Misconduct in Federally Funded Research

Purpose

The purpose of this policy is to identify the investigative procedures to be utilized and process requirements following an allegation of misconduct in research.

Persons Affected

Any person paid by and/or subject to the rules and policies of SFA, including faculty, research scientists, trainees, technicians and other staff members, students and visiting professors, who are working on federally funded research.

Policy Statement

Stephen F. Austin State University (SFA) strives to create a climate that promotes faithful adherence to high ethical standards in the conduct of scientific research without inhibiting the productivity and creativity of the academic community.

Misconduct in research is a major breach of the relationship between a faculty or staff member and the university and is defined as the fabrication, falsification or plagiarism in proposing, performing or reviewing research, or in reporting research results. Fabrication is making up data or results and recording or reporting them. 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 records. Plagiarism is the appropriation of another person's ideas, processes, results or words without giving appropriate credit.

A finding of research misconduct requires three criteria to be met:

1. a significant departure from accepted practices of the relevant research community;
2. intentional, knowing or reckless misconduct; and
3. proof by a preponderance of the evidence.

Research misconduct does not include honest error or differences of opinion.

In order to maintain the integrity of research projects, every investigator should keep an auditable record of experimental protocols, data, and findings. Co-principal investigators and/or co-authors on research reports of any type must have a bona fide role in the research and must accept responsibility for the quality of the work reported.

Any inquiry or investigation of allegations of misconduct in research must proceed promptly and with due regard for the reputation and rights of all involved. The university will take all reasonable steps to assure the persons involved in the evaluation of the allegations and evidence have appropriate expertise and that no person involved in the procedures is either biased against the accused person(s) or has a conflict of interest.

Allegations of misconduct based on events that occurred six or more years previous are not

subject to review under this policy, unless otherwise determined by the deciding official (DO) as defined in Section III.D.

Definitions

A. Allegation: disclosure through any means of communication of possible research misconduct.

B. Complainant: a person who in good faith makes an allegation of research misconduct. Good faith: having a belief in the truth of one's allegation or testimony that a reasonable person in the complainant's or witness's position could have, based on the information known to the complainant or witness at the time. An allegation or cooperation with a research or scholarly misconduct proceeding is not in good faith if it is made with knowing or reckless disregard for information that would negate the allegation or testimony. For PHS supported research, good faith as applied to a committee member means cooperating with the purpose of helping an institution meet its responsibilities under 42 C.F.R. Part 93. A committee member does not act in good faith if his/her acts or omissions on the committee are dishonest or influenced by personal, professional or financial conflicts of interest with those involved in the misconduct proceeding.

C. Inquiry: preliminary information gathering and preliminary fact-finding.

D. Investigation: formal development of a factual record and the examination of that record leading to a decision. The decision may be to not make a finding of research misconduct or to recommend a finding of research misconduct.

E. Preponderance of the evidence: proof by information that leads to the conclusion that the fact at issue is more probably true than not.

F. PHS support: PHS funding, or applications or proposals for biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or training, that may be provided through: PHS grants, cooperative agreements, or contracts or subgrants or subcontracts under those PHS funding instrument, or salary or other payments under PHS grants, cooperative agreements or contracts.

G. Records of research misconduct proceedings (records): research records and other evidence secured for the misconduct proceeding pursuant to this policy and applicable federal regulations, except to the extent the RIO determines and documents that those records are not relevant to the proceeding or that the records duplicate other records that have been retained; the inquiry report and final documents produced in the course of preparing that report, including the documentation of any decision not to investigate, as required by 42 C.F.R. § 93.309(c) for PHS supported research misconduct; the investigation report and all records in support of the report, including the recordings or transcripts of each interview conducted; and the complete record of any appeal to university officials from the finding of misconduct.

H. Research record: the record of data or results that embody the facts resulting from scholarly activity and scientific inquiry, including but not limited to: research proposals,

laboratory records (physical and electronic), progress reports, abstracts, theses, oral presentations, internal reports, journal articles or other forms of scholarly works, reports or publications and any documents and materials provided to a federal agency or a university official by a respondent in the course of the research misconduct proceeding.

I. Respondent: the person against whom an allegation of research misconduct is directed or who is the subject of a misconduct proceeding.

J. Retaliation: an adverse action taken against a complainant, witness, committee member, the RIO or DO by the university or one of its employees in response to: (1) a good faith allegation or research or scholarly misconduct; or (2) good faith cooperation with a misconduct proceeding.

