist

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

X. Institutional Administrative Actions

BHSU will take appropriate administrative actions against individuals when an allegation of misconduct has been substantiated.

If the Deciding Official determines that the alleged misconduct is substantiated by the findings, he or she will decide on the appropriate actions to be taken, after consultation with the Research Integrity Officer. The actions may include: withdrawal or correction of all pending or published abstracts and papers emanating from the research where research misconduct was found, removal of the responsible person from the particular project, a letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, or initiation of steps leading to possible rank reduction or termination of employment. BHSU may also require restitution of funds, as appropriate. (SD BOR 4.8.1 C.9.2)

XI. Other Considerations

A. Appeals

The action of the BHSU president may be appealed to the Board of Regents, where it will be heard in the same manner as other disciplinary appeals, except that the review of investigation panel's factual findings on appeal to the Board will be limited.

Challenges to the judgment for the investigation panel on the weight of evidence pertaining to questions of fact will be limited to showing that the panel's findings are clearly erroneous, arbitrary, capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. The Board will not substitute its judgment for that of the investigation panel unless it forms a definite and firm conviction that a mistake has been committed.

The decision of the Board will be subject to further appeal as provided under the Administrative Procedures Act, the Public Employees' Unions Act or the Civil Service Act, whichever may apply.

B. Termination of Institutional Employment or Resignation Prior to Completing Inquiry or Investigation

The termination of the respondent's institutional employment, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported, will not preclude or terminate the misconduct procedures.

If the respondent, without admitting to the misconduct, elects to resign his or her position prior to the initiation of an inquiry, but after an allegation has been reported, or during an inquiry or investigation, the inquiry or investigation will proceed. If the respondent refuses to participate in the process after resignation, the panel will use its best efforts to reach a conclusion concerning the allegations, noting in its report the respondent's failure to cooperate and its effect on the panel's review of all the evidence.

C. Restoration of the Respondent's Reputation

If the institution finds no misconduct and ORI concurs, after consulting with the respondent, the Research Integrity Officer will undertake reasonable efforts to restore the respondent's reputation. Depending on the particular circumstances, the Research Integrity Officer will consider notifying those individuals aware of, or involved in, the investigation of the final outcome, publicizing the final outcome in forums in which the allegation of research misconduct was previously publicized, or expunging all reference to the research misconduct allegation from the respondent's personnel file. Any institutional actions to restore the respondent's reputation must first be approved by the Deciding Official.

D. Protection of the Complainant and Others

Regardless of whether the institution or ORI determines that research misconduct occurred, the Research Integrity Officer will undertake reasonable efforts to protect complainants who made allegations of research misconduct in good faith and others who cooperate in good faith with inquiries and investigations of such allegations. Upon completion of an investigation, the Deciding Official will determine, after consulting with the complainant, what steps, if any, are needed to restore the position or reputation of the complainant. The Research Integrity Officer is responsible for implementing any steps the Deciding Official approves. The Research Integrity Officer will also take appropriate steps during the inquiry and investigation to prevent any retaliation against the complainant.

E. Allegations Not Made in Good Faith

If relevant, the Deciding Official will determine whether the complainant's allegations of research misconduct were made in good faith. If an allegation was not made in good faith, the Deciding Official will determine whether any administrative action should be taken against the complainant according to SD BOR policies.

F. Interim Administrative Actions

Institutional officials will take interim administrative actions, as appropriate, to protect Federal funds and ensure that the purposes of the Federal financial assistance are carried out. (42 CFR 93.401(d)

XII. Record Retention

After completion of a case and all ensuing related actions, the Research Integrity Officer will prepare a complete file, including the records of any inquiry or investigation and copies of all documents and other materials furnished to the Research Integrity Officer. The Research Integrity Officer will keep the file for seven (7) years after completion of the case to permit later assessment of the case. ORI or other authorized HHS personnel will be given access to the records upon request.