

OFFICIAL

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Programs

Addressing Allegations of Misconduct
in Academic Research and Scholarship
56 (paragraphs)

BACKGROUND/PURPOSE

1. The integrity of the academic research and scholarship process is an essential aspect of the intellectual and social structure of Texas State University. Research as used in this policy comprises here includes all research, development, scholarly, and creative activities that support the intellectual endeavors of The University. The term research encompasses all associated activity, regardless of its empirical nature or methods. Although incidents of misconduct in academic research and scholarship may be rare, those that do occur may threaten the entire research enterprise. This policy addresses how The University deals with allegations and incidents of misconduct in research.
2. Research misconduct as used here includes fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. All employees or individuals associated with The University should report observed, suspected, or apparent instances of misconduct in academic research and scholarship to The university Associate Vice President for Research, who serves as the Chief Research Officer or to the Assistant Vice President for Research, who is the Research Integrity Officer (RIO), or the Director of Research Integrity and Compliance (DORIC).
3. The University is responsible both for promoting academic practices that prevent misconduct and for developing policies and procedures for dealing with allegations or other evidence of misconduct in research and scholarship. All members of The University community share the responsibility for developing and maintaining standards to assure the ethical conduct of research and to detect failures to meet these standards. This policy applies to any person working at, paid by, under the control of, or affiliated with The University, such as faculty, scientists, technicians and other staff members, students and fellows, guest researchers, and collaborators.

WHO NEEDS TO KNOW THIS POLICY

4. Faculty, research staff, and guest researchers, and students involved in the conduct of academic research and scholarship affiliated with The University.

SCOPE

5. This policy and the associated procedures apply to all individuals at the University currently or formerly engaged in research, research-training or research-related grant or cooperative agreements, including any person currently or formerly paid by, under the control of, or affiliated with the University, such as faculty, scientists, trainees, students, fellows, technicians and other staff members, guest researchers, or collaborators, at the University or working with The university employees. The fact that a student is no longer enrolled with The University or has graduated from The University does not preclude nor terminate the misconduct procedures. This is true for any other individual who is no longer at Texas State when the allegation is made.

APPLICABILITY

6. This policy and associated procedures will be followed when an allegation of possible misconduct in academic research is received by a university official. All such allegations should be referred as soon as possible to the Assistant Vice President for Research (RIO), who is the university's Research Integrity Officer (RIO).

DEFINITIONS OF TERMS

7. **Allegation** - any written or oral statement or other indication of possible research misconduct made to a University official.
8. **Complainant** - a person who makes an allegation of research misconduct.
9. **Conflict of Interest (CFR 93.210)** - 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, family, financial, or professional relationships.
10. **Deciding Official** - The university administrator who makes the decisions for The University in a research misconduct proceeding on whether or not to

proceed from an inquiry to an investigation; whether or not to accept the findings from an investigation; and, if research misconduct is found, what administrative actions will be imposed, or proposed for further official actions, on the person who committed research misconduct. The university's Deciding Official is the Vice President for Academic Affairs and Provost (VPAA&P).

11. **Good faith allegation** - an allegation made with the honest belief that research misconduct may have occurred. An allegation is not in good faith if it is made with reckless disregard for, or willful ignorance of, facts that would disprove the allegation.
12. **Inquiry** - gathering information and initial fact-finding to determine whether an allegation or apparent instance of research misconduct has substance and warrants an investigation.
13. **Investigation** - the formal development of a factual record and the examination of that record leading to a decision: either not to make a finding of research misconduct, or to make a finding of research misconduct; and/or to propose other appropriate remedies, including administrative actions.
14. **Investigators**- any persons paid by, under the control of, or affiliated with The University, such as faculty, scientists, trainees, technicians, students, fellows, and other staff members, guest researchers or collaborators, at or affiliated with The University.
15. **Preponderance of the evidence** - proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.
16. **Research Integrity Officer** - The university official, who handles, conducts or oversees all allegations, inquiries, and investigations involving research misconduct, and provides advice and assistance to the involved committees as well as the Vice President for Academic Affairs and Provost (who is The University's Deciding Official in follow up to such inquiries and investigations).
17. **Research misconduct or misconduct in research and scholarship** - includes fabrication, falsification, or plagiarism, in proposing, performing, or reviewing research or in reporting research results. A finding of research misconduct requires that there be a significant departure from accepted practices of the relevant research or scholarly community; that the research misconduct be committed intentionally, knowingly, or recklessly; and that the allegation be proven by a preponderance of the evidence. It does not include honest error or honest differences in interpretations or judgments of data.