Scope

Procedures set forth in this policy address the Requirements for Institutional Policies and Procedures as detailed in 42 C.F.R. § 93.304 for Public Health Service (PHS) supported research, which includes agencies such as the National Institutes of Health, the Centers for Disease Control and Prevention, the Food and Drug Administration and the Health Resources and Services Administration.

The university hereby exercises the option to adopt internal standards of conduct that differ from the PHS standards; therefore, the policy identifies PHS provisions that may apply, in whole or in part, only to PHS supported research. When an allegation falls within PHS definitions and jurisdiction, the university will conduct an institutional inquiry pursuant to the PHS regulations. Additionally, the university will comply with applicable regulations of other federal agencies for the investigation of allegations of misconduct in research that they support.

This policy and its procedures will apply when a university official receives an allegation of possible misconduct in federally funded research. Circumstances in individual cases may require variation from normal procedure to meet the best interest of the university or the sponsor.

Deviation from the normal procedures must ensure fair treatment of the subject of the allegation. Any significant variation should be approved in advance by the university's research integrity officer (RIO), who is the dean of research and graduate studies unless otherwise assigned by the president, and for PHS supported research, the Office of Research Integrity (ORI) of the U.S. Department of Health and Human Services (see III.A below).

Possible scholarly misconduct not specifically covered by this policy may be covered by other university policies and procedures, including SFA HOP 02-315 Misconduct in Scholarly or Creative Activities.

I. Rights and Responsibilities

A. Research Integrity Officer (RIO): The RIO is the institutional official responsible for assessing allegations of federally funded research misconduct and overseeing inquiries and investigations. Responsibilities of the RIO include the following duties related to research misconduct proceedings:

- Consult confidentially with persons uncertain about whether to submit an allegation of research misconduct and provide confidentiality to those involved in the research misconduct proceeding as required by 42 C.F.R. § 93.108, other applicable law and institutional policy.
- Receive allegations of research misconduct.
- Inform the university's general counsel of allegations of research misconduct and seek advice at appropriate junctures in the process.
- Assess each allegation of research misconduct in accordance with Section V.A of this policy to determine whether it falls within the definition of research misconduct and warrants an inquiry.
- Determine if the research in question was supported by a PHS sponsor and, as necessary, take interim action and notify the ORI of special circumstances with regard to PHS supported research, in accordance with Section IV.F of this policy.
- Sequester research data and evidence pertinent to the allegation of research misconduct in accordance with Section V.C of this policy and maintain it securely in accordance with this policy and applicable law and regulation.
- Notify the respondent and provide opportunities for him/her to review/comment/respond to allegations, evidence, and committee reports in accordance with Section III.C of this policy.
- Inform respondents, complainants, and witnesses of the procedural steps in the research misconduct proceeding.
- Appoint the chair and members of the inquiry and investigation committees, ensure that those committees are properly staffed and that there is expertise appropriate to carry out a thorough and authoritative evaluation of the evidence.
- Determine whether each person involved in handling an allegation of research misconduct has an unresolved personal, professional or financial conflict of interest and take appropriate action, including recusal, to ensure that no person with such conflict is involved in the research misconduct proceeding.
- In cooperation with other institutional officials, take all reasonable and practical steps to protect or restore the positions and reputations of good faith complainants, witnesses and committee members and counter potential or actual retaliation against them by respondents or other institutional members.
- Keep the DO and others who need to know apprised of the progress of the review of the allegation of research misconduct.
- For PHS supported research, notify and make reports to the ORI as required by 42 C.F.R. Part 93.
- Ensure that administrative actions taken by the institution and the ORI, as applicable to PHS supported research, are enforced and take appropriate action to notify other involved parties, such as sponsors, law enforcement agencies, professional societies and licensing boards of those actions.
- Maintain records of the research misconduct proceeding and for PHS supported research, make them available to the ORI in accordance with Section VIII.F of this policy.

B. Complainant

The complainant is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with the inquiry and investigation. As a matter of good practice, the complainant should be interviewed at the inquiry stage and given the

transcript or recording of the interview for correction. The complainant must be interviewed during an investigation and be given the transcript or recording of the interview for correction.

