



TEXAS TECH UNIVERSITY

Operating Policy and Procedure

**OP 74.08: Allegations of Misconduct in Research, Scholarly, or Creative Activity**

**DATE:** March 6, 2018

**PURPOSE:** The purpose of this Operating Policy/Procedure (OP) is to outline and delineate the procedures that will be followed in the event that allegations of misconduct in research or scholarly activity or of retaliation because of such allegations should be made against a member of the faculty, a member of the staff, or a student at Texas Tech University. The intent of this policy is to provide an institutional response to accusations of misconduct and, at the same time, to ensure that the individual accused of such misconduct has full opportunity to refute the allegations and present the pertinent facts. Purposeful misconduct in research and scholarship is unethical. All members of the university community are responsible for reporting instances of misconduct in research or scholarly activity or of retaliation.

**REVIEW:** This OP will be reviewed in February of odd-numbered years by the Vice President for Research with substantive revisions forwarded to the Provost and Senior Vice President (PSVP).

**SCOPE**

This policy applies to all research, scholarly, and creative activity conducted at Texas Tech University. The policy does not apply to course work and other academic class activities that are covered by other policies (e.g., [OP 34.12, Grading Procedures](#); Student Handbook; and Code of Student Conduct). This policy applies to any member of the faculty, a member of the staff, or a student at Texas Tech University.

This policy and the procedures herein will be followed when a university official receives an allegation of misconduct in scientific or other scholarly activity or of retaliation because of such allegations. Circumstances of the reported case may require deviation from the normal procedure in order to meet the best interests of the university and parties involved. Any change in procedures must ensure fair treatment of the individual subject to the allegation, and any substantial changes of the procedure must be approved by the Vice President for Research (VPR) in advance of the change.

Difficulties are presented when an allegation of misconduct is brought after a significant passage of time from when the alleged misconduct occurred. As a result, it is common for institutions or other governmental bodies to restrict allegations that may be brought after the passage of a predetermined amount of time.

**DEFINITIONS**

1. Allegation – Any oral or written statement or indication of possible misconduct
2. Complainant – A person who makes an allegation

3. Conflict of Interest – A conflict of interest refers to a situation in which an employee’s financial, professional, or other personal considerations may directly or indirectly affect or have the appearance of affecting the employee’s judgment in exercising any duty or responsibility, including the conduct or reporting of research, owed to the institution. For more information regarding TTU policy on conflict of interest, see TTU [OP 10.20, Conflict of Interest and Commitment Policy](#).
4. Inquiry – Preliminary information gathering and fact finding to conclude whether an allegation warrants an investigation
5. Investigation – The formal examination and evaluation of all relevant facts to determine if misconduct has occurred and, if so, to determine the responsible person and the seriousness of the conduct
6. Good Faith Allegation – An allegation made with the honest belief that scientific misconduct may have occurred. An allegation is not in good faith if made with reckless disregard for or willful ignorance of facts that would disprove the allegation.
7. Malicious Intent – Intent to do harm in the making of an allegation: a report made when the report was not true and the complainant knew it was not true, but made the report anyway to harm the respondent.
8. Misconduct – Includes fabrication, falsification, or plagiarism in proposing, performing, or reviewing research or in reporting research results. It also includes ordering, advising, or suggesting that subordinates engage in research misconduct. The misconduct must depart significantly from accepted practices of the relevant research community and must be committed intentionally, knowingly, or recklessly. It does not include honest error or differences of opinion. Misconduct includes the material failure to comply with federal requirements for protection of researchers, human subjects, or the public, or for ensuring the welfare of laboratory animals. Misconduct also includes, but is not limited to, the failure to meet other legal requirements governing research and scholarly activity.
  - a. Fabrication – Making up data or results and recording or reporting them
  - b. Falsification – Manipulating search 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 – The appropriation of another person’s ideas, processes, results, or words without giving appropriate credit
9. Research Integrity Officer (RIO) – The institutional official responsible for assessing allegations of research misconduct to determine if they fall within the definition of research misconduct and warrant an inquiry on the basis that the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified.
10. Respondent – The person(s) against whom an allegation of scientific 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.

11. Retaliation – Any adverse action or credible threat of an adverse action taken by a covered institution, or member thereof, in response to a complainant’s good faith allegation of research, scholarly, or creative misconduct

## **PROCEDURE**

If an allegation of misconduct in research or other scholarly activity is made against a member of the Texas Tech University faculty, staff, or student body, and the alleged misconduct involves extramural funding, the RIO, in consultation with the VPR, shall consult with the source of the extramural funds for guidance on investigating, reporting, and responding to such allegations. Texas Tech University shall first look to any interested organized entity for guidelines in responding to allegations of misconduct in research or scholarly activity.