- a. Fabrication is making up data or results and recording or reporting them.
- b. Falsification is 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.
- c. Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

18. Research record - any data or results that embody the facts resulting from research or scholarly inquiry, including, but not limited to: grant or contract applications, whether funded or unfunded; grant or contract progress and other reports; laboratory notebooks; notes; correspondence; videos; photographs; X-ray film; slides; biological materials; computer files and printouts; theses and dissertations; manuscripts and publications; equipment-use logs; laboratory procurement records; animal facility records; human and animal subject protocols; consent forms; medical charts; and patient research files. "Data or results" shall be interpreted broadly to encompass all forms of scholarly information about the research at issue, without regard to the type of recording or storage media, including, but not limited to: raw numbers, field notes, interviews, notebooks and folders, laboratory observations, computers and other research equipment, CD-ROMs, hard drives, floppy disks, Zip disks, back-up tapes, machine counter-tapes, research interpretations and analyses, tables, slides, photographs, charts, gels, individual facts, statistics, tissue samples, reagents, and documented oral representations of research results.

19. Respondent - the person against whom an allegation of research misconduct is directed or the person whose actions are the subject of the inquiry or investigation. There can be more than one respondent in any inquiry or investigation; if there are multiple respondents in a case, all references in this policy to "respondent" shall also be read in the plural as appropriate.

20. Retaliation - any action that adversely affects the employment, or other University or professional status, of an individual that is taken by an institution or another individual (*e.g.*, respondent) because the first individual has in good faith made an allegation of research misconduct (or of inadequate University response thereto) or because the individual cooperated in good faith with an investigation of such an allegation.

RIGHTS AND RESPONSIBILITIES OF KEY PERSONS

21. Assistant Vice President for Research – as Research Integrity Officer

The RIO has the primary responsibility for implementation of the procedures set forth in this document. The RIO is The University official who handles the procedural requirements.

The duties of the RIO will include, but not be limited to, the following:

- a. providing staff support for any follow up investigation committee;
- b. providing appropriate experts to assist investigation committee;
- c. maintaining all documents and evidence of any type pertaining to all investigations;
- d. assisting investigation committee in complying with the requirements of this policy;
- e. providing reports to research funding sponsors and regulatory agencies in accordance with applicable laws, regulations and research funding agreements.

In the event that the RIO is unable to fulfill any of the responsibilities set forth herein for any reason, such responsibilities will be fulfilled by the DORIC or by another official designated by The University's VPAA&P.

22. Complainant

The complainant will have an opportunity to be interviewed and present evidence during the RIO's inquiry and to testify before the investigation committee (if there is an investigation), to review specific portions of the inquiry and investigation reports pertinent to the complainant's allegations or testimony, to be informed of the VPAA&P's decision after the inquiry and/or investigation is complete, and to be protected from retaliation.

The complainant is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with any inquiry or investigation into their allegations.

23. Respondent

The respondent will be informed by the RIO of all allegations of research misconduct when an inquiry is commenced and will be permitted to respond to such allegations. . The respondent will also have the opportunity to be interviewed and present evidence during the inquiry, to testify during any investigation.

The respondent is responsible for answering questions during an inquiry or investigation truthfully and in good faith, maintaining confidentiality (insofar as is practical in presenting a defense to the allegations), cooperating with

the conduct of an inquiry or investigation, and not retaliating against any individual. The respondent will be notified in writing of the VPAA&P's final determination regarding whether a completed inquiry will be followed by an investigation, whether or not research misconduct is found by the VPAA&P as Deciding Official following an investigation, and any proposed administrative actions.

24. Vice President for Academic Affairs and Provost – as Deciding Official

The VPAA&P as the Deciding Official will receive the final inquiry report and/or investigation report, with any written comments made by the respondent on the report(s). The VPAA&P will consult with the RIO or other appropriate officials and decide: whether to conduct an investigation based on the evidence in the inquiry report; whether research misconduct occurred as determined by an investigation, and, if so, take appropriate administrative actions.