C. Respondent

The respondent is responsible for maintaining confidentiality and cooperating with the conduct of an inquiry and investigation. The respondent is entitled to:

- a good faith effort from the RIO to notify the respondent in writing at the time or before beginning an inquiry;
- an opportunity to comment on the inquiry report and have comments attached to the report;
- notification of the outcome of the inquiry and receipt of a copy of the inquiry report that includes a copy of, or refers to, 42 C.F.R. Part 93 (if applicable to PHS supported research) and the institution's policies and procedures on research misconduct;
- notification in writing of the allegations to be investigated within a reasonable time after the determination that an investigation is warranted, but before the investigation begins (within 30 calendar days after the university decides to begin an investigation), and notification in writing of any new allegations not addressed in the inquiry or in the initial notice of investigation within a reasonable time after the determination to pursue those allegations;
- an interview during the investigation, an opportunity to correct the recording or transcript and inclusion of the corrected recording or transcript in the record of the investigation;
- an opportunity during the investigation to interview any witness who has been reasonably identified by the respondent as having information on relevant aspects of the investigation, to have the recording or transcript provided to the witness for correction and to have the corrected recording or transcript included in the record of investigation; and
- receipt of a copy of the draft investigation report and, concurrently, a copy of, or supervised access to, the evidence on which the report is based, and notification that any comments must be submitted within thirty (30) calendar days of the date on which the copy was received and that the comments will be considered by the university and addressed in the final report. The respondent will be given the opportunity to admit that the research misconduct occurred. With the advice of the RIO and the university's general counsel, the DO may terminate the institution's review of an allegation that has been admitted if the institution's acceptance of the admission and any proposed settlement is approved by the ORI as applicable for PHS supported research misconduct.

Additionally, the respondent will have the opportunity to request an institutional appeal in accordance with Section VIII.D of this policy.

D. Deciding Official

The deciding official (DO) is an institutional official who makes final determinations on allegations of research misconduct and any institutional administrative actions. The DO for the university is the provost and vice president for academic affairs. For any matter involving a vice president, the president will be the DO. In any matter involving the president or other staff reporting to the regents, the chair of the Board of Regents will be the DO.

The DO will receive the inquiry report and after consulting with the RIO, decide whether an investigation is warranted for research misconduct, and for PHS supported research, whether an investigation is warranted under the criteria in 42 C.F.R. § 93.307(d). Any finding that an investigation is warranted must be made in writing by the DO and for PHS supported research must also be provided to the ORI, together with a copy of the inquiry report meeting the requirements of 42 C.F.R. § 93.309, within thirty (30) calendar days of the finding.

The DO will receive the investigation report and, after consulting with the RIO and other appropriate officials, decide the extent to which the university accepts the findings of the investigation and, if research misconduct is found, decide what, if any, institutional administrative actions are appropriate. The DO will ensure that the final investigation report, the findings of the DO and a description of any pending or completed administrative action are provided to the ORI for PHS supported research, as required by 42 C.F.R. § 93.315.

II. General Policies and Principles

A. Responsibilities to Report Misconduct

All university employees will report observed, suspected or apparent research misconduct with federal funds to the RIO, and any official who receives an allegation of research misconduct must report it immediately to the RIO. If an individual is unsure whether a suspected incident falls within the definition of research misconduct, he or she may meet with or contact the RIO to discuss the suspected misconduct informally, which may include discussing it anonymously and/or hypothetically. If the circumstances described by the individual do not meet the definition of research misconduct, the RIO will refer the individual or allegation to other university offices or officials with responsibility for resolving the problem.

At any time, a university employee may have confidential discussions and consultations about concerns of possible misconduct with the RIO and will be counseled about appropriate procedures for reporting allegations.

B. Cooperation with Misconduct Proceedings

University employees will cooperate with the RIO and other university officials in the review of allegations and the conduct of inquiries and investigations. Employees, including respondents, have an obligation to provide evidence relevant to misconduct allegations to the RIO or other university officials.

C. Confidentiality

The RIO will, as required by university policy and 42 C.F.R. § 93.108: (1) limit disclosure of the identity of respondents, complainants and witnesses to those who need to know in order to carry out a thorough, competent, objective and fair misconduct proceeding; and (2) except as otherwise prescribed by law, limit the disclosure of any records or evidence from which research subjects might be identified to those who need to know in order to carry out a research misconduct proceeding. The RIO will use written confidentiality agreements or other mechanisms to ensure confidentiality.

D. Protecting Complainants, Witnesses and Committee Members
University employees may not retaliate in any way against complainants, witnesses or inquiry committee members. Employees should immediately report any alleged or apparent retaliation against complainants, witnesses or committee members to the RIO who will review the matter and, as necessary, make all reasonable and practical efforts to counter any potential or actual retaliation and protect and restore the position and reputation of the person against whom the retaliation is directed.

