

**GEORGE MASON UNIVERSITY  
MINUTES OF THE FACULTY SENATE  
NOVEMBER 28, 2012  
Robinson Hall B113, 3:00 - 4:15 p.m.**

**Senators Present:** Dominique Banville, Sheryl Beach, Jim Bennett, Lisa Billingham, John Cantiello, Lloyd Cohen, Arie Croitoru, Charlene Douglas, Robert Dudley, Cody Edwards, Janos Gertler, Ghassan Husseinali, Dimitrios Ioannou, Kathryn Jacobsen, Dan Joyce, David Kuebrich, Ning Li, Linda Monson, Harold Morowitz, Star Muir, Peter Pober, Pierre Rodgers, Steven Rose, Joe Scimecca, Suzanne Scott, Suzanne Slayden, June Tangney, Susan Trencher, Iosif Vaisman, Anand Vidyashankar, Jenice View, Phil Wiest, Stanley Zoltek.

**Senators Absent:** Kenneth Ball, Andrea Bartoli, Scott Bauer, Alok Berry, Doris Bitler Davis, Ángel Cabrera, Jack Censer, Vikas Chandhoke, Rick Coffinberger, Yvonne Demory, Daniel Garrison, Mark Ginsberg, Jorge Haddock, Mark Houck, Bruce Johnsen, Jian Lu, Jerry Mayer, Elavie Ndura, Daniel Polsby, Thomas Prohaska, William Reeder, Edward Rhodes, Mark Rozell, Jim Sanford, Bob Smith, Lesley Smith, Peter Stearns, Susan Tomasovic, John Zenelis.

**Visitors Present:** Rizna Ahmed, Director, Benefits, Wellness and Work/Life, Human Resources/Payroll; Jessica Cain, Employee Relations Specialist, Human Resources/Payroll; Aurali Dade, Assistant Vice President, Research Compliance, Office of Research Integrity and Assurance; Pat Donini, Employee Relations Director/Deputy Director HR, Human Resources/Payroll; Esther Elstun, Professor *emerita*, Modern and Classical Languages; Linda Harber, Associate Vice President, Human Resources/Payroll; Tricia McKenzie, Librarian, University Libraries; Janette Muir, Associate Provost for Undergraduate Education; Claudia Rector, Assistant Provost for Academic Affairs; Brian Selinsky, Interim Associate Provost and University Registrar; Walt Sevon, Executive Director, Technology Systems Division; Nicole Snyder, University Policy Manager, Office of University Counsel; Bethany Usher, Director, Students as Scholars, OSCAR/Assoc Director, Center for Teaching and Faculty Excellence; Renell Wynn, Vice President, Communications and Marketing.

**I. Call to Order:** The meeting was called to order at 3:03 p.m.

**II. Approval of the Minutes of October 10, October 24, and November 7, 2012:** The minutes of October 10 and November 7, 2012 were approved as distributed. The minutes of October 24 will be submitted for approval at our next meeting.

**III. Announcements**

Jim Finkelstein (SPP) was elected to serve a two-year term and Jim Harvey (SOM) was elected to serve a one-year term as Faculty Representatives to the BOV Development Committee. Bob Smith (CHSS) was elected to serve a two-year term and Faye Taxman (CHSS) was elected to serve a one-year term as Faculty Representatives to the BOV Research Committee

The Faculty Senate and GMU AAUP will host its annual reception for the BOV on Wednesday, Jan 30, 2013 from 4:00 – 6:00 p.m. in the Mason Hall atrium. Chair Tangney noted that reminders will be sent. Wine and hors d'oeuvres will be served. Chair Tangney hopes you will come and meet the sixteen members of the Board of Visitors; a nice time to get together and socialize.

**IV. New Business - Committee Reports**

**A. Senate Standing Committees**

*Executive Committee – no report*

*Academic Policies – Suzanne Scott, Chair*

Our committee brought some (proposed) changes to the catalog (at our previous meeting), met with friendly amendments and sent back to committee. The committee decided not to make changes to the catalog.

We were asked to consider eliminating Columbus Day as a student holiday and add Election Day instead. Why? To eliminate Monday meetings on Tuesday, and to encourage voting. We seek your input.

Discussion: Several Senators opposed this because they like to have a three day weekend, as do students. Some faculty and students may decide to take a four-day weekend. Elections are held each year in Virginia. Florida has Veterans' Day off, not Columbus Day. A Senator from the College of Education and Human Development reported "a lot of our faculty thought this was a good idea, particularly adjunct faculty who need to reschedule, also working students."

Senator Kuebrich: There is some momentum in national political body to make it easier to vote (e.g. Sunday). We're talking about access to voting for 40,000 people. Some faculty may have easier access. Students in one of my classes were very much in favor of it. We have a polling place on campus, students lined up long after polling place closed. To show students we take polling very seriously, sees as a positive step. Another Senator observed voting is more important than debating someone else's conflict.

The Faculty Senate has been asked to approve the academic year calendar, but never asked to approve the summer calendar. We have asked the person who schedules (the summer term) to come to the Executive Committee meeting in January.

*Budget & Resources – Susan Trencher, Chair*

We have no new issues to report.

*Faculty Matters – Lisa Billingham*

We are working on the Faculty Evaluation of Administrators survey to improve clarity of language. The committee will send changes to the Faculty Senate for review.

**Reconsideration of New Policy re Criminal Background Checks** – David Kuebrich

**Introduction:** The following resolution does not argue it was a bad idea for appropriate administrators to quickly develop and implement the new policy re criminal background checks. This may have seemed the best course of action at the time, given that it was late in the spring semester and the Faculty Senate may not have had time to discuss the issue before summer break. However, now that this policy is in place and temporarily provides the safeguards the Administration then perceived as necessary, the Senate has the opportunity to review it in a more deliberate manner that allows for the consideration of additional information and points of view. The present resolution simply calls for the appropriate Senate committee, presumably Faculty Matters, to conduct such a review. The details of how such a review will be conducted is left to the committee.