GENERAL POLICIES AND PRINCIPLES

25. Responsibility to Report Misconduct

All individuals at The University currently or formerly engaged in research, research-training or research-related grant or cooperative agreements, including any person currently or formerly paid by, under the control of, or affiliated with The University, such as faculty, scientists, trainees, students, fellows, technicians and other staff members, guest researchers, or collaborators, at The University or working with The University employee should report in writing observed, suspected, or apparent misconduct in research to the RIO or DORIC. If an individual is unsure whether a suspected incident would fall within the above definition of research misconduct, the individual may call the RIO or the DORIC to discuss informally the suspected misconduct, even as a hypothetical or without naming any specific person. If the circumstances that are described by the individual do not meet the definition of research misconduct, but do raise other legitimate concerns, the RIO will refer the individual or the allegation to other offices or officials with responsibility for addressing such concerns.

At any time, a person may have confidential discussions and consultations regarding their concerns about possible research misconduct with the RIO or the DORIC, and they will be counseled about appropriate procedures for reporting allegations. The RIO, upon request, may ask the TSUS Office of General Counsel to provide information to such employees about the legal aspects of this policy and the applicable laws and regulations.

26. Protecting the Complainant

The RIO and the DORIC will be available to receive complaints regarding the mis-treatment of, or retaliation against, individuals who bring in good faith allegations of research misconduct (or complaints of inadequate University response thereto), or against other persons who have cooperated with an inquiry or investigation. The RIO will inform the respondent(s), when providing notice of the allegations, that such persons should not be subjected to retaliation in the terms and conditions of their employment or other status at The University. All such complaints will be investigated and appropriate action will be taken as necessary.

To the extent permitted by law, The University will protect the privacy of those who report misconduct in good faith. If they request anonymity, The University will try to keep their identity confidential while it assesses the allegation and conducts its inquiry. Similarly, Respondent's identity will remain confidential to the extent possible and to the extent permitted by law.

27. Protecting the Respondent

Inquiries and investigations will be conducted in a manner that is designed to provide fair treatment to the respondent and to maintain confidentiality about the case to the extent possible, without compromising public health and safety or compromising the thoroughness of the inquiry or investigation.

Individuals accused of research misconduct may, at their own expense, consult with legal counsel or a non-lawyer personal adviser provided such person will not be a witness. Such legal counsel or non-lawyer adviser may only serve in an advisory capacity. Respondent may have a legal counsel or an advisor present during any interviews or meetings conducted during an inquiry; these persons may not present testimony themselves, but they may provide advice in private to the respondent.

28. Cooperation with Inquiries and Investigations

All University investigators have an obligation to provide relevant evidence to the RIO or other University officials in the conduct of inquiries or investigations into research misconduct allegations.

29. Preliminary Assessment of Allegations

Upon receiving an allegation of research misconduct, the RIO will promptly conduct a preliminary assessment of the allegation to determine whether the allegation falls under the definition of research misconduct as set forth above and whether there is sufficient basis for proceeding with an inquiry.

If not, the RIO may determine that the issues raised in the allegation could be handled under a different University process.

RIO may consult with applicable agencies as appropriate in determining whether an allegation should proceed to the Inquiry level.

30. Legal Counsel for University Officials and Entities

RIO, DORIC, Inquiry Committee, Investigation Committee may consult with TSUS Office of General Counsel as necessary.

CONDUCTING THE INQUIRY

31. Initiation and Purpose of the Inquiry

If the RIO determines that the allegations fall under the definition of research misconduct as set forth above and are sufficiently credible and specific, the RIO will promptly initiate an inquiry. The RIO will provide written notice of the inquiry to the respondent, identifying the research misconduct allegations and any related issues under consideration.

The purpose of the inquiry is to determine whether there is sufficient evidence of research misconduct to warrant an investigation. If a legally sufficient admission of research misconduct is made by the respondent, and all relevant issues are resolved, then misconduct may be determined at the inquiry stage; for HHS/PHS cases, the RIO will promptly consult with the Office of Research Integrity (ORI) to determine the next steps that should be taken, including possible joint settlement of the ORI case.