E. Protecting the Respondent
As requested, and as appropriate, the RIO and other university officials will make all reasonable and practical efforts to protect or restore the reputation of persons alleged to have engaged in research or scholarly misconduct when no finding of misconduct is made.

During the misconduct proceeding, the RIO is responsible for ensuring that respondents receive all the notices and opportunities provided for in 42 C.F.R. Part 93, as applicable to PHS supported research and the policies and procedures of the university. Respondents may consult with legal counsel or a non-lawyer personal adviser (who is not a principal or witness in the case) to seek advice and may bring the counsel or personal adviser to interviews or meetings on the case for personal advisement. University counsel must be present in any meeting where other counsel is present.

F. Interim Administrative Actions and Notifying the ORI of Special Circumstances
Throughout research misconduct proceedings, the RIO will review the situation to determine if there is any threat of harm to public health, federal funds and equipment, or the integrity of the research process, and, for PHS supported research, will notify the ORI immediately of such threats.

In the event of such threats, the RIO, in consultation with other university officials and the ORI as appropriate, will take appropriate interim action including additional monitoring of the research process and the handling of federal funds and equipment, reassignment of personnel or the responsibility for the handling of federal funds and equipment, additional review of research data and results or delaying publication.

Such potential threats where interim action should be taken include:

- Health or safety of the public is at risk, including an immediate need to protect human or animal subjects.
- Public resources or interests are threatened.
- Research activities should be suspended.
- There is a reasonable indication of possible violations of civil or criminal law.
- Federal action is required to protect the interests of those involved in the research misconduct proceeding.
- The research misconduct proceeding may be made public prematurely and HHS action may be necessary to safeguard evidence and protect the rights of those involved.
- The research community or public should be informed.

III. Stage 1 – Conducting the Assessment and Inquiry

A. Assessment of Allegations
Upon receiving an allegation of misconduct in research with federal funds, the RIO will immediately assess the allegation to determine whether it is sufficiently credible and specific so that potential evidence of misconduct may be identified and whether it is within the jurisdictional criteria of 42 C.F.R. § 93.102(b) and 93.103. An inquiry must be conducted if the required criteria for research misconduct are met.

The assessment period should be concluded within five (5) working days of receipt of an allegation. In conducting the assessment, the RIO need not interview the complainant, respondent or other witnesses, or gather data beyond any that may have been submitted with the allegation, except as necessary to determine whether the allegation is sufficiently credible and specific so that potential evidence of misconduct may be identified. The RIO will, on or before the date on which the respondent is notified of the allegation, obtain custody of, inventory, and sequester all records and evidence needed to conduct the misconduct proceeding, as provided in paragraph C of this section.

B. Initiation and Purpose of the Inquiry
If the RIO determines the criteria for an inquiry are met, the inquiry process will be immediately initiated. The purpose of the inquiry is to conduct an initial review of the available evidence to determine whether to investigate. An inquiry does not require a full review of all the evidence related to the allegation.

C. Notice to Respondent; Sequestration of Research Records
At the time of or before beginning an inquiry, the RIO must make a good faith effort to notify the respondent in writing, if the respondent is known. If the inquiry subsequently identifies additional respondents, a good faith effort must be made to notify them in writing. On or before the date on which the respondent is notified or the inquiry begins, whichever is earlier, the RIO must take all reasonable and practical steps to obtain custody of all the records and evidence needed to conduct the misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except where the research records or evidence encompasses scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments. For PHS supported research, the RIO may consult with the ORI for advice and assistance in this regard.

D. Appointment of the Inquiry Committee
The RIO, in consultation with other university officials as appropriate, will appoint an inquiry committee and committee chair within ten (10) working days of the initiation of the inquiry or as soon thereafter as practical. The inquiry committee must consist of individuals who do not have unresolved personal, professional or financial conflicts of interest with those involved with the inquiry and should include individuals with the appropriate expertise to evaluate the evidence and issues related to the allegation, interview the principals and key witnesses, and conduct the inquiry.

The RIO will prepare a written charge for the inquiry committee that:

- sets forth the time for completion of the inquiry, unless extenuating circumstances require an extension of time;
- describes the allegations and any related issues identified during the allegation assessment;
- states that the purpose of the inquiry is to conduct an initial review of the evidence, including the testimony of the respondent, complainant and key witnesses, to determine whether an investigation is warranted, not to determine whether research misconduct definitely occurred or who was responsible;
- states that an investigation is warranted if the committee determines if the allegation may have substance based on the committee's review and, in the case of PHS supported research, there is a reasonable basis for concluding that the allegation falls within the definition of research misconduct and is within the jurisdictional criteria of 42 C.F.R. § 102(b); and
- informs the inquiry committee that they are responsible for preparing or directing the preparation of a written report of the inquiry that, in the case of PHS supported research misconduct, meets the requirements of this policy and 42 C.F.R. § 93.309(a).

