



***Policy to Assure the Integrity of
Research***

*As Approved by the New Mexico Tech
Board of Regents
On April 23, 2001*

I. INTRODUCTION

A. Purpose

This policy establishes an administrative process for dealing with misconduct in research and creative activities. This policy is meant to insure that the integrity of research and scholarly activity conducted at New Mexico Tech is maintained, and to assure federal agencies that New Mexico Tech complies with all federal regulations for institutional oversight of scientific misconduct.

B. Scope

This policy and associated procedures apply to all individuals at New Mexico Tech who are engaged in research or other creative activities whether or not their work is supported by funding from a federal agency.

The Public Health Service (PHS) regulation at 42 C.F.R. Part 50, Subpart A applies to any research, research-training or research-related grant or cooperative agreement with PHS. The National Science Foundation regulation is at 45 C.F.R. 689.

C. Application

This document outlines procedures that New Mexico Tech will follow in the event allegations of misconduct are brought against researchers or individuals involved with scholarly activity employed or enrolled at New Mexico Tech. "Researchers" include faculty, research associates, individuals holding postdoctoral or adjunct appointments, graduate students, undergraduate students doing data analysis or other research-based work for a faculty member, and any other individual employed by or enrolled at New Mexico Tech and doing basic, theoretical, or applied research. Allegations will be investigated in such a manner that both the person providing notification of the alleged misconduct and the person whose research practices are being questioned are protected from undue publicity and impairment of reputation until the matter has been fully investigated and resolved. This policy defines research misconduct and provides guidelines for evaluating allegations expeditiously and responsibly.

This policy relates to activities associated with the collection, analysis and reporting of research — theoretical, basic, and applied. Other forms of academic misconduct are not covered by this policy.

These practices are defined as "research misconduct:"

1. Violation of any criminal or civil law in obtaining, analyzing or reporting data.
2. Plagiarism: The act of taking the written or oral research ideas or results from another and presenting them as one's own.
3. Intentional falsification or fabrication of data or results:

- a. Forging Data: Inventing some or all of the reported research data, or reporting experiments never performed.
 - b. “Cooking” Data: Retaining only those results that fit the hypothesis.
 - c. “Trimming” Data: The unreasonable smoothing of irregularities to make the data look extremely accurate and precise.
4. Applying for federal funding while under federal suspension or debarment, or knowingly utilizing as a co-principal investigator, investigator, technician, or consultant a person suspended or debarred.
 5. Failure to maintain a record of primary data with the intent to deceive, e.g. destroying laboratory notebooks, survey forms, microscope reference slides, computer or other machine printouts with the intent to deceive.
 6. Failure to report known or suspected acts of misconduct on the part of others, including the act of knowingly withholding or destroying evidence crucial in an investigation of misconduct.
 7. Abuse of confidentiality when gathering or reporting data, e.g., releasing data gathered during privileged communication.
 8. Use of honorary authorships, without the person's consent, and/or with the intent to deceive.
 9. Without being involved with the research in question, making a demand to be listed as an author on a researcher's publication, solely because the person making the demand is in a position of authority over the researcher.

II. DEFINITIONS

Allegation -- notice to the responsible official either in writing or orally that wrongdoing is suspected or known to have occurred. The individual who makes the allegation will be hereinafter referred to as the complainant. The individual against whom the allegation has been brought will be termed the respondent.

Appeal -- an opportunity afforded by the institution for review of the final determination. Permissible bases for an appeal are limited to assertions that improper procedures were followed during the Inquiry or Investigation phase; that the decision of the Investigation Committee, when taken as a whole, was not based upon sufficient evidence; or that the decision of the Investigation Committee was reached in an arbitrary and capricious manner. An appeal shall only be on the record.

Complainant -- a person who makes an allegation of scientific misconduct.

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

Failure to cooperate -- the failure to produce requested documents, data, research results, publications, audio or video tapes, or other materials in a timely manner; the failure to respond to questions, either orally or in writing; the refusal to permit members of the Inquiry or Investigation Committee or other authorized persons to enter the research area or laboratory; and other actions deemed by the Inquiry or Investigation Committee to be unsatisfactory in response to requests made to expedite the inquiry or investigation procedure.