**Resolution:** It is the judgment of the Faculty Senate that University Policy Number 2221 should receive further consideration and possibly be revised or abolished. The policy was developed, *without consulting the Faculty*, during Spring, 2012 and implemented on June 25, 2012. It requires, among other things, that "all new and rehired salaried employees" who begin employment on or after June 25, 2012 as well as employees who "transfer into new positions" and "all staff, volunteers, chaperones, and guests of sponsored events" be subject to criminal background checks. In addition, it requires every employee to

“inform his/her supervisor or departmental designee within five business days “if convicted of a crime (not including traffic infractions).”

### Reasons to Reconsider

1. The AAUP has considered this issue and advises against such a blanket policy because it A) requires too large an invasion of privacy for the limited benefit that *might* be achieved and B) poses a risk for the misuse of sensitive information:

“Our primary recommendation is that the principle of proportionality prohibits the adoption of a general policy of searching the criminal records, if any, of all applicants for all faculty positions. . . .

“[W]e conclude that for an ordinary faculty appointment, the likely benefits of a background criminal investigation of an applicant are dwarfed by the grave invasions of privacy caused by such investigations, as well as by the great potential of such investigations to facilitate the misuse of sensitive information.” “Verification and Trust: Background Investigations Preceding Faculty Appointment,” prepared by by Professors Matthew W. Finkin (Law, University of Illinois), Robert C. Post (Law, Yale University), Judith J. Thompson (Philosophy, Massachusetts Institute of Technology). Approved by AAUP Committee A on Academic Freedom and Tenure (June 2004); adopted by the AAUP Council (Nov 2004).

2. The policy could discourage faculty from coming to GMU. This, along with the privacy issue, was reportedly a key concern at the University of Texas and, seemingly, at a number of other universities: “University of Texas faculty concerns about privacy and a negative effect on recruiting led to a very public debate about a proposed background check policy. Officials responded to concerns by scaling back the policy to apply only to ‘security sensitive’ positions. It is concerns like these, perhaps, that lead most institutions that implement background checks to do so on a limited basis, and rarely apply them to faculty” (Ann D. Springer, “Legal Watch—Background Checks, When the Past Isn’t Past,” AAUP, *Academe Online*, April, 2003).

3. The process for developing and implementing the new policy does not provide a compelling rationale. The reasons that have been given are 1) the recent child-abuse scandal at Penn State and 2) other Virginia public colleges and universities have adopted such a policy. However, the Penn State justification is problematic on several grounds: a) the new GMU policy would not have prevented what happened at Penn State, b) most GMU employees don’t relate to minors as part of their employment, and c) those who do—for instance, staff of a summer camp or child development center—might be subjected to a background check without making this a requirement for all employees. The argument from other Virginia colleges is, in itself, questionable in two respects. First, when did these colleges develop such policies? Were some acting hurriedly in response to Penn State? Second, although the Faculty Senate has been told other schools are doing this, it hasn’t been told how and why these policies were developed. Were they the result of careful deliberation by administration, staff and faculty? And if so, what were the *reasons* that convinced all parties such a policy was advisable?

4. The new policy does not address various important issues: For instance, what happens to an employee who is convicted but who appeals her/his case? Will the employee be subject to termination once convicted or be retained until the appeal process is completed? If terminated will s/he be automatically re-hired if found innocent by an appellate court? Another issue of concern: what about the employee who is convicted of non-violent civil disobedience, a “crime” that might better be termed a form of political speech. Is this employee required to report this conviction to his/her supervisor—and be subject to possible dismissal?

5. The money (\$49-\$70/background check) and staff time required to implement each individual background check might, arguably, be better spent on other needs: for example, the money might be

directed to financial assistance for low-income students or an enlargement of the faculty study-leave program.

6. The policy overreaches, amounting to an un-warranted invasion of privacy. Most aspects of an employee's life, even criminal convictions, are none of the employer's business. If a GMU faculty or staff member is convicted for a sound disturbance in his/her neighborhood, for failure to make required child-support or alimony payments, for illegally chopping down a branch of a neighbor's tree because it hinders his/her view of the sunset, for blocking entrance to a government building to protest a government policy that is widely perceived to be reckless or grossly immoral, for improperly disposing of trash, for imprudently taking a toke while walking in the park—one could go on and on with such examples—these acts in themselves do not impose any harm to University personnel or property or otherwise pose a threat to the functioning of the University. Nor do they render the employee less able to fulfill her/his contractual obligations. So there is no reason for faculty or staff to divulge such information to their employer.

7. It seems prudent to check the impulse to react quickly to disturbing events played up by the news media. As a general principle, a policy quickly designed and implemented in response to a shocking incident, especially if it reduces personal freedom or rights, should be subject to subsequent review.

8. It seems advisable that GMU, in keeping with AAUP guidelines, scale back its policy—as did, for example, the University of Texas—to include only “security sensitive” positions. In addition, the revised policy should include a brief rationale for restricting criminal background checks to “security sensitive” positions. Then if there were to arise an occasion when the University needed to explain its position, it would have a well-articulated rationale at hand that demonstrated it had considered the issue carefully and developed a policy consistent with professional guidelines.

(Submitted by Dave Kuebrich, 10/10/12, revised on 11/19/12)

Discussion:

A Senator clarified that the statements about University of Texas no longer accurate. They now force colleagues to go through background check processes.