32. Sequestration of the Research Records

All materials relevant to the allegation of research misconduct will be maintained in accordance with 42 CFR 93.317a5.b.

33. Inquiry Process

The RIO will interview the complainant, the respondent, and any key witnesses deemed necessary, as well as examine relevant research records and materials. The RIO will consider whether additional expertise, either internal or external, is necessary for the RIO to conduct a proper evaluation of the relevant evidence in the inquiry. Individuals who might provide such expert advice will be confidentially questioned in advance by

the RIO to ensure that they have no real or apparent conflicts of interests (whether personal, family, financial, or professional) with any individual involved in the case.

The RIO will determine whether the complainant's allegations of research misconduct were made in good faith. If allegations were not made in good faith, the VPAA&P, in consultation with the RIO, will determine whether administrative actions should be taken against the complainant.

The RIO will draft an inquiry report and formulate a recommendation to the VPAA&P as to whether there is sufficient evidence of research misconduct to warrant further investigation. The RIO will attempt to protect the confidentiality of the inquiry process and subsequent report.

INQUIRY REPORT AND DECISION PROCESS

34. Elements of the Inquiry Report

A written inquiry report will be prepared by the RIO that states the specific allegations falling under the definition of research misconduct; the identity of any expert or consultant who participated in the inquiry; the funding support, if any; the documents and or materials relied upon by the RIO to reach a decision, and a recommendation as to whether an investigation should be conducted (and whether any other actions should be taken if an investigation is not recommended). The RIO may request TSUS Office of General Counsel review the draft report for legal sufficiency.

35. Comments on the Final Report by the Respondent and Complainant

The RIO will give the respondent and complainant a copy of the final inquiry report for comments, which should be provided promptly, normally within fourteen (14) calendar days starting from the date the final inquiry report has undergone review by TSUS legal counsel for legal sufficiency. Any comments that the respondent (and/or complainant) submits will become part of the final inquiry report and the case record.

36. Timing of the Inquiry Process

The RIO should complete the inquiry and submit the final inquiry report to the VPAA&P within sixty (60) calendar days of the initiation of the inquiry, unless circumstances warrant a longer period. The respondent may also request an extension for good cause, which the RIO will consider. If an inquiry takes longer than 60 days, the circumstances warranting a longer

period will be documented in the case record and noted in the final inquiry report.

37. Decision by the Vice President for Research

The RIO will transmit the final inquiry report with recommendations to the VPAA&P as the Deciding Official. The VPAA&P will make a determination of whether the findings from the inquiry justify moving forward with an investigation (and/or whether other actions are appropriate).

38. Notifications of Outcome of the Inquiry

The RIO will notify both the respondent and the complainant in writing of the decision of the VPAA&P as to whether the case will proceed to an investigation. The RIO may also notify other University officials of the decision as appropriate. The RIO will also notify the appropriate federal regulatory agency or sponsor, if required, of a decision to conduct an investigation.

[For HHS/PHS/ORI cases, the RIO will provide to ORI within thirty (30) calendar days a copy the Deciding Officer's written decision to proceed to investigation, with a copy of the inquiry report. For cases that do not proceed to investigation, the RIO will secure and maintain, for seven (7) years after the termination of the inquiry (42 CFR 93.317a5.b.), sufficiently detailed documentation of the inquiry to permit a later assessment by ORI of the reasons why an investigation was not conducted; these documents will be provided by the RIO to ORI or other authorized HHS investigatory personnel upon request.]

CONDUCTING AN INVESTIGATION

39. Purpose of an Investigation

The purpose of an investigation is to explore in detail the allegations, examining the evidence in depth, conducting additional interviews and analyses, and determining specifically whether research misconduct has been committed; if so, by whom; and if so, what the extent and the significance are of the misconduct.

The investigation will also determine whether there are additional instances of possible misconduct that would justify broadening the scope of investigation beyond the initial allegations. This is particularly important when the alleged misconduct involves potential harm to human subjects, patients, or the general public, or it affects research that forms the basis for

public policy or health care practices. The findings of the investigation will be set forth in an investigation report.

