Intramural Academic Freedom: Standard Operating Procedure for Reporting and Review of Academic Freedom Suppression Allegations

Purpose

The Intramural Academic Freedom Guidance (IAF Guidance) provides guidance for review of scientific publications and communications from the NIH Intramural Research Program (IRP). The IAF Guidance is published in the Sourcebook and is maintained by the NIH Office of Intramural Research (OIR). The IAF Guidance includes the following regarding allegations of suppression of academic freedom: "Staff should report allegations related to the suppression of academic freedom to the Deputy Director for Intramural Research. Appeals will be taken to the NIH Principal Deputy Director." The purpose of this Standard Operating Procedure (SOP) is to address the reporting and review of academic freedom suppression allegations.

1. **Applicability**

Consistent with the IAF Guidance, this SOP applies to all IRP researchers who are federal employees. This SOP excludes non-FTE fellows, who must obtain supervisory approval prior to submission of any scientific publications, and who may not represent NIH in any media interactions except for supervisor-approved presentations of research. This SOP covers scientific publications authored by IRP researchers who are federal employees, including manuscripts, abstracts, perspectives, and commentaries. The SOP also covers media clearance for media inquiries, media statements or interviews, or media pitches, for or by IRP researchers who are federal employees.

2. **Definitions**

   a. **Academic Freedom** - The ability to respectfully and openly express ideas, perspectives, and discordant views about scientific data and scholarly research without risk of official interference, professional disadvantage, or workplace retaliation.
   b. **Allegation** – A statement alleging official interference, professional disadvantage, or workplace retaliation in response to the expression of ideas, perspectives, or discordant views about scientific data and scholarly research.
   c. **Complainant** – An individual who, in good faith, makes an allegation of official interference, professional disadvantage, or workplace retaliation due

to their expression of ideas, perspectives, and/or discordant views about scientific data and/or scholarly research.

d. **Conflict of interest** - A financial, personal, or professional interest that is likely to compromise the judgment or decision-making of an individual conducting procedures covered by this policy, such as an Assessment, Factfinding, Decision, or Appeal. Types of conflicts may include but are not limited to:
    i. The individual is from the same IRP lab or branch as the respondent or complainant;
    ii. The individual is planning a collaboration with the complainant or respondent;
    iii. Within the past three years, the individual has published with, has collaborated with, has participated in the preparation of an application or proposal with, or has been in a mentoring relationship with the complainant or respondent;
    iv. The individual has a direct or an indirect financial interest in related to the dispute between the complainant and respondent.

    The NIH Agency Intramural Research Integrity Officer (AIRIO) will notify the complainant and respondent of the names of the individuals(s) writing the Factfinding Report and serving as the Reviewing Official (RO) and provide an opportunity for the complainant and respondent to object to a proposed individual based upon a personal, professional, or financial conflict of interest. The complainant and respondent must inform the AIRIO of any objections within three (3) business days of the AIRIO notification. NIH will then determine whether a personal, professional, or financial conflict of interest exists that cannot be resolved and, as a result, necessitates replacement of the challenged individual. The decision of the NIH official assessing COI can not be appealed.

e. **Decision** – A determination by the RO, based upon the evidence contained in the Factfinding Report, that academic freedom has or has not been suppressed.

f. **Factfinding Report** – A report written by an NIH employee or contractor after gathering and reviewing information and records related to academic freedom allegations or concerns, which is provided to the RO for a determination.

g. **NIH Official** - An employee of the NIH who holds authorized responsibility for conducting, managing, or overseeing biomedical research and/or NIH administrative policies
h. **Respondent** – The person (or persons) against whom an allegation of suppression of academic freedom is made, who is (are) the subject of an academic freedom proceeding.
i. **Reviewing Official (RO)** – The official who reviews allegations of suppression of academic freedom for the NIH IRP. The Deputy Director for Intramural Research (DDIR) is the RO unless they have a conflict of interest, in which case the Principal Deputy to the DDIR is the RO.
j. **Reviewing Official for Appeals (ROA)** – The official who reviews appeals under this SOP. The NIH Principal Deputy Director is the ROA unless they have a conflict of interest, in which case another NIH official will be appointed as ROA by the NIH Principal Deputy Director.
k. **Suppression of Academic Freedom** – Official interference, professional disadvantage, or workplace retaliation in response to the expression of an idea, perspective, or discordant view about scientific data and/or scholarly research. An example of suppression of academic freedom is failing to approve a manuscript for publication, which otherwise would have been approved, solely because the reviewer disagrees with the ideas, conclusions, or interpretations of data presented in the manuscript. Because open debate and respectful disagreement are essential to the advancement of scientific knowledge, differences in perspectives and interpretations do not on their own equate to the suppression of academic freedom. Administrative actions, including human resources actions or funding allocations, which are or are not taken in direct response to the expression of an idea, perspective, or discordant view about scientific data and/or scholarly research, may meet the definition as suppression of academic freedom.