A Senator from the College of Health and Human Services noted that in CHHS we have background checks on all students and faculty. “Barrier” issues such as laying hands on another person. This other thing does not resonate with our unit. “blanket” could be a lot of people.

Another Senator observed a compelling argument rather than blanket one, applies to groups which deal with minor students (e.g. high school students) in lieu of doing something more tailored or specific. “Blanket” merits attention, and welcomed feedback from Human Resources and what they do.

A motion was made and seconded to adopt the [resolution](#). The resolution passed unanimously.

*Nominations – Jim Bennett, Chair*

Chair Tangney, with great regret, announced that Earle Reybold has stepped down as Secretary and from the Faculty Senate. Peter Pober (CHSS) is nominated to serve as Faculty Senate Secretary.

Evans Mandes (COS) is nominated to serve a faculty representative to the search committee for a new police chief.

A motion was made and seconded to suspend the rules and to take the two elections together. The nominations were approved. Congratulations and thanks to the nominees.

*Organization & Operations – no report.*

## **B. Other Committees/Faculty Representatives**

*Faculty Handbook Revision Committee - Suzanne Slayden, Chair*

In presenting the following report, Senator Slayden noted that she understands that the BOV is setting up a subcommittee to study the Faculty Handbook.

### **Report from the Faculty Handbook Revision Committee for the Faculty Senate meeting November 28, 2012**

The Faculty Handbook Revision Committee will include the proposed revisions to Section 1.2.5 along with other proposed revisions at the Special Meeting on Feb. 13, 2013.

The current wording of the proposed revision is (with the most relevant changes in bold):

#### 1.2.5 Faculty Participation in the Selection of Certain Members of the Central Administration

The faculty plays a vital role in the appointment and reappointment of senior academic administrators and other leadership positions related to the academic mission of the university.

The Board of Visitors provides for participation by faculty on presidential search, reappointment, and contract extension committees. **A minimum of 25% of the committee must be composed of faculty, at least half of whom are elected by the General Faculty, with the remainder appointed by the Board of Visitors. No more than one representative from any school/college/institute may serve on the committee.** The Board will make concerted efforts to further engage the faculty in the selection process (e.g., conducting a survey of faculty regarding desirable characteristics; providing an opportunity for General Faculty or representatives of the General Faculty to meet with finalists). In the case of reappointment or contract extension, this process includes an opportunity for the General Faculty to meet with the President to discuss his or her achievements and future plans for the university.

The President provides for faculty participation on search, reappointment, and contract extension committees for the Provost. **A minimum of 55% of the committee must be composed of faculty, at least half of whom are elected by the General Faculty, with the remainder appointed by the President. No more than two representatives from any school/college/institute may serve on the committee.** The President will make concerted efforts to further engage the faculty in the selection process (e.g., conducting a survey of faculty regarding desirable characteristics; providing an opportunity for General Faculty or representatives of the General Faculty to meet with finalists). In the case of reappointment or contract extension, this process includes an opportunity for the General Faculty to meet with the Provost to discuss his or her achievements and future academic plans for the university.

The Provost provides for participation on search and reappointment committees for college, school, or institute deans and directors by faculty who are elected from and by the faculty of the college, school, or institute in which the appointment will occur. The search and selection process must include opportunities for the college, school, or institute faculty to meet with the dean/director or with candidates who are finalists for the position.

The Faculty Senate will assist in conducting elections by the General Faculty.

## **VI. Other New Business**

*Research Misconduct Policy Update - Aurali Dade, Assistant Vice President for Research Integrity & Assurance*

Vice President Dade thanked all who took the time out to review the Research Misconduct policy. She joined GMU in the spring. The current policy in place is difficult to follow. There were concerns about due process issues, protection of respondents, and serious consequences of accusations. Professors Suzanne Slayden and Bob Pasnak served on the formal task force, Fall 2012. The biggest change is the central assessment of allegations. Unfortunately the order of attachments was posted backwards on line; University Policy Number 4007 is the main document (below).

The Central Assessment Mechanism is a preliminary assessment. Protects confidentiality better, 28 universities have some sort of central research integrity person. VP Dade serves as the research integrity officer, has done this for five years. A low percentage of allegations go further. Of 15 allegations received, 4 went forward, 2 investigated; one involved retraction of fifty papers. Expert faculty are involved to provide advice in the inquiry stage. Allegation requirements more clearly delineated in the revision, based on AAUP recommendations. Please send your feedback/comments to [adade3@gmu.edu](mailto:adade3@gmu.edu).

## **University Policy Number 4007**

**Subject:** Misconduct in Research and Scholarship

**Responsible Office:** Office of Research Integrity & Assurance

**Procedures:** Research Misconduct Procedure

### **Related Law & Policy:**

Data Stewardship

Financial Conflicts of Interest in Federally-Funded Research

Sponsored Programs Administration

Guidance governing research misconduct in connection with support from Federal agencies includes: (1) 42 CFR Part 93, for the Public Health Service of the United States Department of Health and Human Services; (2) 45 CFR Part 689, for the National Science Foundation; (3) 14 CFR Part 1275 and section 1260.40, for the National Aeronautics and Space Administration; (4) 10 CFR Part 733 and section 600.31, and 48 CFR sections 935.070 – 935.071, 952.235-71, and 970.5204-3, for the United States Department of Energy; (5) 48 CFR section 1252.235-70 and Implementation Guidance, Feb. 2002, for the United States Department of Transportation; (6) 68 Fed. Reg. 53861 (Sept. 12, 2003), for the United States Department of Labor; (7) EPA Order 3120-5, Mar. 18, 2003, for the United States Environmental Protection Agency; and (8) VHA Handbook 1058.2, May 4, 2005, for the United States Department of Veterans Affairs.