At the committee's first meeting, the RIO will review the charge, discuss the allegation and any related issues, the appropriate procedures for conducting the inquiry, assist with organizing plans for the inquiry, and answer any questions. The RIO will be available throughout the inquiry to advise the committee as needed.

E. Inquiry Process

The inquiry committee will normally interview the complainant, the respondent and key witnesses, as well as examine relevant research records and materials. Then, the inquiry committee will evaluate the evidence, including the testimony obtained during the inquiry. After consultation with the RIO, the committee members will decide whether an investigation is warranted based on the criteria in this policy and 42 C.F.R. § 93.307(d), as applicable to the allegation. The scope of the inquiry is not required to include, and does not normally include, deciding whether misconduct definitely occurred, determining definitely who committed the misconduct or conducting exhaustive interviews and analyses.

However, if a legally sufficient admission of misconduct is made by the respondent, misconduct may be determined at the inquiry stage if all relevant issues are resolved. In that case, for instances of PHS supported research misconduct, the university will promptly consult with the ORI to determine the next steps that should be taken.

F. Time for Completion

The inquiry, including preparation of the final inquiry report and the decision of the DO on whether an investigation is warranted, must be completed within sixty (60) calendar days of initiation of the inquiry, unless the RIO, at his/her discretion, determines circumstances clearly warrant a longer period. In the case of an extension, the inquiry record must include documentation of the reasons for exceeding the 60-day period.

IV. The Inquiry Report

A. Elements of the Inquiry Report
A written inquiry report must be prepared that includes the following information, as applicable to the allegation: (1) the name and position of the respondent; (2) a description of the allegations of research misconduct; (3) the federal support including, for example, grant numbers, grant applications, contracts and publications listing federal support; (4) the basis for recommending or not recommending that the allegations warrant an investigation; and (5) any comments on the draft report by the respondent or complainant.

The university's general counsel will review the report for legal sufficiency. Modifications should be made as appropriate in consultation with the RIO and the inquiry committee. The inquiry report will include: (1) the names and titles of the committee members and experts who conducted the inquiry; (2) a summary of the inquiry process used; (3) a list of the research records reviewed; (4) summaries of any interviews; and (5) any other actions that should be taken if an investigation is not recommended.

B. Notification and Opportunity to Comment
The RIO will notify both the respondent and the complainant within ten (10) working days of completion of the draft inquiry report whether the inquiry found an investigation to be warranted, provide a copy of the draft report for comment and the university's policies and procedures on misconduct, and for PHS supported research, a copy of or reference to 42 C.F.R. Part 93. A confidentiality agreement will be a condition for access to the report by the respondent and complainant.

Any comments that are submitted will be attached to the final inquiry report. Based on the comments, the inquiry committee may revise the draft report as appropriate and prepare it in final form. The committee will deliver the final report to the RIO.

C. Institutional Decision and Notification
1. Decision by Deciding Official
The RIO will transmit the final inquiry report and any comments to the DO, who will determine in writing whether an investigation is warranted. The inquiry is completed when the DO makes this determination.

2. Notification to the ORI
For allegations of research misconduct with PHS funded research, within thirty (30) calendar days of the DO's decision that an investigation is warranted, the RIO will provide the ORI with the DO's written decision and a copy of the inquiry report. The RIO will also notify those university officials who need to know of the DO's decision. The RIO must provide the following information to the ORI upon request: (1) the institutional policies and procedures under which the inquiry was conducted; (2) the research records and evidence reviewed, transcripts or recordings of any interviews and copies of all relevant documents; and (3) the charges to be considered in the investigation.

3. Documentation of Decision Not to Investigate
If it is found an investigation is not warranted, the DO and the RIO will ensure for PHS supported research that detailed documentation of the inquiry is retained as detailed in Section VIII.F.

V. Stage 2 – Conducting the Investigation

A. Initiation and Purpose

The investigation must begin within thirty (30) calendar days after the determination by the DO that an investigation is warranted. The purpose of the investigation is to develop a factual record by exploring the allegations in detail and examining the evidence in depth, leading to a determination of findings on whether misconduct has been committed, by whom and to what extent. The investigation will also determine whether there are additional instances of possible misconduct that would justify broadening the scope beyond the initial allegations. This is particularly important where the alleged research misconduct involves potential harm to human subjects or the general public, or if it affects research that forms the basis for public policy, clinical practice, or public health practice. The findings of the investigation will be set forth in an investigation report.

