



February 26, 2014

Honorable Claire McCaskill
Chairman
Subcommittee on Financial and Contracting
Oversight
United States Senate
Washington, DC 20510-6250

Dear Senator McCaskill:

This letter is in response to the Subcommittee's January 16, 2014, letter to Harry Anderson Page, President and Chief Executive Officer, Oak Ridge Associated Universities (ORAU). The subcommittee's letter relays complaints received by the Subcommittee regarding Dr. Paul Cole, a research participant at the Joint POW/MIA Accounting Command (JPAC). As a result, you requested that ORAU investigate whether Dr. Cole "has violated any ORISE program guidelines during his tenure as an ORISE fellow."

The structure and history of ORAU and ORISE is relevant to any response to that request. Over the course of recent face-to-face meetings and teleconferences with the subcommittee staff, we have outlined the structure of Oak Ridge Associated Universities (ORAU) as a not-for profit entity that supports the scientific research and education enterprise of the nation. Our management and administration of the Oak Ridge Institute for Science and Education (ORISE), pursuant to contract with the Department of Energy, is an important element of that mission, and ORISE's standing as a DOE institute with a reputation for excellence has grown since we were established as a direct descendant of the Manhattan project.

From that beginning in 1946 and continuing until today, ORISE has functioned as a government entity, identifying, recruiting, and administering research participants who meet requirements established by DOE and other federal agencies who establish research participation programs via interagency agreements with DOE. ORAU's effective management of ORISE is well documented by superior performance scores and accolades from DOE and our other federal partners. ORAU has achieved its track record of superior performance by emphasizing compliance with the terms of the ORISE contract and all other applicable rules and regulations.

The Joint POW/MIA Accounting Command (JPAC) entered into an interagency agreement with DOE in 1998 to establish a research participation program that would complement JPAC's mission. We have already provided a copy of that agreement to the subcommittee. JPAC's program created research opportunities for qualified scientific researchers and other

individuals with unique skills relevant to the JPAC mission. Since 1998, 182 scientists have participated in JPAC's program.

In accordance with the interagency agreement that defines the JPAC program, ORAU provides program management, recruits applicants, administers stipends, and administers the healthcare plan for research participants. The host facility, in this case JPAC, establishes the criteria required in selecting research participants, reviews applicant qualifications (after an initial review by ORAU) and serves as final selection authority of any individual to receive an appointment. Once the participant is selected, JPAC provides the infrastructure and location for the research participant. Also, JPAC provides a mentor who is responsible for the day-to-day oversight of the participant and ensures that the participant meets expectations.

Just like many ORISE research participation programs, JPAC's program is a non-employee participant program. Participants in the program are not employees of either ORAU or JPAC. That relationship is clearly articulated in the "Education and Training Programs Terms of Appointment," hereinafter, "the Terms of Appointment." All participants must sign the Terms of Appointment before they begin their appointment. One example of the non-employee relationship is that, rather than receiving a salary, the participants receive a stipend for their participation in the program.

In addition to clearly defining non-employment as a condition of the appointment, the Terms of Appointment establish the expectations for participation. Participants acknowledge that they must observe and conform to all applicable rules, regulations, and requirements to justify continued participation under the ORISE research program. In return, the interagency agreement requires that the host facility provides a mentor who assists the research participant and ensures that they are meeting the requirements of the appointment.

ORISE research participants are typically appointed for a twelve month term. As the end of that term approaches, the mentor must decide whether to renew the appointment or end it, based on the research needs of facility, the participant's progress toward the goals of the research, and the research participant's adherence to the Terms of Appointment. The renewal decision is conducted by the host facility and communicated to ORAU in writing. ORAU plays no role in that review and has no influence on the day-to-day supervision of participants in the program.

Those facts bring us to the specific case of Dr. Paul Cole. The Committee has informed us that several anonymous allegations regarding Dr. Cole have been raised with the Committee. As a result, the Committee asked us to investigate whether Dr. Cole has violated any program guidelines and whether his fellowship is in line with the mission for the ORISE fellowships.

As I have outlined above and have explained in earlier conversations with the Subcommittee Staff, the interagency agreement between JPAC and DOE defines ORAU's role in administering JPAC's research participation program and, specific to your request for an inquiry, severely limits ORAU's ability to conduct an investigation of an individual participant in that program or

any program in which the host agency provides mentorship, oversight, materials, laboratory space, and other physical elements that support the appointment.

Since research participants like Dr. Cole are physically located at the host facility, they are required to comply with the all of the rules and regulations of the host facility. In this case, those rules and regulations are administered by JPAC and govern Dr. Cole's participation. The Terms of Appointment signed by Dr. Cole, make this point clearly:

A Participant shall at all times observe and conform to all applicable rules, regulations, and requirements of the facility to which assigned, including, but not limited to, those respecting environment, safety and health (ES&H) and ES&H training requirements; security, operating and health physics procedures; drug free workplace notification requirements; and conduct. Failure of the Participant to maintain access to the facility to which assigned or failure to observe and conform to all applicable rules, regulations, and requirements of the facility to which assigned shall result in termination of the appointment. (Emphasis added.) A copy of the Terms of Appointment is attached as Exhibit 1.

If any evidence or information is presented to ORAU by a host facility that a research participant has failed to comply with the Terms of Appointment, ORAU would generally terminate the appointment. There have been instances where rather than immediate termination, the appointment was allowed to expire.