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## **I. SCOPE**

This policy applies to all full-time and part-time employees of the University, to all persons holding any position affiliated with the university, to all graduate students engaged in research activities leading to the generation of reports, conference papers, publications, or creative works in which the university affiliation is indicated, to undergraduate students who are involved in sponsored research,

and to all individuals at the university engaged in teaching, research, or scholarship, or under the control of, or affiliated with, the university.

Allegations of academic misconduct by graduate students are governed solely by the university honor code, except for: (1) research activities as defined above regardless of sponsorship; and (2) master's theses and doctoral dissertations, both of which are governed by this policy. Allegations of academic misconduct by undergraduate students are governed solely by the university honor code, except for sponsored research activities which are governed by this policy.

## **II. POLICY STATEMENT**

Members of the George Mason University community will pursue their research and scholarly activities in a manner that is consistent with the highest standards of ethical, scientific, and scholarly practice. The university will take all reasonable and practical steps to foster an environment that promotes the responsible conduct of research, research training, and related activities; discourages research misconduct; and deals promptly with allegations or evidence of possible research misconduct. The university also is committed to compliance with the requirements for the receipt of Federal funds.

All allegations of research misconduct will be addressed under this policy and associated procedure. The university will take all reasonable steps to ensure an impartial and unbiased research misconduct proceeding to the maximum extent practicable throughout the proceeding. It will select those conducting the inquiry or investigation on the basis of expertise that is pertinent to the matter and, prior to selection, will screen them for any source of potential bias or unresolved personal, professional, or financial conflicts of interest with the respondent, complainant, potential witnesses, or others involved in the matter. The university will take all reasonable steps to ensure that complainants, respondents, and other members of the university community maintain confidentiality and cooperate in the conduct of research misconduct proceedings as provided in this policy.

A research misconduct proceeding will not be discontinued as a result of the termination of a respondent's employment, confession, or the respondent's refusal to cooperate in the conduct of the proceeding.

## **III. DEFINITIONS**

"Allegation" means a disclosure of possible research misconduct to individuals indicated in the procedures to this policy.

"Complainant" means a person who in good faith makes an allegation of research misconduct.

"Conflict of Interest" means the real or apparent interference of one person's outside interests with the interests of another person where potential bias may occur due to prior or existing personal or professional relationships (whether positive or negative). This relationship may be with the person or the person's close relatives.

"Days" means calendar days. Weekdays in which the university is closed for business are not included in the calculation of deadlines for any procedure. .

“Evidence” means any document, tangible item, testimony, or other information offered or obtained during a research misconduct proceeding that tends to prove or disprove the existence of an alleged fact.

“Fabrication” means making up data or results and recording or reporting them.

“Falsification” means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

“Good faith” means an allegation made with the honest belief that research misconduct may have occurred. An allegation or participation in a research misconduct proceeding is not in good faith if made with knowing or reckless disregard for information that would negate the allegation or testimony.

“Inquiry” means preliminary information-gathering and preliminary fact-finding. An inquiry leads to a determination of whether the allegation has substance and if an investigation is warranted.

“Investigation” means the formal development of a factual record and the examination of that record leading to either a finding of research misconduct or a finding that no research misconduct occurred.

“Notice” means a written communication served in person or sent by mail or its equivalent to the campus address, last known street address, facsimile number, or e-mail address of the addressee.

“Person” means any individual, corporation, partnership, institution, association, unit of government, or legal entity, however organized.

“Plagiarism” means the appropriation of another person’s ideas, processes, results, or words without giving appropriate credit.

“Preponderance of the evidence” means that the existence of a fact is more probable than not. Or that the party with the burden of proof has shown that its view of the facts is more probable than not.

“Research” means a systematic experiment, study, evaluation, demonstration, or survey designed to develop or contribute to general or specific knowledge by establishing, discovering, developing, elucidating, or confirming information. Research also includes work for the advancement of a discipline or field of study, or the integration of the discipline with other fields, through original research, artistic work, exhibitions, or performance, or by the application of discipline- or field-based knowledge to the practice of the profession.

“Research misconduct” means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Fabrication or falsification of credentials on funding applications and manuscripts can be considered research misconduct. Research misconduct does not include honest error or differences of opinion.

“Research record” means the record of data or results that embodies the facts resulting from scholarly inquiry, including but not limited to, research proposals, laboratory records (both physical and electronic), progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and



any documents and materials provided to a university official or a Federal agency by a respondent in the course of the research misconduct proceeding.

“Respondent” means the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

“Retaliation” means an adverse action taken against a complainant, witness, or committee member by a member of the university community in response to –

- (a) A good faith allegation of research misconduct; or
- (b) Good faith cooperation with a research misconduct proceeding.

### **III. COMPLIANCE**

#### Allegations of Research Misconduct

All allegations of research misconduct will be managed through the George Mason University Research Misconduct Procedure. This procedure describes responsibilities for the research misconduct process and how the university will receive and review allegations, conduct inquiries and investigations, and communicate results to the complainant and respondent. This procedure also describes how the university will communicate results with external agencies. Procedural deadlines may be extended in cases of illness or other extenuating circumstances. Requests for such extensions (along with accompanying documentation) must be submitted at least 1 day in advance of the original deadline, and must be approved by the Vice President for Research and Economic Development (Vice President).

#### Notifying funding agencies as required

For proceedings that involve Federal support and research misconduct, the university will meet the reporting requirements of the funding agency. For proceedings that involve Federal support and research misconduct (as defined by the funding agency), the university will cooperate fully and on a continuing basis with Federal agencies during any oversight reviews and during the process under which the respondent may contest the agency’s findings of research misconduct and proposed administrative actions. The university will cooperate with and assist the appropriate Federal agency, as needed, to carry out any administrative actions it may impose as a result of a final finding of research misconduct by that agency.