B. Notifying the ORI and Respondent; Sequestration of Research Records

The RIO must notify the respondent in writing of the allegations to be investigated and give the respondent written notice of any new allegations of misconduct within a reasonable amount of time of deciding to pursue allegations not addressed during the inquiry or in the initial notice of the investigation.

For allegations of research misconduct with PHS funded research, on or before the date on which the investigation into research misconduct begins, the RIO must notify the ORI director of the decision to begin the investigation and provide the ORI a copy of the inquiry report.

In all instances, the RIO, prior to notifying the respondent of the allegations, will take all reasonable and practical steps to obtain custody of and sequester in a secure manner all scholarly records, research records and evidence needed to conduct the misconduct proceeding that were not previously sequestered during the assessment inquiry. Where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments. The need for additional sequestration of records for the investigation may occur for any number of reasons, including the institution's decision to investigate additional allegations not considered during the assessment inquiry stage or the identification of records during the inquiry process that had not been previously secured. The procedures to be followed for sequestration during the investigation are the same procedures that apply during the inquiry.

C. Appointment of the Investigation Committee

The RIO, in consultation with other university officials, as appropriate, will appoint an investigation committee and committee chair within ten (10) working days of the beginning of the investigation or as soon thereafter as practical. The investigation committee must consist of individuals who do not have unresolved personal, professional or financial conflicts of interest with those involved with the investigation and should include individuals with the appropriate expertise to evaluate the evidence and issues related to the allegation, interview the respondent and complainant and conduct the investigation.

Individuals appointed to the investigation committee may also have served on the inquiry committee.

D. Charge to the Committee and the First Meeting

1. Charge to the Committee

The RIO will define the subject matter of the investigation in a written charge to the committee that:

- describes the allegations and related issues identified during the inquiry;
- identifies the respondent;
- informs the committee that it must conduct the investigation as prescribed in paragraph E of this section;
- defines research misconduct;
- informs the committee that it must evaluate the evidence and testimony to determine whether, based on a preponderance of the evidence, misconduct occurred and, if so, the type and extent of it and who was responsible;
- informs the committee that in order to determine that the respondent committed misconduct it must find a preponderance of the evidence establishes that: (1) misconduct, as defined in this policy, occurred (the respondent has the burden of proving by a preponderance of the evidence any affirmative defenses raised, including honest error or a difference of opinion); (2) there is a significant departure from accepted practices of the relevant research/scholarly community; and (3) the respondent committed the misconduct intentionally and/or knowingly or recklessly; and,
- informs the committee that it must prepare or direct the preparation of a written investigation report that meets the requirements of this policy and 42 C.F.R. § 93.313, as applicable to the allegation.

2. First Meeting

The RIO will convene the first meeting of the investigation committee to review the charge, the inquiry report, and the prescribed procedures and standards for the conduct of the investigation, including the necessity for confidentiality and for developing a specific investigation plan. The investigation committee will be provided with a copy of this policy and, for allegation of misconduct with PHS supported research, with a copy of 42 C.F.R. Part 93. The RIO will be present or available throughout the investigation to advise the committee as needed.

E. Investigation Process

The investigation committee and the RIO must:

- use to ensure that the investigation is thorough and sufficiently documented and includes examination of all records and evidence relevant to reaching a decision on the merits of each allegation;
- take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical;
- interview each respondent, complainant and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the respondent, and record or transcribe each interview, provide the recording or transcript to the interviewee for correction, and include the recording or transcript in the record of

investigation; and

- pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of any additional instances of possible misconduct, and continue the investigation to completion.

F. Time for Completion
This investigative stage is to be completed within 120 calendar days, including conducting the investigation, preparing the report of findings, providing the draft report for comment and sending the final report to the ORI as required for PHS supported research. However, if the RIO determines that the research misconduct investigation will not be completed within this 120-day period, a written request for an extension will be submitted to the ORI or other federal agencies as applicable, setting forth the reasons for the delay. If the ORI grants an extension, it may direct the filing of periodic progress reports (42 C.F.R. § 93.314).