Federal support -- federal grants, contracts, or cooperative agreements or applications thereof.

Final determination -- the institutional conclusion concerning the extent of possible wrongdoing and culpability of the respondent, which occurs after the investigation. In deciding a case, the standard for weighing the evidence is "preponderance of the evidence," in which a simple majority of the evidence must weigh in favor of the decision. A presumption of innocence should prevail until a final determination concerning guilt has been made.

Good faith allegation -- an allegation made with the honest belief that scientific or other misconduct may have occurred. An allegation is not in good faith if it is made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

Hearing -- a formal procedure during which the respondent has an adequate opportunity to hear and question witnesses, to examine other evidence, and to present testimony and evidence on his/her own behalf.

Inquiry -- gathering information and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

Investigation -- the formal examination and evaluation of all relevant facts to determine if misconduct has occurred, and if so, to determine the responsible person and the seriousness of the misconduct.

Misconduct or misconduct in science or scholarly activity -- research misconduct, professional misconduct, or other practices that seriously deviate from those commonly accepted within the scientific and academic community for proposing, conducting, or reporting research and other creative activities. It does not include honest error or honest differences in interpretations or judgments of data.

ORI -- Office of Research Integrity, the office within the U.S. Department of Health and Human Services (DHHS) that is responsible for the scientific misconduct and research integrity activities of the U.S. Public Health Service. In the case of the National Science Foundation (NSF), the appropriate office is the Office of the Inspector General (OIG). In the case of other federal agencies, an appropriate office of the involved federal agency will be identified.

PHS -- U.S. Public Health Service, an operating component of the DHHS.

PHS regulation -- Public Health Service regulation establishing standards for institutional inquiries and investigations into allegations of scientific misconduct, which is set forth at 42

C.F.R. Part 50, Subpart A, entitled “Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science.”

Research record -- any data, document, computer file, e-mail, computer diskette, or any other written or non-written account or object that reasonably may be expected to provide evidence or information regarding the proposed, conducted, or reported research that constitutes the subject of an allegation of scientific misconduct. A research record includes, but is not limited to, grant or contract applications, whether funded or unfunded; grant or contract progress and other reports; laboratory notebooks; notes; correspondence; videos; photographs; X-ray film; slides; biological materials; computer files and printouts; manuscripts and publications; equipment use logs; laboratory procurement records; animal facility records; human and animal subject protocols; consent forms; medical charts; and patient research files.

Respondent -- the person against whom an allegation of scientific 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.

Retaliation -- any action that adversely affects the employment or other institutional status of an individual that is taken by an institution or an employee because the individual has in good faith, made an allegation of scientific misconduct or of inadequate institutional response thereto or has cooperated in good faith with an investigation of such allegation.

Scientific Record -- any documentation or presentation of research, oral or written, published or unpublished.

For purposes of clarification, the definition of misconduct or misconduct in science or scholarly activity is expanded as follows:

A. Research Misconduct

Research misconduct is significant misbehavior that improperly appropriates the intellectual property or contributions of others, that intentionally impedes the progress of research, or that risks corrupting the scientific record or compromising the integrity of scientific practices. Such behaviors are unethical and unacceptable in proposing, conducting, or reporting research, or in reviewing the proposals or research reports of others.

Examples of research misconduct include but are not limited to the following:

1. Misappropriation: An investigator or reviewer shall not intentionally or recklessly
 - a. plagiarize, which shall be understood to mean the presentation of the documented words or ideas of another as his or her own, without attribution for the medium of presentations; or
 - b. use information in breach of any duty of confidentiality associated with the review of any manuscript or grant application.
2. Interference: An investigator or reviewer shall not intentionally and without authorization take, sequester or materially damage any research-

related property of another, including without limitation the apparatus, reagents, biological materials, writings, data, hardware, software, or any other substance or device used or produced in the conduct of research.