For proceedings that involve support from non-Federal entities, the university will comply with all reporting requirements of, and provide information requested by, the funding entity subject to any legal limitations on the disclosure of that information.

#### Confidentiality

To the extent allowed by law, the university will maintain the identity of respondents and complainants securely and confidentially and will not disclose any identifying information, except to institutional officials and committee members in order to carry out a thorough, competent, objective, and fair research misconduct proceeding. Any information obtained during the research misconduct proceeding that might identify human subjects will be maintained securely and confidentially and will

not be disclosed except to institutional officials and committee members in order to carry out the research misconduct proceeding.

Confidentiality of information shall be maintained to the maximum extent possible, except that the respondent may disclose this information as needed to defend against an allegation of research misconduct.

#### Interim protective actions

The university will take appropriate interim actions at any time during a research misconduct proceeding to protect the integrity of the research process, public health, and any Federal funds and equipment involved in the proceeding. The necessary actions will vary according to the circumstances of each case.

#### Protecting and restoring reputations

(a) Respondents. If a respondent is found not to have engaged in research misconduct, the university will undertake all reasonable, practical, and appropriate efforts to protect and restore the respondent's reputation. The university will obtain the permission of the respondent or his or her legal counsel or other authorized representative before taking any such action.

(b) Complainants, witnesses, and committee members. The university will undertake all reasonable and practical efforts to protect and restore the position and reputation of any good faith complainant, witness, or committee member and to counter potential or actual retaliation against those persons. Potential or actual retaliation must be reported to the Vice President, AVP, or Provost.

### **Responsibilities**

#### President

If the Provost has a conflict of interest with a proceeding, the President will serve in all capacities assigned to the Provost under this policy.

#### Provost

The Provost will make the ultimate decision regarding administrative actions for individuals found guilty of research misconduct. If a particular proceeding presents the Vice President, AVP, Dean, or Director with a real or apparent conflict of interest, the Provost will appoint a replacement to carry out the responsibilities of the individual with a conflict of interest for that proceeding. If the respondent and the Vice President or the Dean or Director disagree as to whether a conflict exists, the Provost will resolve the disagreement.

#### Vice President

The Vice President is responsible for the overall administration, interpretation, and application of this policy. The Vice President will review the inquiry report and determine when investigations are warranted. The Vice President will also appoint the investigative committee and recommend administrative actions where appropriate.

#### AVP

The AVP is responsible for implementation of the procedure associated with this policy. The AVP will

conduct the inquiry, appoint the inquiry committee, and prepare the inquiry report along with other communication to the respondent, complainant and Vice President. Additionally, the AVP will provide support throughout the investigation and resolution of the allegation.

#### Deans and Institute Directors

Deans and Institute Directors are responsible for forwarding allegations of research misconduct. They are also responsible for providing support for this policy and participating in the associated procedure. For a respondent who does not report to a Dean or Institute Director, those terms mean the respondent's equivalent senior supervisor. For respondents with multiple reporting lines, all supervisors may be engaged in the process, or one responsible supervisor may be designated by mutual agreement.

#### Faculty, staff, and students

Each member of the university research community is responsible for conducting research in an ethical manner, reporting good faith suspicions of research misconduct, cooperating with research misconduct proceedings, and providing information during an inquiry and investigation.

### **Finding of Research Misconduct**

Where the investigative committee finds research misconduct in the investigative report, the Vice President will review the report and make a determination on behalf of the university as to whether research misconduct occurred and, if so, by whom, and whether the university accepts the findings of the investigation. The Vice President will recommend to the Provost administrative actions the university should take against the respondent.

In addition to disciplinary administrative actions outlined in university policies and procedures, the Vice President may recommend:

- 1 – withdrawal or correction of all pending or published abstracts and papers emanating from the research where research misconduct was found,
- 2 – removal of the responsible person from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, initiation of steps leading to possible rank reduction or termination of employment consistent with university policy, and
- 3 – restitution of funds as appropriate.

The University Counsel will review the determination and the recommendation of the Vice President for legal sufficiency. The Provost will determine what administrative actions the university takes against the respondent.

## **V. DATES**

### **A. EFFECTIVE DATE**

This policy will become effective upon the date of approval by the Senior Vice President and Provost.

### **B. DATE OF MOST RECENT REVIEW**

## VI. TIMETABLE FOR REVIEW

The policy, and any related procedures, shall be reviewed every 3 years.

## VII. SIGNATURES

Approved:

\_\_\_\_\_  
Senior Vice President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Provost

\_\_\_\_\_  
Date

### **University Procedure for Research Misconduct Allegations under Policy 4007**

*All definitions for this procedure are included in Policy 4007*

#### **I. Conduct of Proceedings**

Allegations of research misconduct will be managed through the process outlined in this procedure and policy 4007. During the course of the proceedings, all individuals involved have an obligation to provide confidentiality to all respondents, complainants, and research subjects identifiable from research records or evidence except when required to disclose by federal or state law or regulations, and as specified in policy 4007 and this procedure document.

Only university employees may serve on an inquiry or investigative committee in a research misconduct proceeding. However, the university may obtain the advice of non-employees with relevant expertise at any stage of the proceeding, including the preliminary assessment of the allegation. The committee(s) and institutional officials will follow these procedures to ensure all allegations are appropriately evaluated and due process is provided for respondents.

In addition to referral to appropriate institutional officials, if at any point in the proceedings, evidence of harm to research subjects is identified, the Institutional Review Board or Institutional Animal Care and Use Committee will be notified and will independently conduct an investigation. If at any point in the proceedings, an undisclosed conflict of interest is identified, the Conflict of Interest Committee will be notified and will independently conduct an investigation.