40. Sequestration of Additional Research Records

All materials relevant to the initial allegation of research misconduct will be maintained in accordance with 42 CFR 93.317a5.b if there are any additional pertinent research records that were not previously secured during the inquiry, the RIO should promptly secure such records at the start of the investigation process. The need for sequestration of additional records may occur because of a determination by the RIO or VPAA&P to investigate additional allegations, because some evidence of research misconduct was not evaluated during the inquiry stage, or because of the identification of records during the inquiry process that were not previously secured.

41. Timing of the Investigation Process

An investigation committee which may also be referred to as the Investigating Hearing Panel will ordinarily be appointed and the investigation process initiated, within thirty (30) calendar days of the VPAA&P's decision on the inquiry.

An investigation will ordinarily be completed within one hundred and twenty (120) calendar days of the first meeting of the investigation committee (including the conducting of the investigation, preparing the report and making it available to the respondent for comment, and revising and submitting the report to the VPAA&P for final decision). If an extension of this time period is needed, the RIO will document the reasons for it in the investigation file (and will notify federal regulatory agencies or research sponsors as they require).

42. Appointment of the Investigation Committee

The RIO will select three (3) members for the VPAA&P to appoint as a committee to conduct an investigation, with staff support from the RIO and/or DORIC. The RIO will notify the respondent of the planned membership, providing ten (10) calendar days for any objections to be made to the membership. The members finally chosen for the investigation committee should not have any real or apparent conflicts of interest (whether personal, family, financial, or professional) in the case, should be unbiased, and should have the expertise needed to evaluate the evidence and issues related to the allegations, to interview the principals and key witnesses, and to conduct the analyses and investigation. These individuals may be scientists, subject-matter or methods experts,

administrators, lawyers, or other qualified persons from inside or outside The University.

If the respondent objects to one or more members of the proposed investigation committee, the respondent will submit a written objection to the RIO. The RIO, in consultation with the VPAA&P, will determine whether or not to replace any challenged member with another qualified person. The respondent will be informed of any change and have an opportunity to object to any new member as before. Then the RIO will finalize the membership of the committee.

43. Charge to the Committee

The RIO will state in a written charge the allegations under the research misconduct definition and any related issues identified during the inquiry. The charge will identify the name of the respondent(s), and instruct the committee to evaluate the evidence and the testimony of the respondent, complainant, and key witnesses, and determine whether, based on a preponderance of the evidence, research misconduct occurred; if so, who was responsible for committing the misconduct; and the extent and seriousness of the misconduct. The RIO will provide the respondent with a copy of the charge to the investigation committee.

During the investigation, if additional information becomes available that substantially changes the subject matter of the investigation or would suggest an additional respondent(s), the investigation committee will notify the RIO. The RIO will notify the respondent about any new allegations of research misconduct.

The RIO will determine whether it is necessary to notify an additional respondent(s) of the commencement of an inquiry into possible research misconduct on their part. If the RIO and the VPAA&P determine, after an inquiry process as described above, that the additional respondent(s) should be the subject of an investigation, the RIO will decide whether to add them as respondent(s) to the ongoing investigation or to start a separate investigation.

44. First Meeting of the Investigation Committee

The RIO will convene the first meeting of the investigation committee to review the charge, the inquiry report, and the procedures and standards for the conduct of the investigation, including the necessity for confidentiality. The RIO will provide the investigation committee members with a copy of this policy and any relevant federal regulation, depending on the source of funding. If necessary, the Investigating Committee may have legal counsel

present at this meeting or appointed at a later time to provide legal and policy advice to the Investigating Committee.

45. Investigation Process

The investigation will normally involve a detailed examination of all relevant documentation including, as applicable, but not necessarily limited to, research records, computer files, proposals, manuscripts, and publications, as well as correspondence, memoranda, emails or text messages, and notes of telephone calls.

Whenever possible, the committee will interview the complainant(s), the respondents(s), and other individuals who might have information regarding aspects of the allegations and the evidence. Interviews should be tape-recorded or transcribed. A copy of the transcript, or the tape-recording, should be provided to the person interviewed for their comments or suggested revisions, which will be included as part of the investigation file.

46. Ending a Respondent's Employment or Affiliation before Completing the Investigation

A termination of the respondent's University employment or affiliation, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported or been investigated, will not preclude nor terminate the misconduct procedures.