3. Misrepresentation: An investigator or reviewer shall not with intent to deceive or in reckless disregard for the truth,
 - a. state or present a material or significant falsehood; or
 - b. omit a fact so that what is stated or presented as a whole states or presents a material or significant falsehood.

Free scientific inquiry naturally includes proposing hypotheses that may ultimately prove to be false, offering interpretations of data that conflict with other interpretations, and making scientific observations and analyses that may prove to be in error. The sanctionable behaviors defined and elaborated here are not intended to limit or define comprehensively the oversight role of academic and research institutions.

B. Other Forms of Professional Misconduct

1. Obstruction of Investigations of Research Misconduct. The Federal Government has an important interest in protecting the integrity of investigations into reported incidents of research misconduct. Accordingly, obstruction of investigations of research misconduct related to federal funding constitutes a form of professional misconduct in that it undermines the interests of the public, the scientific community, and the Federal Government.

Obstruction of investigations of research misconduct consists of intentionally withholding or destroying evidence in violation of a duty to disclose or preserve; falsifying evidence; encouraging, soliciting or giving false testimony; and attempting to intimidate or retaliate against witnesses, potential witnesses, or potential leads to witnesses or evidence before, during, or after the commencement of any formal or informal proceeding.

2. Noncompliance with Research Regulations. Responsible conduct in research includes compliance with applicable federal research regulations. Such regulations include (but are not limited to) those governing the use of bio-hazardous materials and human and animal subjects in research. Serious noncompliance with such regulations after notice of their existence undermines the interests of the public, the scientific community, and the Federal Government and constitutes another form of professional misconduct.

III. GENERAL POLICIES AND PRINCIPLES

A. Responsibility to Report Misconduct

All employees or individuals associated with New Mexico Tech should report observed, suspected, or apparent misconduct in science to the Vice President for Research & Economic Development. If an individual is unsure whether a suspected incident falls within the definition of scientific misconduct, he or she may call the Vice President for Research & Economic Development to discuss the suspected misconduct informally. If the circumstances described by the individual do not meet the definition of misconduct, the Vice President 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 research misconduct with the Vice President for Research & Economic Development and will be counseled about appropriate procedures for reporting allegations, which may be made orally and anonymously.

B. Protecting the Complainant

The Vice President for Research & Economic Development will monitor the treatment of individuals who bring allegations of misconduct, allegation of inadequate institutional response to such charges, and who cooperate in inquiries or investigations. The Vice President for Research and Economic Development will ensure that these persons will not be retaliated against in the terms and conditions of their employment or other status at the institution and will review instances of alleged retaliation for appropriate action. Employees should immediately report any alleged or apparent retaliation to the Vice President for Research & Economic Development.

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, regulations, and state and local laws. The complainant will be advised that if the matter is referred to an investigation committee and the complainant's testimony is required, anonymity may no longer be guaranteed. Institutions are required to undertake diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations.

C. Protecting the Respondent

The respondent will be provided with written notice of allegations within 5 days of their receipt. Inquiries and investigations will be conducted in a manner that will ensure 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.

Institutional employees accused of scientific 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.

D. Burden of Proof Standard

The burden of proof standard for misconduct is that the preponderance of the evidence must support the conclusion that the acts or practices in question were serious deviations from those commonly employed in the United States for proposing, conducting or reporting research activities. In determining whether or not misconduct occurred, both action and intent will be considered.

IV. PROCEDURES FOR FILING A COMPLAINT OF ALLEGED MISCONDUCT

An allegation of research misconduct is to be reported to the Vice President for Research & Economic Development. If the Vice President for Research & Economic Development is associated with the research in question, the complainant is to report the allegation to the Vice President for Academic Affairs. Responsibilities of the Vice President for Research & Economic Development include interpreting the policy, hearing confidentially any individual who comes forward with an allegation of research misconduct, conducting the Pre-Inquiry Phase review and serving as the non-voting Chair of the Inquiry Committee and Investigation Committee. The Investigation Committee is charged with making the final determination of whether or not alleged research misconduct has occurred.