If a respondent confesses to research misconduct, this procedure may be modified to accommodate necessary administrative actions earlier in the process and/or reduce or eliminate procedures that are not relevant.

#### **II. Allegation**

##### **Making an allegation**

An allegation of research misconduct may be made by disclosing the alleged misconduct to the respondent's Dean or Institute Director, the Vice President for Research and Economic Development (Vice President), the Assistant Vice President for Research Integrity & Assurance (AVP) or any other member of the university's administrative or professional faculty (or, if the allegation involves Federal support and research misconduct as defined by the funding agency, to an official of that agency) through any means of communication. For complainants unaffiliated with the university or unsure of the respondent's affiliations, complaints should be directed to the Vice President or AVP. Allegations received by a person other than the Vice President shall be promptly referred to the Vice President or AVP.

Whenever possible, at a minimum the complainant should provide: the name of the respondent, names of witnesses, description of the misconduct, when and where the misconduct occurred, any relationship they have to the respondent, and supporting documentation. Additionally, if known, the complainant should specify whether the project is funded and the funding source. Finally, the complainant should provide their contact information unless they wish to remain anonymous. If the complainant wishes to remain anonymous, the Vice President or AVP will record the complaint without any identifiers that may have been disclosed during the allegation process.

The complainant has a duty to make the allegation in good faith. If at any point in a research misconduct proceeding the Vice President or the respondent's Dean or Institute Director believes that the allegation was not made in good faith, that official will refer the matter for appropriate handling under existing university procedures. In addition, if the respondent is a member of the faculty, he or she may bring a grievance under the grievance provisions of the Faculty Handbook.

#### Preliminary assessment of allegation

Within 14 days of receiving an allegation of research misconduct, the AVP, or Vice President's designee in cases where the AVP has a conflict of interest, will assess the allegation to determine if an inquiry is warranted. Except in extraordinary circumstances, an allegation that is not made in writing (or subsequently reduced to writing) and supported by specific evidence does not warrant an inquiry. An inquiry is warranted if the alleged conduct meets the definition of research misconduct in policy 4007 and if the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified. If the alleged conduct fails to meet these criteria, no inquiry will be conducted. Where possible, the AVP may request additional details from the complainant to evaluate the need for an inquiry.

### **III. Inquiry**

The purpose of an inquiry is to conduct an initial review of evidence to determine whether to recommend that an investigation be conducted. Within 7 days of making a determination that an inquiry is warranted, the AVP will provide notice to the respondent. This notice will include a statement of the allegation, a description of the inquiry process, and a request for information and names of witnesses. This notice will be copied to the respondent's local academic unit administrator, Dean or Director, VPR, and the Provost.

The AVP will review the allegations, the evidence, and gather information through interactions with the complainant, respondent, and other witnesses as appropriate. The AVP will form an inquiry committee with members appropriate to evaluate the charges. This committee will have expertise to

evaluate technical data and review the facts and make recommendations. The committee will consist of three to five members; size and scope of the committee will be based on the allegation and needed evaluation. No individual involved in the inquiry will have conflicts of interest with the complainant or the respondent. Individuals appointed to the committee will typically not have an academic or administrative appointment in the same department as the respondent; these individuals may be interviewed as witnesses or expert witnesses. The inquiry and preparation of the draft inquiry report should ordinarily be completed within sixty (60) days of receipt of an allegation by the Vice President or AVP.

The respondent will be provided the draft inquiry report and have 15 days to provide a confirmation or response to the report. The AVP will then prepare a final inquiry report for the Vice President which recommends whether an investigation should be conducted. This final inquiry report will be prepared within 7 days of receipt of comments from the respondent. An investigation is warranted if there is a reasonable basis for concluding that the alleged conduct falls within the definition of research misconduct under this policy and preliminary information-gathering and fact-finding from the inquiry indicates that the allegation may have substance. The inquiry report will contain the following:

- (a) The name and position of the respondent;
- (b) The names and positions of the inquiry committee;
- (c) A description of the allegations of research misconduct;
- (d) Any federal or other external support involved;
- (e) The basis for recommending that the alleged actions warrant or do not warrant an investigation;
- (f) Comments on the report by the respondent;
- (g) A recommendation as to whether the complainant should be notified of the results of the inquiry and, if so, which parts of the report, if any, should be included in the notification;
- (h) A notification that the information should be maintained confidentially; and
- (i) Any recommendations to refer any of the inquiry findings to other university officials for appropriate action.

Within 15 days of receiving the inquiry report, the Vice President will determine whether to conduct an investigation and will provide notice to the respondent of this determination, provide the respondent a copy of the final inquiry report, and act on the other recommendations of the inquiry report. This notice will also include a statement of the allegation, a description of the investigation process, and the identities of the members of the investigation committee. The University Counsel will review the determination for legal sufficiency. This notice and final inquiry report will be copied to the respondent's local academic unit administrator, Dean or Director, and the Provost.

The Vice President will notify funding agencies as required by their respective policies when inquiries are forwarded to the investigation stage.

#### **IV. Investigation**

The purpose of an investigation is to determine whether research misconduct occurred and, if so, by whom and to what extent. A finding of research misconduct requires that:

- (a) The misconduct was committed intentionally, or knowingly, or recklessly; and
- (b) The allegation was proven by a preponderance of the evidence; and

(c) There was a significant departure from accepted practices of the relevant research community.

The university has the burden of proof in making a finding of research misconduct. The respondent has the burden of going forward with, and proving by a preponderance of the evidence, any affirmative defenses and any mitigating factors relevant to a decision to impose administrative actions.

