

BARD COLLEGE RESEARCH MISCONDUCT GRIEVANCE POLICY AND PROCEDURES

Bard College is committed to setting a behavioral standard of appropriate research conduct among all of its faculty, staff, and students. The College fosters a research environment that promotes responsible research activities, condemns misconduct, mandates good-faith reports of misconduct, and takes reasonable and effective steps to protect good-faith reporters, witnesses, and committee members from inappropriate breaches of confidentiality and retaliation.

This document contains the grievance policy and procedures to be followed by Bard College in case of possible research misconduct by any member of the Bard College community whose research is funded by the US Department of Health and Human Services, as described in the Public Health Service Policies on Research Misconduct, 42 CFR Parts 50 and 93, also known herein as the final rule. This document refers to various sections of the final rule, instead of repeating all the requirements of those sections.

Research Misconduct Proceedings—Criteria, Reports, and Time Limitations

Promptly after receiving an allegation of research misconduct, defined as a disclosure of possible research misconduct through any means of communication, the Vice President for Academic Affairs (hereafter referred to as the VPAA) and/or his/her designee(s) shall assess the allegation to determine if: (1) it meets the definition of research misconduct in 42 CFR Section 93.103; (2) it involves either the PHS supported research, applications for PHS research support, or research records specified in 42 CFR Section 93.102(b); and, (3) the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

If it is determined that an inquiry (i.e., an initial review of the evidence to determine if the criteria for conducting an investigation have been met) is warranted, the VPAA will designate one or more persons to complete the inquiry, which may include one or more individuals from outside of the College if deemed necessary. The inquiry process, including preparation of the inquiry report and giving the respondent a reasonable opportunity to comment on it, must be completed within 60 calendar days of its initiation, unless the circumstances warrant a longer period. If the inquiry takes longer than 60 days to complete, documentation of the reasons for the delay will be included in the inquiry record. The inquiry report shall contain the following information: (1) The name and position of the respondent(s); (2) A description of the allegations of research misconduct; (3) The PHS support involved, including, for example, grant numbers, grant applications, contracts, and publications listing PHS support; (4) The basis for recommending that the alleged actions warrant an investigation; and (5) Any comments on the report by the respondent or the complainant.

After receiving the inquiry report, the VPAA will make a written determination of whether an investigation is warranted. If the inquiry results in a determination that an investigation is warranted, the VPAA will establish a committee to conduct the investigation. The committee shall begin the investigation within 30 calendar days of that determination and, on or before the date on which the investigation begins, the VPAA will send the inquiry report and the written determination to the ORI. The committee shall use its best efforts to complete the investigation within 120 calendar

days of the date on which it began, including conducting the investigation, preparing the report of findings, providing the draft report for comment, and sending the final report to ORI. If it becomes apparent that the committee cannot complete the investigation within that period, it shall promptly request an extension in writing from ORI. This time period does not apply to separate termination hearings.

In conducting all investigations, the committee shall: (1) Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research records and evidence relevant to reaching a decision on the merits of the allegations; (2) Interview each respondent, complainant, and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the respondent, and record or transcribe each interview, provide the recording or transcript to the interviewee for correction, and include the recording or transcript in the record of investigation; (3) Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of additional instances of possible research misconduct, and continue the investigation to completion; and (4) Otherwise comply with the requirements for conducting an investigation in 42 CFR Section 93.310.

The committee shall prepare the draft and final institutional investigation reports in writing and provide the draft report for comment as provided elsewhere in these policies and procedures and 42 CFR Section 93.312. The final investigation report shall:

- (1) Describe the nature of the allegations of research misconduct;
- (2) Describe and document the PHS support, including, for example any grant numbers, grant applications, contracts, and publications listing PHS support;
- (3) Describe the specific allegations of research misconduct considered in the investigation;
- (4) Include the institutional policies and procedures under which the investigation was conducted, if not already provided to ORI;
- (5) Identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody, but not reviewed. **The report should also describe any relevant records and evidence not taken into custody and explain why.**
- (6) Provide a finding as to whether research misconduct did or did not occur for each separate allegation of research misconduct identified during the investigation, and if misconduct was found, (i) identify it as falsification, fabrication, or plagiarism and whether it was intentional, knowing, or in reckless disregard, (ii) summarize the facts and the analysis supporting the conclusion and consider the merits of any reasonable explanation by the respondent and any evidence that rebuts the respondent's explanations, (iii) identify the specific PHS support; (iv) identify any publications that need correction or retraction; (v) identify the person(s) responsible for the misconduct, and (vi) list any current support or known applications or proposals for support that the respondent(s) has pending with non-PHS Federal agencies; and

(7) Include and consider any comments made by the respondent and complainant on the draft investigation report.