The complainant shall be informed about the nature of the 3-phase process for the investigation of alleged misconduct – Pre-Inquiry, Inquiry, and Investigation Phases - should he or she elect to pursue the complaint. If the complainant chooses to make a formal allegation, the Vice President for Research & Economic Development shall request that the complainant present a formal written report of the alleged misconduct.

If the complainant chooses not to make a formal allegation, the Vice President for Research & Economic Development may pursue the matter, if there is sufficient cause, at his or her discretion. In the latter instance, there will be no named complainant during the Pre-Inquiry or Inquiry Phase of the process.

The Vice President for Research & Economic Development shall delineate explicitly for the complainant any limits to confidentiality that may be imposed by law, such as the obligation to respond to external subpoenas. If substantial evidence is readily available, further involvement of the complainant may not be necessary. It may not be possible to pursue the allegation without the participation of the complainant. If the case depends specifically on eyewitness accounts or other evidence that necessitates open participation of the complainant, the complainant must comply.

In the event that the Vice President for Research & Economic Development receives an anonymous allegation of research misconduct, by letter, telephone, or by other means, he or she is charged with investigating the allegation to the fullest extent possible. The intent of the Pre-Inquiry Phase will be to determine if there is sufficient evidence of alleged misconduct to warrant initiation of an Inquiry Phase with no named complainant. The Vice President for Research & Economic Development has the option of requesting conferences with those individuals he or she feels may help to clarify the anonymous allegation.

If the alleged act(s) do not fall within the scope of this policy, the Vice President for Research & Economic Development may assist in a resolution, according to whatever institutional channels best fit the situation, such as referral to a department chair, a director, the Human Resources Office or an existing grievance committee.

V. THE PRE-INQUIRY PHASE

Upon receiving an allegation of research misconduct, whether in written, verbal or anonymous form, the Vice President for Research & Economic Development shall conduct an informal, preliminary review of the facts to determine if there is a reasonable basis for initiating the formal process of inquiry.

VI. THE INQUIRY PHASE

A. Purpose

The Inquiry Phase determines if a full-scale investigation of a complaint is warranted. The Inquiry Phase shall include limited formal gathering of information, the review of evidence, a careful review of the allegation, and interviews with the complainant (if there is one) and the respondent.

B. Committee Structure

The Inquiry Committee shall consist of the Vice President for Research & Economic Development, the Chair of the department in which the alleged misconduct occurred, or the Director of the affected research division if the inquiry involves a researcher, and three faculty members or researchers appointed by the Vice President for Research & Economic Development. If a member of the student body or administrative staff conducted the research, appropriate peer representation will be appointed to this Committee by the Vice President for Research & Economic Development. The Vice President for Research and Economic Development shall serve as the non-voting Committee Chair, but will vote in the case of a tie. All decisions of the Inquiry Committee require a majority vote. Appointees to the Inquiry Committee must have no conflicts of interest with the respondent or the complainant and shall be relieved of their appointments to the Inquiry Committee at the outset if they believe that their personal or professional relationships with the principal(s) in the case may affect their judgment. Membership in the same academic unit is not necessarily considered to be a conflict of interest within the context of this policy.

C. Process

Upon the initiation of the Inquiry Phase, the respondent shall receive from the Vice President for Research & Economic Development written notification of the inquiry, of the allegations, and of the administrative policies and procedures for investigating misconduct.

The Committee shall have the authority to request, and the respondent shall have the obligation to provide evidence including, but not limited to, lab notebooks, computer printouts, electronic data storage, magnetic and voice recorded tapes, notes, manuscripts, publications, tours of the

research area, or any other item or activity which will enhance and expedite the decision-making process. "Failure to Cooperate" on the part of the respondent, including refusal to comply with requests of the Inquiry Committee, shall result in immediate implementation of the Investigation Phase and possibly disciplinary actions, which would be recommended by the Inquiry Committee to the Vice President for Research & Economic Development. New Mexico Tech reserves the right to exercise mandatory processes such as seizure and protection of physical evidence (e.g. laboratory notes and research materials) when necessary. If the researcher leaves New Mexico Tech prior to the close of the inquiry, the Committee shall complete the Inquiry Phase.