If the respondent, without admitting to the misconduct, elects to resign their University position prior to the initiation of an inquiry into a reported allegation, or during an inquiry or investigation, the inquiry or investigation may proceed at the discretion of the RIO and VPAA&P. If the respondent refuses to participate in the inquiry or investigation process before or after resignation, the RIO or the investigation committee members, as appropriate, will use their best efforts to reach a conclusion about the allegations, noting in their report(s) the respondent's failure to cooperate and its effect on the RIO's or the investigation committee's review of all of the evidence. The process will proceed to its conclusion.

INVESTIGATION REPORT

47. Investigation Report

The investigation committee will write an investigation report, describing the policies and procedures under which the investigation was conducted; describing how and from whom information relevant to the investigation was obtained; providing a detailed description of the testimony, evidence, and

analysis supporting the investigation committee's findings; stating the findings regarding research misconduct; and explaining the basis for these findings.

A finding of research misconduct requires that: (1) there be a significant departure from accepted practices of the relevant research community; (2) the misconduct be committed intentionally, or knowingly, or recklessly; and (3) the misconduct be proven by a preponderance of the evidence, with the burden of proof borne by The University. The RIO or investigation committee may request that its legal counsel review the report for legal sufficiency.

In HHS/PHS/ORI cases, the respondent has the burden of proving, by a preponderance of the evidence, any affirmative defenses raised by the respondent, including that the alleged misconduct was actually an honest error or a difference of opinion.

The investigation report should include the basis for the committee's decision and a statement of findings for each allegation of research misconduct identified during the investigation: (1) stating whether the alleged research misconduct was falsification, fabrication, or plagiarism, and whether it was committed intentionally, knowingly, or recklessly; (2) summarizing the facts and the analysis that support the conclusion, as well as consider the merits of any reasonable explanation by the respondent (including any effort by respondent to establish by a preponderance of the evidence that he or she did not engage in research misconduct because of honest error or a difference of opinion); (3) identifying the person(s) who committed the research misconduct; (4) identifying whether any publications or pending manuscripts need correction, retraction, or withdrawal; (5) listing the specific research support for the research work containing the misconduct, as well as any relevant current support or known applications or proposals that the respondent has pending with federal agencies and (6) recommendation of potential disciplinary actions in the event of a finding of misconduct

COMMENTS ON INVESTIGATION REPORT BY THE RESPONDENT AND COMPLAINANT

48. The RIO will provide the respondent and complainant with a copy of the final investigation report for comment. Within ten (10) calendar days of receipt of the report, the respondent may submit a written request to the RIO for excerpts of testimony or copies of documentary evidence that was cited but not included with the draft report. The respondent will be permitted thirty (30) calendar days from receipt of the investigation report, or twenty (20) calendar days from the receipt of requested excerpts of testimony

and/or copies of other documentary evidence, whichever is later, to review and submit comments on the investigation report. Reasonable requests for additional time will be considered by the RIO; the respondent will be notified of an extension if granted. The respondent's comments will be attached to the final report. The final report of the investigation committee will take into consideration any comments made by the respondent, in addition to all the other evidence.

49. Confidentiality of the Draft Investigation Report

When the RIO distributes the investigation report to the respondent (or a portion thereof to the complainant), or distributes testimony or other evidence referred to therein to the respondent, the RIO will inform the recipient of the need for confidentiality under which the report and all such evidence are being made available.

The RIO may establish reasonable conditions to ensure such confidentiality, including, but not limited to, a requirement that the recipient first sign a confidentiality agreement; or the RIO may use other measures (such as requiring the viewing of the report and evidence under RIO or DORIC supervision), in order to protect the confidentiality of the report.

50. Final Investigation Report to the Deciding Official

After any comments by the respondent (and/or the complainant) have been received and any necessary changes have been made to the report, the investigation committee will transmit to the VPAA&P as the Deciding Official the final report, with attachments, including any comments received from the respondent and from the complainant.

The investigation committee members may also suggest separately any recommendations for the VPAA&P to consider as administrative actions to redress the consequence of any research misconduct, if demonstrated. These may include recommendations for correction, retraction, or withdrawal of publications, manuscripts, and/or funding proposals, or for other personnel actions (e.g., reprimand, demotion, termination, revocation of degree, etc.).