The College shall maintain and provide to ORI upon request all relevant research records and records of all research misconduct proceedings, including results of all interviews and the transcripts or recordings of such interviews.

Ensuring a Fair Research Misconduct Proceeding

The College shall take all reasonable steps to ensure an impartial and unbiased research misconduct proceeding to the maximum extent practicable. The Provost shall select those conducting the inquiry or investigation on the basis of scientific expertise that is pertinent to the matter and, prior to selection, shall screen them for any unresolved personal, professional, or financial conflicts of interest with the respondent, complainant, potential witnesses, or others involved in the matter. Any such conflict, which a reasonable person would consider to demonstrate potential bias, shall disqualify the individual from selection.

Confidentiality

To the extent allowed by law, the College shall maintain the identity of respondents and complainants securely and confidentially and shall not disclose any identifying information, except to: (1) those who need to know in order to carry out a thorough, competent, objective and fair research misconduct proceeding; and (2) ORI as it conducts its review of the research misconduct proceeding and any subsequent proceedings.

To the extent allowed by law, any information obtained during the research misconduct proceeding that might identify the subjects of research shall be maintained securely and confidentially and shall not be disclosed, except to those who need to know in order to carry out the research misconduct proceeding.

Protecting complainants, witnesses, and committee members

Institutional members may not retaliate in any way against complainants, witnesses, or committee members. Institutional members should immediately report any alleged or apparent retaliation against complainants, witnesses, or committee members to the VPAA, who shall review the matter and, as necessary, make all reasonable and practical efforts of counter any potential or actual retaliation and protect and restore the position and reputation of the person against whom the retaliation is directed.

Notice to Respondent

During the research misconduct proceeding, the College shall provide the following notifications to all identified respondents:

- Initiation of Inquiry. Prior to or at the beginning of the inquiry, the College shall provide the respondent(s) written notification of the inquiry and contemporaneously sequester all research records and other evidence needed to

- conduct the research misconduct proceeding. If the inquiry subsequently identifies additional respondents, they shall be promptly notified in writing.
- Comment on Inquiry Report. The College shall provide the respondent(s) an opportunity to comment on the inquiry report in a timely fashion so that any comments can be attached to the report.
 - Results of the Inquiry. The College shall notify the respondent(s) of the results of the inquiry and attach to the notification copies of the inquiry report and these institutional policies and procedures for the handling of research misconduct allegations.
 - Initiation of Investigation. Within a reasonable time after the determination that an investigation is warranted, but not later than 30 calendar days after that determination, the College shall notify the respondent(s) in writing of the allegations to be investigated. Respondent(s) shall be given written notice of any new allegations within a reasonable time after determining to pursue allegations not addressed in the inquiry or in the initial notice of the investigation.
 - Scheduling of Interview. The College will notify the respondent sufficiently in advance of the scheduling of his/her interview in the investigation so that the respondent may prepare for the interview and arrange for the attendance of an advisor who is a member of the College community, if the respondent wishes. The advisor's role is limited to providing support and consultation.
 - Comment on Draft Investigation Report. The College shall give the respondent(s) a copy of the draft investigation report, and concurrently, a copy of, or supervised access to, the evidence on which the report is based and notify the respondent(s) that any comments must be submitted within 30 days of the date on which he/she received the draft report. The College shall ensure that these comments are included and considered in the final investigation report.
 - Appeal. Although the provision of an appeal that could result in the reversal or modification of the findings in the investigation report is not required by the HHS regulations, the College will allow the respondent to appeal the findings of the report. The respondent shall receive timely notification of that appeal process. If an appeal is made, the Provost will designate a separate committee to evaluate the appeal, which may include individuals from within Providence College and/or individuals from outside of the College community. Any appeal process must be completed within 120 days unless Providence College has requested and received an extension from ORI.