All proceedings of the inquiry shall be strictly confidential.

D. Timetable and Report(s)

The Inquiry Phase must be completed within 60 days from the date of written notification to the respondent (researcher) that an inquiry will be conducted. A written report of the findings shall be completed by the Inquiry Committee at or before the end of the prescribed period. The Vice President for Research & Economic Development shall notify the respondent and complainant of the Inquiry Committee's decision in writing and send them a copy of this report.

Should the Inquiry Phase exceed the 60-day deadline due to unforeseen circumstances, a written interim report noting the progress of the inquiry, the reasons for the delay, and a proposed completion date must be submitted by the Inquiry Committee to the President of the Institute.

If the decision is to proceed to the Investigation Phase, and an agency is sponsoring the research, the appropriate agency official(s) shall be notified by the Vice President for Research & Economic Development of the status of the allegation on or before the day the Investigation Phase is initiated, or as required by the agency. In addition, the complainant, the respondent, and the witnesses shall be notified in writing of the date that the Investigation Phase will begin by the Vice President for Research & Economic Development. The decision by the Committee to implement the Investigation Phase shall be final.

If the decision is that the charges are unfounded, see Section XI—Unfounded Allegations.

VII. THE INVESTIGATION PHASE

A. Purpose

The Investigation Phase formally examines the allegations of misconduct which were found to be worthy of closer scrutiny in the Inquiry Phase, and to determine if the evidence gathered supports the conclusion that scientific misconduct has occurred. There are four aspects to the Investigation Phase:

1. Gathering and reviewing evidence/testimony—this includes collecting and examining raw research materials and records and receiving and documenting testimony from all relevant sources, including that from the respondent.

2. Convening a hearing by the Investigation Committee—as defined above in Section II. Definitions.
3. Drawing conclusions—After review of the evidence, the Investigation Committee shall draw conclusions about whether the evidence persuasively supports a finding that scientific misconduct took place, about the nature of deeds engaged in, and about who is responsible.
4. Preparing a report—A report shall be prepared setting forth and documenting evidence received, conclusions drawn, and actions recommended.

B. Committee Structure

The Investigation Committee shall be comprised of the Inquiry Committee (i.e. the Vice President for Research & Economic Development, the Department Chair or Director in which the alleged misconduct occurred, and the three faculty members appointed by the President) and two additional, preferably senior faculty, also appointed by the President. The Vice President for Research & Economic Development shall serve as the non-voting Chair of the Committee, but will vote in the case of a tie. If special expertise is needed, additional non-voting members may be appointed who are not affiliated with New Mexico Tech.

Appointees to the Investigation Committee must have no conflicts of interest with the respondent or the complainant and shall be relieved of their Investigations Committee appointments at the outset if they believe that their personal or professional relationships with the principal(s) in the case may affect their judgment. Membership in the same academic unit is not necessarily considered to be a conflict of interest in the context of this policy. A high proportion of the members should have appropriate research expertise in the accused's field or a closely affiliated field. All decisions of the Committee require a majority vote.

C. Process

The process shall be initiated within 30 days of the conclusion of the Inquiry Phase (i.e. the submission of the final written report of the Inquiry Committee) by the Vice President for Research & Economic Development, who shall send written notification of the investigation to those involved. The respondent shall be provided with a complete statement of the allegations and must prepare a written response within 10 working days of the receipt of the statements. All relevant evidence shall be considered in the Investigation Phase. "Evidence" includes all items requested during the Inquiry Phase, plus additional notes, journals, letters, computer printouts, equipment printouts, publications, manuscripts, tours of the laboratory or other research area, witness testimony, testimony of the accused, and any other item which is reasonably requested for examination by the Investigation Committee. All items pertaining to the case are to be carefully documented in written form by the Committee including the statements by the respondent, the complainant, and witnesses made during the hearing. At the discretion of the Vice President for Research & Economic Development, a court reporter may be retained for this purpose. All persons involved are obligated to cooperate fully by providing all information pertaining to the case.