3. Reporting and Review Process

a. **Notification of Allegation.** Allegations may be made by any means of communication to any NIH official. Complainants are strongly encouraged, but not required, to bring their allegations directly to the DDIR or the AIRIO. NIH officials who become aware of allegations should communicate them to the DDIR or AIRIO within two business days of receiving them, barring extenuating circumstances. Complainants may make their allegations by using a form provided by the AIRIO but are not required to use it. Allegations

may be made anonymously. However, reporting anonymously requires key details about the concern to be omitted, which will limit the NIH's ability to conduct an assessment and take corrective action as warranted. Additionally, when NIH follows up on anonymous concerns, they cannot guarantee that the reporting party's identity will remain confidential as it may become apparent throughout the course of the process. If you would prefer to discuss all of your options with an office that operates under principles of confidentiality, please contact the Employee Assistance Program or the NIH Office of the Ombudsman.

b. **Assessment.** The DDIR and/or AIRIO will determine if the allegation is covered by the IAF Guidance, meets the definition of suppression of academic freedom, and has been made within 30 business days of the action occasioning the allegation. Barring extenuating circumstances, the DDIR and/or AIRIO shall make this determination within ten business days of receiving the allegation. If these conditions are met, an academic freedom review process will be initiated, and the parties involved in the matter will be notified. If the DDIR has a conflict of interest, the Principal Deputy to the DDIR will make the assessment. If the DDIR and/or the AIRIO find that the allegation is not covered by the IAF Guidance, the complainant will be promptly notified. There will be no appeal of the assessment.

c. **Factfinding Report** – The DDIR will delegate an NIH employee (usually the AIRIO) or contractor to serve as the Factfinder for the allegation. If the DDIR has a conflict of interest, the Principal Deputy to the DDIR will make this delegation. The Factfinder, who also shall not have a conflict of interest, shall gather information relevant to the allegation, including, but not limited to scientific papers or draft manuscripts, research presentations or posters, research data, the research record, interviews with respondent(s) and witnesses, emails, letters, analyses, performance reviews, or any other matter relevant to the allegation. The Factfinder will keep a record of all information collected. The Factfinder will review this material and write a report that summarizes the information in a manner that facilitates decision-making. The Factfinding Report will list the source of information and provide a link to permit the RO and ROA to access the information independently. The Factfinding Report may make non-binding recommendations for further action by the DDIR (or Principal Deputy to the DDIR if the DDIR is conflicted). A draft of the Factfinding Report may be provided to the NIH Branch of the HHS Office of the General Counsel (OGC) for legal review, or other subject matter experts for technical review, at the discretion of the Factfinder and/or

the DDIR (or AIRIO). The Factfinding Report must be completed no later than 20 business days after the assessment determination, unless the Factfinder requests an extension based on extenuating circumstances.

d. **Decision** – The RO will make a decision about the merits of the allegation and further actions to be taken to address the matter, within ten business days of receiving the Factfinding Report, barring extenuating circumstances. The AIRIO will prepare a decision memorandum for the record, to be signed by the RO.
e. **Notifications** – The complainant, respondent, and Scientific Director (SD) from their respective IC(s) will be notified of the decision within two business days, barring extenuating circumstances. The AIRIO will provide the complainant and respondent with an executive summary of the Factfinding Report that serves as the basis for the decision. The AIRIO will not provide the full Factfinding Report or the information collected by the Factfinder to either the complainant or respondent consistent with the Privacy Act.
f. **Appeals** – Either the complainant or the respondent may appeal the decision. If the DDIR or their Principal Deputy is the RO, the NIH Principal Deputy Director (PDD) is the Reviewing Official for Appeals (ROA). If the PDD has a conflict of interest, another NIH official will be appointed to serve as the ROA. Appeals shall be made within ten business days of receiving notification of the decision, barring extenuating circumstances. Appeals must be made in writing through the AIRIO. Requests for an appeal must state the basis for the appeal. The ROA will make a decision within fifteen business days of receiving the appeal, unless extenuating circumstances justify a longer timeline. If the ROA rules against the appealing party, the RO's decision remains in effect. The ROA will issue a decision memorandum summarizing their ruling. The AIRIO will notify the complainant and respondent of the ROA decision within two business days, barring extenuating circumstances. The ROA's decision may not be further appealed and represents NIH's final decision and the conclusion of the NIH review process.