Within seven days of determining an investigation is warranted, the Vice President will appoint the investigation committee and a chair of that committee from among 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. The committee will typically be composed of three to five individuals from among the academic and administrative faculty with appropriate expertise to evaluate the allegation of research misconduct. Except in extraordinary circumstances, the majority of the investigative committee's members will be tenured faculty. Individuals appointed to the committee will typically not have an academic or administrative appointment in the same department as the respondent; these individuals may be interviewed as witnesses or expert witnesses. Inquiry committee members may be appointed to the investigative committee.

The Vice President will provide a notification listing committee members to the respondent. The respondent may challenge a member of the investigation committee on the basis of conflict of interest or bias by submitting the challenge in writing to the Vice President within five days of the date of the notification. The Vice President will determine whether to accept or deny the challenge and with whom a challenged member is replaced. The respondent may challenge the replacement in the same manner.

Within 15 days of final committee appointment, the Vice President will begin the investigation by convening the first meeting of an investigation committee. At the investigation committee's first meeting, the Vice President will review the following: the allegations, the findings of the inquiry, the procedures and standards for conducting the investigation, confidentiality obligations, the need for an investigation plan, the possible penalties for a finding of misconduct, and the timeframe for completing the investigation. The University Counsel and AVP will accompany the Vice President at the first meeting of the investigation committee and remain available to advise the committee during its investigation.

If the investigation discloses any allegation against the respondent not addressed during the inquiry or in the initial notice of the investigation or any allegation against an additional respondent, the committee will report the allegation to the AVP for assessment. If the AVP, with guidance from the inquiry committee, finds that the additional allegation meets the definition of research misconduct and is sufficiently credible and specific, the allegation becomes part of the ongoing investigation and investigative times are extended to accommodate evaluation of this new allegation.

In conducting the investigation, the committee –

(a) Will 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;

(b) Will 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

(c) Will 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.

The committee will ensure that any interview conducted during the investigation is recorded, that a transcript of the recording is prepared, that the interviewee is provided a copy of the transcript for correction and the opportunity to comment on its contents, and that the transcript and any comments of the interviewee are included in the record of the investigation. The respondent may attend interviews of the complainant and witnesses and direct questions to them. The committee will notify the respondent at least 14 days in advance of the scheduling of his or her interview and any interview he or she is entitled to attend so that the respondent may prepare for the interview and arrange for the attendance of legal counsel or another authorized representative to advise the respondent at the interview, if the respondent wishes.

After gathering and examining the relevant evidence, the investigation committee will:

(a) Prepare a draft investigation report;

(b) Give the respondent a copy of the draft report, and, concurrently, a copy of, or supervised access to, the evidence on which the report is based; and

(c) Provide notice to the respondent of his or her opportunity to provide a written response to the draft report within 30 days of the date on which he or she received it.

The committee will ensure that any response submitted by the respondent is considered and included in the final investigation report. The committee will also give the University Counsel a copy of the draft investigation report to review for legal sufficiency.

The committee will then prepare a final investigation report to the Vice President. In the report, the committee will –

(a) Describe the nature of the allegations of research misconduct;

(b) Describe and document any Federal or other external support;

(c) Describe the specific allegations of research misconduct considered in the investigation;

(e) Identify and summarize the research records and evidence reviewed, identify any evidence taken into custody but not reviewed, and summarize the reasons why any evidence was not taken into custody;

(f) 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 committed intentionally, or knowingly, or recklessly;

(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 any publications that need correction or retraction;

(iv) identify the person or persons responsible for the misconduct; and



- (v) list any current support or known applications or proposals for support that the respondent or respondents have pending with any Federal agency;
- (g) Include and evaluate any response made by the respondent on the draft investigation report;
- (h) Include a recommendation as to whether the complainant should be notified of the results of the investigation and, if so, which parts of the report, if any, should be included in the notification;
- (i) Include any recommendations for administrative actions relating to the misconduct found; and
- (j) Include any recommendations to assist the complainant or any other person who was harmed by the conduct found.

The investigation will ordinarily be completed within 120 days of the first meeting of the investigation committee. For proceedings that involve Federal support and research misconduct as defined by the funding agency, if the committee is unable to complete the investigation within the time prescribed by the funding agency, the Vice President will communicate with the agency regarding any requirements relating to an extension. For other proceedings, the Vice President may grant a reasonable and specified extension for good cause.

## **V. University Determination**

The Vice President will provide a copy of the final investigation report and decision to the respondent. This final report will be copied to the respondent's local academic unit administrator, Dean or Director, and the Provost.

If the decision is that the respondent committed research misconduct, the Vice President will provide notice to the respondent that he or she may appeal the decision by filing a request for reversal or modification of the decision and grounds for that request with the Provost within 30 days of receiving the university's decision. The Provost will generally issue a written decision on the appeal, including the reasons for the decision, within 60 days of the date the appeal is filed. This written decision will be copied to the respondent's local academic unit administrator, Dean or Director, and the Provost. If the university is unable to complete the appeal within the time prescribed by a funding agency, the Vice President will communicate with the agency regarding any requirements relating to an extension. The Vice President will provide notice of the Provost's decision to the respondent. The Vice President also will provide a final case report to federal funding agencies when required.

If research misconduct is found, the administrative actions described in policy 4007 will apply.

If the decision is that research misconduct did not occur, the university will undertake all reasonable, practical, and appropriate efforts to protect and restore the respondent's reputation if the respondent or his or her legal counsel or other authorized representative request that it do so.

## **VI. Research Records and Evidence**

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

- (a) If an inquiry is warranted, the university, not later than when it notifies the respondent of the allegation, will take all reasonable, practical, and lawful 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 that in those cases where the research records or evidence encompass equipment or instruments shared by a number of users, custody may be limited to copies of the data or evidence on that equipment or those instruments, so long as those copies are substantially equivalent to the evidentiary value of the equipment or instruments.