The respondent and the complainant have the right to legal counsel at their own expense. Counsel shall be permitted to attend the hearing, however, attorneys for the respondent and the complainant shall not be permitted to testify, cross-examine witnesses, or otherwise take an active role in the proceedings.

The proceedings of the Investigation Phase shall be strictly confidential. Only members of the Investigation Committee, persons called as witnesses by the Investigation Committee, the complainant, the respondent, and their legal counsels, if any, shall be allowed in the hearing. Any member of the Committee or other affiliated person who breaches the confidentiality of the reports and paperwork shall be subject to disciplinary action, including removal from the Committee.

If it is deemed necessary by the Investigation Committee, interim administrative action may be taken to protect the health and safety of research subjects, the best interests of students and colleagues, and University and community property. This action may range from requiring alterations in the research activities of the respondent to full suspension of his or her research activities. The Committee's recommendations shall be made to the President.

D. Timetable and Report(s)

The Investigation Phase must be initiated within 30 days of the submission of the Inquiry Committee's final written report and shall be completed no later than 120 days after the Investigation Phase is opened.

If the Investigation Phase cannot be completed in 120 days, the Committee shall submit a written interim report to the President noting the progress of the Investigation, the reasons for the delay, and a proposed completion date. In addition, the Vice President for Research & Economic Development shall submit a request for an extension to the funding agency (ies), if any, and include an interim report on the progress to date and an estimate for the date of completion of the report and other necessary steps.

At the completion of the investigation, the findings of the Investigation Committee and recommended actions shall be submitted in written form to the President for implementation. The respondent shall be provided a complete copy of the recommendations. If the investigation involves more than one person, only the portion that pertains to that person will be provided to him or her.

If the researcher leaves New Mexico Tech prior to the close of the investigation, New Mexico Tech will still complete the Investigation Phase.

VIII. AFTER THE INVESTIGATION PHASE

If the Investigation Committee finds that research misconduct did not occur, all pertinent agencies and individuals will be notified as quickly as possible by the Vice President for Research & Economic Development. (See Section XI- Unfounded Allegations.)

If no actual intentional misconduct has occurred, but the scientific record needs to be corrected, the Vice President for Research & Economic Development shall see that corrections to the

scientific record are made. If the research has been published, the Committee can recommend specific action, if any, based on the circumstances of the case.

If misconduct has occurred, the Vice President for Research & Economic Development will inform as quickly as possible: the involved funding agencies, the complainant, the respondent, and other appropriate individuals of the results of the investigation. Other organizations and entities will be notified, if applicable, including:

- ▶ The Restricted Funds Accounting Office/Budget Office and/or The Office of the Registrar
- ▶ Co-authors, co-investigators, collaborators
- ▶ Editors of journals in which the accused or, in the case of a collaborator (albeit unknowingly), published fraudulent research
- ▶ State professional licensing boards
- ▶ Editors of other journals, or publications, other institutions, sponsoring agencies, and funding sources with which the accused has been affiliated
- ▶ Professional societies
- ▶ Criminal authorities, if appropriate
- ▶ Others who might be affected.

Disciplinary action shall be recommended by the Investigation Committee to the President. If the accused is a currently enrolled student, the Student Disciplinary Committee shall meet with the Investigation Committee, and shall jointly recommend appropriate action to the President.

Recommended disciplinary action shall be in accordance with appropriate, established University policies and procedures. Disciplinary actions may include, but are not limited to, letter of reprimand, removal of chairperson or administrative position, reduction in salary, dismissal, and termination of employment. If the individual is a student, credit hours and the grade for the course in question may be withdrawn and the student may be suspended or expelled. If the research in question was the basis of a graduate thesis or dissertation or played a significant role in the award of an undergraduate, graduate or professional degree, New Mexico Tech reserves the right to withdraw the degree awarded. The student's transcript shall be amended and New Mexico Tech will notify professional societies, licensing boards and other pertinent parties of the decision.