The investigating committee may consult with its legal counsel at any phase during the investigatory process.

51. Review by Deciding Official of Investigation Report and Recommendations

The VPAA&P as Deciding Official will review the final investigation report, with its attachments, including any comments received. The VPAA&P will then make the final determination as to whether to accept the investigation committee's report, any findings of research misconduct, and any recommendations for administrative actions. The VPAA&P will make the final decision for The University on findings of research misconduct and on administrative actions.

The VPAA&P will ordinarily issue a final decision within thirty (30) calendar days after receiving the investigation report. However, the VPAA&P may ask the investigation committee to conduct additional investigational fact-finding or analysis or to provide additional explanations for the conclusions and recommendations submitted to the VPAA&P.

If the final decision by the VPAA&P differs from that in the final investigation committee report, the VPAA&P will explain in writing the basis for rendering a decision different from that of the investigation committee. The explanation of the VPAA&P should be consistent with the definition of research misconduct, the policies and procedures of The University, and the evidence reviewed and analyzed by the investigation committee.

Notifications by Deciding Official

52. When a final decision on the case has been made by the VPAA&P, the RIO will notify both the respondent and the complainant in writing of the outcome. The RIO will provide a copy to the respondent of the final written decision by the VPAA&P, as to whether the respondent was found to have committed research misconduct and as to any administrative actions to be imposed or processed. The University will take appropriate administrative actions against individuals when a finding of research misconduct has been made.

The VPAA&P, after consultation with the RIO, other officials, or legal counsel as appropriate, will decide on the appropriate actions to be taken, which may include, but will not be limited to: (1) retraction, withdrawal, or correction of all pending or published publications (abstracts and papers) in which 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, termination or initiation of steps leading to possible reduction in rank or termination of employment; or (3) possible restitution of funds, as appropriate. For some such administrative actions, including termination of a student or an employee, or revocation of student degrees or faculty tenure, The University will initiate separate procedures under applicable and appropriate University and/or TSUS policies.

The RIO will notify any federal regulatory agency or research sponsor as required, providing the findings as to research misconduct

[In HHS/PHS/ORI cases, the RIO will provide to ORI: (1) a copy of the final investigation report with all attachments; (2) the VPAA&P's statement of whether The University has accepted the findings of the investigation report; (3) a statement of whether The University has found research misconduct, and, if so, who committed the misconduct, and how serious the misconduct was; and (4) a description of any pending or completed administrative actions against the respondent.]

In addition, the RIO, with advice from the VPAA&P, will determine whether other parties should be notified of the outcome of the case: *e.g.*, law enforcement agencies; professional societies or professional licensing boards; editors of journals in which falsified, fabricated, or plagiarized research reports were published; and/or collaborators of the respondent(s) in the questioned work. The RIO as will make such notifications as necessary.

Appeal by Respondent of Deciding Official's Conclusions

53. Except in the case of a Respondent who is a tenured faculty member or is a faculty member under contract whose contract has not expired, Respondents may appeal the conclusion by the VPAA&P as Deciding Official as to findings of research misconduct and/or proposed administrative actions. To initiate an appeal, the respondent must submit a written statement of the grounds for the appeal to The University's VPAA&P within thirty calendar (30) days of receipt of the conclusions. Grounds for appeal are limited to: new and previously unconsidered material evidence; proposed administrative actions not being commensurate with the findings of research misconduct; and lapses in due process during the investigative proceedings.

Upon receipt of a written appeal, the VPAA&P will determine if Respondent has established any of the three grounds for appeal. The VPAA&P's decision will be binding on all parties and will be conveyed to all involved in a timely fashion, within thirty (30) calendar days.

In the case of a Respondent who is a tenured faculty or is a faculty member under contract whose contract has not expired, the Respondent's appeal shall be in accordance with Texas State University System Rules, Chapter V, section 4.55 and 4.56.

Special Requirements for Reporting to the federal/HHS Office of Research Integrity (ORI)

54. When the research under investigation for possible research misconduct involves funding or applications for funding from the federal Department of Health and Human Services (DHHS), specifically the U.S. Public Health Service (PHS) agencies, including the National Institutes of Health (NIH), The University's decision to initiate an investigation will be reported in writing to the Director of the ORI at DHHS, on or before the date of the first meeting of the investigation committee in accordance with 42 CFR 309. At a minimum, the notification to ORI will include the name of the person(s) against whom the allegations under investigation have been made, the general nature of the allegations as they relate to the federal definition of research misconduct, and the PHS applications or grant number(s) involved.