VI. The Investigation Report

A. Elements of the Investigation Report
The investigation committee and the RIO are responsible for preparing a written draft report of the investigation that:

- describes the nature of the allegation of misconduct, including identification of the respondent;
- describes and documents the federal support, including, for example, the numbers of any grants that are involved, grant applications, contracts and publications listing federal support;
- describes the specific allegations of misconduct considered in the investigation;
- includes the institutional policies and procedures under which the investigation was conducted, unless, in the case of research misconduct proceedings for allegations of research in PHS supported research, those policies and procedures were provided to the ORI previously;
- identifies and summarizes the records and evidence reviewed and identifies any evidence taken into custody but not reviewed; and,
- includes a statement of findings for each allegation of misconduct identified during the investigation. Each statement of findings of misconduct must: (1) identify whether the misconduct was falsification, fabrication or plagiarism and whether it was committed intentionally, knowingly or recklessly; (2) summarize the facts and the analysis that support the conclusion and consider the merits of any reasonable explanation by the respondent, including any effort by the respondent to establish a preponderance of the evidence that he or she did not engage in misconduct because of honest error or a difference of opinion; (3) identify the specific federal support; (4) identify whether any publications need correction or retraction; (5) identify and the person(s) responsible for the misconduct; and (6) list any current support or known applications or proposals for support that the respondent has pending with federal agencies.

B. Comments on the Draft Report and Access to Evidence
1. Respondent
The RIO must give the respondent a copy of the draft investigation report for comment

and concurrently a copy of, or supervised access to, the evidence on which the report is based. The respondent will be allowed thirty (30) calendar days from the date the draft report is received to submit comments to the RIO. The respondent's comments must be included and considered in the final report.

2. Complainant
On a case-by-case basis within the university's discretion, the university may provide the complainant a copy of the draft investigation report, or relevant portions of it, for comment. The complaint's comments must be submitted within thirty (30) calendar days of the date on which the draft report is received, and the comments must be included and considered in the final report. For allegations of misconduct for PHS supported research, see §§ 93.312(b) and 93.313(g).

C. Decision by Deciding Official
The RIO will assist the investigation committee in finalizing the draft investigation report, including ensuring that the respondent's and complainant's comments are included and considered, and transmit the final investigation report to the DO, who will determine in writing whether the university accepts the investigation report, its findings and any recommended institutional actions in response to accepted findings of research misconduct. If the determination by the DO varies from the findings of the investigation committee, the DO will, as part of the written determination, explain in detail the basis for rendering a decision different from the findings of the investigation committee. The DO may return the report to the investigation committee with a request for further fact- finding or analysis.

When a final decision on the case has been reached, the RIO will notify both the respondent and the complainant in writing. In the case of PHS supported research, the DO will inform the ORI. The DO will determine whether law enforcement agencies, professional societies, professional licensing boards, editors of journals in which falsified reports may have been published, collaborators of the respondent in the work, or other relevant parties should be notified of the outcome of the case. The RIO is responsible for ensuring compliance with all notification requirements of other sponsoring federal agencies.

D. Appeals
Respondents and complainants may submit a written appeal on the judgment of the investigating committee, the DO and/or the sanction to the DO within thirty (30) calendar days of written notification of the sanctions. The DO will forward the appeal to the president for consideration. For matters concerning the vice president for academic affairs, the appeal will be forwarded to the chair of the Board of Regents. In any matter involving the president or other staff reporting to the regents, the chair of the Board of Regents will also serve as the appeal officer. Grounds for appeal include, but are not limited to, previously unconsidered material evidence, sanctions not commensurate with the finding, and failure to follow the prescribed process. Upon receipt of the appeal, the appeal officer will evaluate the evidence and make a determination. The appeal officer may consult with the DO, RIO or other individuals as appropriate. The appeal officer will reopen the investigation if the previously unconsidered material evidence so warrants and may reopen the investigation if circumstances so dictate. The appeal officer's decision will be

conveyed to all involved in a timely fashion but must be conveyed within thirty (30) calendar days. In the case of termination, the appropriate university policies on termination for cause will be followed.

Unless an extension has been granted, the appeal process must be completed within 120 calendar days of its filing. Similarly, but without external review, an extension of time may be granted for good cause by the university or as directed by the sponsoring agency for completion of the appeal process in non-PHS supported research misconduct cases.

E. Notice to the ORI of Institutional Findings and Actions
For cases involving PHS supported research, unless an extension has been granted by ORI, the RIO must, within the 120-day period for completing the investigation or the 120-day period for completion of any appeal, submit the following to ORI: (1) a copy of the final investigation report with all attachments and any appeal; (2) a statement of whether the institution accepts the findings of the investigation report or the outcome of the appeal; (3) a statement of whether the institution found misconduct and, if so, who committed the misconduct; and (4) a description of any pending or completed administrative actions against the respondent.