In the case of termination of employment, expulsion, or in the case of the respondent's decision to resign or withdraw from New Mexico Tech, the Director of Human Resources or the Registrar shall place the findings of the Investigation Committee in the respondent's personnel or student file.

IX. RECORDS RETENTION

The written report from the Inquiry Phase and all records pertaining to the Investigation Phase, including the final report written at the completion of the investigation, shall be kept in a locked

file in the Office of the Vice President for Research & Economic Development. The records shall be retained for a minimum of 7 years for Official University purposes and to enable the agency (ies) funding the research to obtain information regarding the case. At the discretion of the Vice President for Research & Economic Development, original notebooks, printouts and other original materials that were submitted by the respondent in response to the request of the Inquiry and/or Investigation Committees, shall be returned to the respondent after copies are made for the file. Only appropriate officials, based on the judgment of the Vice President for Research & Economic Development, shall be permitted access to these files.

X. APPEALS PROCESS

The respondent may appeal the decision of the Investigation Committee by submitting in writing a Statement of Appeal to the President within fifteen (15) working days of the notification to the respondent by the Vice President for Research & Economic Development of the Investigation Committee's decision.

The appeal shall not constitute a new fact-finding process, but shall rather be a review of the record previously compiled. The appeal must be based on a contention that improper procedures were followed during the Inquiry or Investigation phase; that the decision of the Investigation Committee, when taken as a whole, was not based upon sufficient evidence; or that the decision of the Investigation Committee was reached in an arbitrary and capricious manner.

The respondent must set forth in his or her written Statement of Appeal a summary of the facts of the case, the investigative procedures which have taken place, the dates of hearing(s), the witnesses present, a brief summary of the relevant testimony and evidence presented at the hearings, and the particular bases or grounds for the appeal. The Vice President for Research & Economic Development shall make available to the respondent for his/her use in preparing the appeal the entire record of the case. The respondent must deliver a copy of the Statement of Appeal to the President and to the Vice President for Research & Economic Development.

The Vice President for Research & Economic Development shall then deliver the entire record of the case, including the transcript of the hearing and all exhibits and documentary evidence, to the President. The Vice President for Research & Economic Development may make a written response to the Statement of Appeal in which he or she sets forth facts and arguments in support of the Investigation Committee's decision, with a copy provided to the respondent.

The decision of the President shall be final.

XI. UNFOUNDED ALLEGATIONS AND MALICIOUS ALLEGATIONS AND RETALIATION

A. Unfounded Allegations

If the Inquiry or Investigation Committee finds the allegations are not justified, but the complainant submitted the allegations in good faith, the case shall be dismissed and no further action will be taken except to inform the complainant, the accused and any witnesses of the

decision. If necessary, the pertinent funding agencies shall be notified that during the course of the Investigation Phase, the allegations were found to be unjustified.

B. Malicious Allegations and Retaliation

If in the Pre-Inquiry, the Inquiry or the Investigation Phases, the allegations are found to have not been made in good faith and the complainant is found to have been maliciously motivated, the complainant shall be subject to disciplinary action.

New Mexico Tech will make every effort to protect the complainant against retaliation. If the complainant requests a transfer, New Mexico Tech shall act in good faith to help him or her to find a position of comparable responsibility and salary.

The Vice President for Research & Economic Development shall caution the respondent that—engaging in acts of retaliation toward the complainant, members of either an Inquiry or Investigation Committee, or other members of New Mexico Tech, shall be subject to disciplinary action.

The disciplinary actions possible for both malicious allegations and retaliatory acts may range from a public letter of reprimand to dismissal and termination of employment. The disciplinary action to be taken shall be recommended by either the Inquiry or the Investigation Committee to the President. If the claimant or respondent, respectively, is a student, the Student Disciplinary Committee shall meet with the Inquiry or Investigation Committee, shall jointly recommend appropriate action to the President.

XII. MODIFICATIONS TO THIS POLICY

Any proposed modifications to this policy shall be submitted to the Vice President for Research and Economic Development for consideration. Proposed changes will be forwarded to the Institute Senate for comments, to the President for his/her approval, and finally to the Board of Regents for sanction.