It is noteworthy that the HHS/PHS/ORI regulations do not apply to authorship credit disputes between collaborators, and that these regulations apply only to allegations of research misconduct that occurred within six (6) years of the date that the institution or HHS received the allegation [subject to the subsequent use, health or safety of the public, and grandfather exceptions in the PHS regulations at 42 CFR § 93.105(b).]

The VPAA&P or RIO will also notify ORI of the final outcome and the VPAA&P's decision on the investigation, providing a copy of the investigation report (whether or not research misconduct was found). Any significant variations from the provisions of University's standard policies and procedures will be explained by the RIO for any reports that are submitted to ORI.

In the event that The University plans to terminate an inquiry or investigation for any reason without completing all relevant requirements of the PHS regulation on research misconduct, the RIO will submit a report of the planned termination to ORI, including a description of the reasons for the proposed termination.

In the event that The University determines that it will not be able to complete an investigation relating to PHS-funded research in one-hundred-and-twenty (120) calendar days, the RIO will submit to ORI a written request for an extension, explaining the reasons for the delay, reporting on the progress to date, estimating the date of completion of the report and decision and describing other necessary steps to be taken. If and when the request for extension is granted by ORI, the RIO will file periodic progress reports as requested by ORI.

If a respondent makes an admission of research misconduct, for research involving PHS funding or applications for funding, the RIO will contact ORI for consultation and advice, with the possibility that a full investigation process may not be needed by ORI. In such cases, the individual making the admission will be asked to sign a statement for The University and ORI attesting to the occurrence and describing the full extent of the research misconduct committed by the respondent, and agreeing to administrative actions by PHS (including submission of correction or retraction notices for falsified, fabricated, or plagiarized research publications).

The RIO will also notify ORI, at any stage of the inquiry or investigation: (1) if there is an immediate health hazard involved; (2) there is an immediate need to protect federal funds or equipment; (3) there is an immediate need that could be addressed by PHS to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations, as well as co-investigators and associates, if any; (4) if it is probable that the alleged incident is going to be reported publicly; (5) if the allegation involves a public health sensitive issue, *e.g.*, a clinical trial; or (6) if there is a reasonable indication of possible criminal violation [in this instance, The University will ordinarily inform ORI within twenty-four (24) hours of obtaining that information].

After the completion of a case and the related ensuing actions, the RIO will maintain for ORI a complete file, including the records of any inquiry or investigation and copies of all documents and other materials provided to the investigation committee. The RIO will keep the file for seven years after completion of the case, or after the completion of any PHS proceeding involving the research misconduct case (such as an appeal by the respondent of ORI findings to the HHS Departmental Appeals Board), whichever is later. ORI or other authorized DHHS personnel will be given access to the records upon request for cases related to PHS funding.

REQUIREMENTS FOR REPORTING TO AGENCIES AND SPONSORS

55. The RIO will also take responsibility for making reports and providing information to other federal agencies (other than DHHS) and other research-funding sponsors, in accordance with applicable laws, regulations, and research-funding agreements.

For example, the National Science Foundation (NSF) requires notification to its Office of Inspector General (OIG) when The University initiates an investigation of misconduct in research and education involving NSF funding or proposals; NSF requires submission of the investigation report and institutional findings to OIG when that process is completed.

In this context, University officials will take interim administrative actions as needed to protect all federal research funds and ongoing federally-sponsored research activities, and to ensure that the purposes of the federal financial assistance are carried out.

CERTIFICATION STATEMENT

56. This PPS has been approved by the reviewer listed below and represents Texas State's Division of Academic Affairs policy and procedure from the date of this document until superseded.

Review Cycle: _____

Review Date: _____

Reviewer: _____

Date: _____

Approved: _____

Date: _____

Gene Bourgeois
Provost and Vice President for
Academic Affairs

Texas State University
Provost and Vice President for Academic Affairs
Last Updated: September 1, 2016
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