F. Maintaining Records for Review by the ORI
For cases involving PHS supported research, the RIO must maintain and provide to the ORI upon request "records of research misconduct proceedings" as defined by 42 C.F.R. § 93.317. The RIO is also responsible for providing any information, documentation, research records, evidence or clarification requested by ORI to carry out its review of an allegation of research misconduct or of the institution's handling of such an allegation.

Unless custody has been transferred to HHS or the ORI has advised in writing that the records no longer need to be retained, records of research misconduct proceedings will be retained in a secure manner for seven (7) years after completion of the proceeding or the completion of any PHS proceeding involving the research misconduct allegation.

VII. Completion of Cases: Reporting Premature Closures to the ORI

1. Generally, all inquiries and investigations will be carried through to completion and all significant issues will be pursued diligently. For cases involving PHS supported research, the RIO must notify the ORI in advance if there are plans to close a case at the inquiry, investigation or appeal stage on the basis that respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason, except closing of a case at the inquiry stage on the basis that an investigation is not warranted; or
2. a finding of no misconduct at the investigation stage, which must be reported to the ORI as prescribed in this policy and 42 C.F.R. § 93.315.

VIII. Institutional Administrative Actions

If the DO determines that research misconduct is substantiated by the evidence, he/she will decide on the appropriate actions to be taken, after consultation with the RIO. The administrative actions may include:

- withdrawal or correction of all pending or published abstracts and papers emanating

from the research where misconduct was found;
- removal of the responsible person from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction or initiation of steps leading to possible rank reduction or termination of employment;
- restitution of funds to the grantor agency as appropriate; and
- other action appropriate to the misconduct.

IX. Other Considerations

A. Termination or Resignation Prior to Completing Inquiry or Investigation

The termination of the respondent's institutional employment, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported, will not preclude or terminate the research misconduct proceeding or otherwise limit any of the institution's responsibilities, including those under 42 C.F.R. Part 93 for cases involving PHS supported research.

If the respondent, without admitting to research misconduct, elects to resign after the institution receives an allegation of research misconduct, the assessment of the allegation will proceed, as well as the inquiry and investigation as appropriate, based on the outcome of the preceding steps. If the respondent refuses to participate in the process after resignation, the RIO and any inquiry or investigation committee will use their best efforts to reach a conclusion concerning the allegations, noting in the report the respondent's failure to cooperate and the effect on the evidence.

B. Restoration of the Respondent's Reputation

Following a final finding of no research misconduct, including the ORI concurrence if required by 42 C.F.R. Part 93, the RIO will, at the request of the respondent, undertake all reasonable and practical efforts to restore the respondent's reputation. Depending on the particular circumstances and the views of the respondent, the RIO should consider (1) notifying those individuals aware of or involved in the investigation of the final outcome, (2) publicizing the final outcome in any forum in which the allegation of misconduct was previously publicized, and (3) expunging all reference to the misconduct allegation from the respondent's personnel file (to the extent permitted by law). Any institutional actions to restore the respondent's reputation should first be approved by the DO.

C. Protection of the Complainant, Witnesses and Committee Members

During the misconduct proceeding and upon its completion, regardless of whether the institution or the ORI determines that research misconduct occurred, the RIO will undertake all reasonable and practical efforts to protect the position and reputation of, or to counter potential or actual retaliation against, any complainant who made allegations of misconduct in good faith and of any witnesses and committee members who cooperate in good faith with the misconduct proceeding. The DO will determine, after consulting with the RIO, and with the complainant, witnesses or committee members, respectively, what steps, if any, are needed to restore their respective positions or reputations or to counter potential or actual retaliation against them. The RIO is responsible for implementing any steps that the DO approves.

D. Allegations Not Made in Good Faith

If relevant, the DO will determine whether the complainant's allegations of misconduct were made in good faith, or whether a witness or committee members acted in good faith. If the DO determines there was an absence of good faith, he/she will determine whether any administrative action should be taken against the person who failed to act in good faith.

Related Statutes or Regulations, Rules, Policies, or Standards

42 C.F.R. Part 93

SFA HOP 02-314 Misconduct in Scholarly or Creative Activities

Responsible Executive

Vice President for Academic Affairs

Forms

None

Revision History

September 1, 2023 (original)