Notifying ORI of the Decision to Open an Investigation and of Institutional Findings and Actions Following the Investigation.

On or before the date on which the investigation begins (the investigation must begin within 30 calendar days of the finding that an investigation is warranted), the College shall provide ORI with the written finding by the VPAA and a copy of the inquiry report containing the information required by 42 CFR Section 93.309(a). Upon a request from ORI the College shall promptly send them: (1) a copy of the institutional policies and procedures under which the inquiry was conducted; (2) the research records and evidence reviewed, transcripts or recordings of any interviews, and copies of all relevant documents; and (3) the charges for the investigation to consider.

The College shall promptly provide to ORI after the investigation: (1) A copy of the investigation report, all attachments, and any appeals; (2) A statement of whether the

institution found research misconduct and, if so, who committed it; (3) A statement of whether the institution accepts the findings in the investigation report; and (4) A description of any pending or completed administrative actions against the respondent.

Maintenance and Custody of Research Records and Evidence

The College shall take the following specific steps to obtain, secure, and maintain the research records and evidence pertinent to the research misconduct proceeding:

(1) **Either before or when the College notifies the respondent of the allegation**, the College shall promptly take all reasonable and practical steps to obtain custody of all research records and evidence needed to conduct the research misconduct proceeding, inventory those materials, and sequester them in a secure manner, except in those cases where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.

(2) Where appropriate, give the respondent copies of, or reasonable, supervised access to the research records.

(3) Undertake all reasonable and practical efforts to take custody of additional research records and evidence discovered during the course of the research misconduct proceeding, including at the inquiry and investigation stages, or if new allegations arise, subject to the exception for scientific instruments in (1) above.

(4) The College shall maintain all records of the research misconduct proceeding, as defined in 42 CFR Section 93.317(a), for 7 years after completion of the proceeding, or any ORI or HHS proceeding under Subparts D and E of 42 CFR Part 93, whichever is later, unless the College has transferred custody of the records and evidence to HHS, or ORI has advised us that the College no longer needs to retain the records.

Interim Protective Actions

At any time during a research misconduct proceeding, the College shall take appropriate interim actions to protect public health, federal funds and equipment, and the integrity of the PHS supported research process. The necessary actions will vary according to the circumstances of each case, but examples of actions that may be necessary include delaying the publication of research results, providing for closer supervision of one or more researchers, requiring approvals for actions relating to the research that did not previously require approval, auditing pertinent records, or taking steps to contact other institutions that may be affected by an allegation of research misconduct.

Notifying ORI of Special Circumstances That May Require Protective Actions

At any time during a research misconduct proceeding, the College shall notify ORI immediately if there is reason to believe that 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 violations of civil or criminal law.
- (5) Federal action is required to protect the interests of those involved in the research misconduct proceeding.
- (6) The College believes the research misconduct proceeding may be made public prematurely, so that HHS may take appropriate steps to safeguard evidence and protect the rights of those involved.
- (7) The College believes the research community or public should be informed.

Institutional Actions in Response to Final Findings of Research Misconduct

Bard College will cooperate with and assist ORI and HHS, as needed, to carry out any administrative actions HHS may impose as a result of a final finding of research misconduct by HHS.

Restoring Reputations

Respondents Bard College shall undertake all reasonable, practical, and appropriate efforts to protect and restore the reputation of any person alleged to have engaged in research misconduct, but against whom no finding of research misconduct was made, if that person or his/her legal counsel or other authorized representative requests that the College do so.

Complainants, Witnesses, and Committee Members Bard College shall undertake all reasonable and practical efforts to protect and restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against those complainants, witnesses and committee members.

Cooperation with ORI

Bard College shall cooperate fully and on a continuing basis with ORI during its oversight reviews of this institution and its research misconduct proceedings and during the process under which the respondent may contest ORI findings of research misconduct and proposed HHS administrative actions. This includes providing, as necessary to develop a complete record of relevant evidence, all witnesses, research records, and other evidence under the College's control or custody, or in the possession of, or accessible to, all persons that are subject to the College's authority.

Reporting to ORI Bard College will report to ORI any proposed settlements, admissions of research misconduct, or institutional findings of misconduct that arise at any stage of a misconduct proceeding, including the allegation and inquiry stages.

Bard College is grateful to Providence College for allowing Bard to adopt and revise Providence College's policy