Dr. John Byrd, the Laboratory Director, Central Identification Laboratory, JPAC, serves as Dr. Cole's mentor. One of the duties of the mentor is to inform ORAU when the participant fails to meet expectations, exhibits unacceptable behavior, or otherwise neglects to meet the terms and conditions specified in the ORISE Terms of Appointment. As of this writing, no one from JPAC has ever provided us with any information that Dr. Cole has failed to meet expectations or behaved in an unacceptable manner. In fact, all of the feedback we have received from JPAC with regard to Dr. Cole has been positive. In each of the four annual reviews that JPAC conducted as it considered whether or not to continue Dr. Cole's appointment, JPAC has endorsed continued participation per the terms of appointment:

- "Why do you wish to renew this participant's ORISE appointment? Dr. Cole is doing an outstanding job with his assigned research project." Mentor's Annual/Final Review Questionnaire, March 14, 2011, signed by John E. Byrd.
- "Why do you wish to renew this participant's ORISE appointment? To continue a successful project." Mentor's Annual/Final Review Questionnaire, March, 2012, signed by John E. Byrd.
- "Why do you wish to renew this participant's ORISE appointment? Dr. Cole serves as an immense resource for the JPAC CIL. He has developed a predicted [sic] application for researching our unknown cases." Mentor's Annual/Final Review Questionnaire, February 4, 2013, signed by John E. Byrd.

- “Why do you wish to renew this participant’s ORISE appointment? Dr. Cole’s research is highly valuable to the JPAC-CIL, and is only partially complete.” Mentor’s Annual/Final Review Questionnaire, January 22, 2014, signed by Gregory Berg.

After reviewing these statements, we inferred that JPAC was satisfied with Dr. Cole’s contributions to the program and fully supported continuing his participation in the research participation program, so we renewed his appointment.

The Subcommittee’s letter also requests that ORAU review “whether Mr. Cole’s fellowship is in line with Oak Ridge’s mission for the ORISE fellowships.” The most recent JPAC proposal describes the design of the JPAC Research Participation Program as follows:

The Research Participation Program for JPAC is designed to provide a flow of scientists and researchers into approved laboratories to participate in current research and development activities. In addition, the program will link JPAC’s technologies with the capabilities of the academic community. By supporting this program, JPAC will enhance the educational programs offered by academic institutions, strengthen the scientific and technical manpower base, transfers its knowledge and technology to the academic community, and support a growing national commitment to science education. Attached is the JPAC proposal and IAA as Exhibit 2.

Although the focus of the program is clearly on the pursuit of scientific knowledge and research, the program recognizes that there are circumstances where other fields of knowledge will advance the JPAC scientific mission. Thus, the program provides that: “Other applicants, including established scientists interested in new training activities, are considered on a case-by-case basis. Recruitment and placement of individuals to serve in non-scientific and technical internship positions shall not exceed 5% of total internship positions filled.” As stated, any research participants in this category are considered on a case-by-case basis. Dr. Cole’s appointment as an expert in efficiency was approved on such basis by representatives of JPAC and ORAU. Thus, his appointment is in line with the mission of the research participation program.

As you noted in your letter to ORAU, the allegations communicated by the Subcommittee involve use of JPAC provided resources, such as office email systems. Therefore, the conduct of a thorough investigation would require that all of Dr. Cole’s email messages sent using the JPAC provided resources be collected and reviewed via JPAC. Since ORAU does not own or control the JPAC computing infrastructure, ORAU, a 501(c)(3) nonprofit corporation, does not have the ability or authority to compel JPAC, a government entity, to provide such information or otherwise conduct a search of JPAC office email systems.

Nonetheless, even though we have received no negative information from JPAC during Dr. Cole’s appointment, and despite the limits imposed by the distance from and nature of the

appointment, we have taken several steps to gather information that responds to the Committee's request.

We asked Dr. Cole to provide a written statement responding to the allegations raised in the Subcommittee's January 16, 2014, letter. Dr. Cole's written statement is attached as Exhibit 3.¹

We also interviewed Dr. Cole and asked him to address the specific allegations raised to the Committee. I conducted that interview with Dr. Cole by telephone on January 22, 2014. Present with me for the interview was Shawn Browning, ORAU's program manager for the JPAC research participation program. [As you may be aware, Mr. Browning also met in September 2013 with the subcommittee staff.] Dr. John Byrd, Dr. Cole's mentor, and Ms. Elizabeth Feeney of JPAC also were present during the January 22, 2014, telephone interview.

Based on that interview, the statements by Dr. Cole's mentor, and all other available information, ORAU has no evidence that Dr. Cole has violated any ORISE program guidelines during his tenure as an ORISE Fellow. ORAU has no ability to compel JPAC to provide additional information that may or may not establish such a finding, and JPAC has not offered any such information in the six weeks since JPAC was made aware of the Subcommittee's interest in such evidence, if it were to exist. To the contrary, ORAU received notice that JPAC intends to extend Dr. Cole's appointment for an additional year. The decision as to whether a research appointment should be extended is the sponsor's decision based upon factors such as the performance of the participant, the needs of their program, and available funding.

As in all cases, were JPAC to provide us with information that Dr. Cole had failed to meet expectations or engaged in misconduct, we would take appropriate responsive action.

If the Subcommittee has additional questions, please call me at 865-576-3054.

Sincerely,



Ivan A. Boatner
Vice President and General Counsel

Exhibits: As stated

¹ It should be noted that the research participants are not employees or agents of ORAU. Thus, the attachment represents Dr. Cole's position on this matter and is not submitted as evidence of ORAU's position.