(b) Where appropriate, the university will give the respondent copies of, or reasonable, supervised access to, the research records. To the extent consistent with its commitment to maintain confidentiality, the university will provide other researchers who participated in the work similar access to sequestered records.

(c) The university will 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 equipment or instruments in (a) above.

(d) The university will maintain all records of the research misconduct proceeding for seven years after completion of the proceeding or any related proceeding of the funding agency, whichever is later, unless the proceeding involved Federal support and research misconduct as defined by the funding agency and the university has transferred custody of the records and evidence to the appropriate Federal agency or that agency has advised the university that it no longer needs to retain the records.

### Summary of Major Proposed Changes to Policy 4007 Misconduct in Research and Scholarship

- 1) Procedures have been pulled out from Policy document.
- 2) Clarifications have been added throughout (for instance: penalties are now specified and the differences between allegations for the research misconduct process and honor code process are now detailed).
- 3) The Procedures have been updated to include:
  - a. A central assessment mechanism to determine if allegations are credible, specific, and require an inquiry. This will add standardization and more rapid response.
  - b. A more flexible inquiry committee format with the ability to include administrative and faculty expertise based on the specific allegation.
  - c. A more clear delineation of each stage of the investigation process.
  - d. A process for including new evidence that comes up during the investigation into the ongoing investigation to avoid duplicated work and respondents being questioned by different groups for similar allegations.
  - e. Reduction of times to allow for completion of average proceedings within timeframes specified by funding agencies. Flexibility for time extensions remains for extraordinary circumstances.
- 4) Allegation requirements have been spelled out more clearly. An allegation cannot be assessed unless there is clear information on who was involved, the specific misconduct being alleged, and where/when the misconduct occurred.
- 5) Responsibilities in the policy have been more clearly delineated.

Review Process to this point

- 1 - Working group formed during summer 2012 and developed an initial draft update.
- 2 - Draft provided for comments to the research council, the Deans and Directors, OSP, Human Resources, and Office of University Counsel for review.
- 3 - Formal Task Force formed during fall 2012 with representation from Faculty Senate and University Process Improvement Committee. This group reviewed comments on the initial draft and provided additional comments and suggestions.
- 4 – Attached draft for review by full Faculty Senate.

**Research Misconduct Process and Timing**

<b>Phase</b>	<b>Action</b>	<b>Timing</b>
<b>Allegation</b> (provided to Dean, Director, Vice President, AVP, or any other faculty member)	Referred to AVP for review and assessment. Allegation must be specific and credible to move to inquiry phase.	Allegation assessed within 14 days of receipt of referral.
<b>Notice of Allegation/Inquiry</b>	AVP provides notice to respondent including statement of allegation, description of inquiry process, and request for information/witnesses.	Within 7 days of determining inquiry is warranted.
<b>Inquiry</b>	Committee with expertise to evaluate technical data and review facts (preliminary information-gathering and fact-finding) to determine whether allegation has substance.	Inquiry and preparation of final inquiry report with investigation recommendation within 60 days of receipt of allegation by AVP.
<b>Respondent Review of Inquiry Report</b>	Review of draft inquiry report to provide comments on the report.	15 days after respondent is provided report.
<b>Integration of Respondent Comments</b>	Comments from respondent are assessed by inquiry committee and incorporated into final inquiry report.	7 days.
<b>Vice President Review of Inquiry Report</b>	Vice President reviews inquiry report, determines whether to proceed with investigation, provides notice to respondent of this determination, and provides notice to funding agency if needed.	15 days after final inquiry report.
<b>Investigation Committee Appointed</b>	Investigation committee appointed by Vice President – composition is faculty with no conflicts of interest, majority are tenured faculty. Vice President provides committee membership and information about process to respondent.	Within 7 days of determining investigation is warranted. Respondent has 5 days to challenge appointments.
<b>Investigation Committee Convened</b>	First meeting and charge to investigation committee; attended by university Counsel, Vice President, and AVP.	Within 15 days of final committee appointment.

<b>Investigation Conducted</b>	Full investigation of allegations. Draft report prepared. Finding of research misconduct or not.	Normally, within 60 days of initial meeting of committee.
<b>Respondent Review</b>	Respondent given opportunity to review and comment on draft report.	Within 30 days of the date report provided to respondent.
<b>Final investigative report</b>	Final report by committee with recommended administrative actions from Vice President (reviewed by University Counsel). Report provided to Provost and Respondent.	Respondent comments and Vice President recommendations will be incorporated within 14 working days. Total investigation time will be <120 days whenever possible.
<b>Appeal</b>	Respondent may appeal decision by providing grounds for appeal and request for reversal or modification of decision to Provost.	Within 30 days of final report.
<b>Appeal Decision</b>	Provost considers appeal and renders decision.	Within 60 days of appeal date.

**VII. Remarks for the Good of the General Faculty**

Some universities, in their versions of Banner, include photos of students. Issue may affect more than just faculty, not sure if academic policy (exists), as privacy and other issues may be involved. The Chair of the Organization and Operations Committee encouraged the Senator to send them the issue for further study.

In response to concerns raised about the applicability of Criminal Background checks for hiring half-time employees with no benefits, adjuncts, or GTAs, Associate VP for Human Resources Linda Harber encouraged faculty to contact her to discuss questions.

Mason is hosting 2700 invitees for the High School Forensics Tournament this week. Try to remember you were once fifteen. We are honored to have these kids at Mason.

**VIII. Adjournment: The meeting adjourned at 3:52 p.m.**

Respectfully submitted,  
Peter Pober  
Secretary