If an allegation of misconduct in research or other scholarly activity is made against a member of the Texas Tech University faculty, staff, or student body, the allegation shall be dealt with in the following manner:

### **1. Reporting Misconduct or Retaliation**

- a. All reports of alleged fraud, misconduct, and retaliation under this policy shall be directed to the RIO. Upon receipt of a formal, written, and signed allegation of fraud, misconduct, or retaliation, the RIO shall initiate an inquiry.
- b. There shall be no retaliation against any complainant who makes a good faith report or complaint under this policy.

### **2. Cooperation with Research Misconduct Proceedings**

Institutional members will cooperate with the RIO and other institutional officials in the review of allegations and the conduct of inquiries and investigations. Institutional members, including respondents, have an obligation to provide evidence relevant to research misconduct allegations to the RIO or other institutional officials.

### **3. Inquiry**

- a. The RIO is to make an immediate inquiry into the allegations. The RIO shall make an initial finding of whether:
  - (1) The subject matter and individuals accused in the reported allegation are within the scope of this policy.
  - (2) The allegations are sufficient to warrant an investigation into the alleged misconduct.
- b. An inquiry shall consist of information gathering and initial fact finding to determine whether an allegation of misconduct warrants an investigation. No presumption that misconduct occurred is created if the RIO determines that an investigation is warranted. Inquiry procedures will be determined by the circumstances of the allegations, but shall include notification of the individual against whom the allegation is made. The inquiry shall be completed within 60 days after receipt of the allegation. Any extension of this period will be based on good cause, approved in advance by the VPR, and recorded in the inquiry file.

- c. As a part of the inquiry, the RIO shall take appropriate action to preserve original research records and materials and all documents relevant to the inquiry. If appropriate, the RIO shall take interim administrative actions to protect federal funds and ensure that the purposes of the grant or contract are being carried out.
- d. All persons involved in the inquiry shall make diligent efforts to protect the identity of the complainant during the inquiry phase. If the process reaches the investigative phase, the right of the respondent to confront the complainant may require that the identity of the complainant be revealed. There shall be no retaliation against a complainant for his/her good faith allegation of misconduct.
- e. At the time of or before beginning an inquiry, the RIO shall make a good faith effort to notify the respondent in writing. If the inquiry later identifies additional respondents, the RIO shall notify them in writing. On or before the date on which the respondent is notified or the inquiry begins, whichever is earlier, the RIO shall take all reasonable and practical steps to obtain custody of all research records, including computer records, and evidence needed to conduct the inquiry, inventory the records and evidence, and sequester them in a secure manner. If the research records or evidence comprise instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, as long as those copies are substantially equivalent to the evidentiary value of the instruments. The RIO shall conduct the inquiry utilizing all materials and persons necessary to resolve the matter fairly and justly. This includes, but is not limited to, reviewing documents, materials, and other pertinent information from research, as well as conducting interviews of personnel. Normally, at the inquiry stage, the interviews will only include the claimant and respondent; however, the RIO may interview other persons relevant to the investigation if necessary. The respondent will have the opportunity to be interviewed and to present evidence in the initial inquiry.
- f. A report of the findings from the inquiry shall be made in writing to the VPR. Reports of inquiries shall be maintained in the office of the VPR for a period of seven years. The respondent shall have the opportunity to review drafts of the inquiry reports and to be informed of the results of the inquiry.
- g. If results of the inquiry indicate that the allegation was made with malicious intent, the VPR shall determine what action should be taken against the complainant.

#### 4. Investigation

- a. If the finding of the inquiry is that an investigation is warranted, the VPR shall appoint an ad hoc committee within 30 days after completion and/or reception of the report finding an investigation is warranted. The purpose of the investigation is to:
  - Explore in detail the allegations;
  - Examine all evidence in depth;
  - Determine if misconduct has occurred, by whom, and to what extent; and
  - Report to the VPR the committee's findings as to whether or not the allegations have, in the committee's opinion, sufficient basis in fact for the university to consider disciplinary action against the individual.

The investigation should also determine whether additional circumstances exist that warrant the expansion of the scope of the investigation beyond the initial allegations.

- b. The ad hoc committee will consist of three to five persons chosen by the VPR, in consultation with the chairperson or other appropriate official having administrative jurisdiction over the academic unit in which the individual holds principal academic appointment. The VPR shall appoint one ex-officio member of the committee from the Texas Tech University Faculty Senate. Insofar as possible, the members of the committee will be persons having sufficient acquaintance with research and scholarship in the discipline in question so that they can assess the allegation. In appointing the investigating committee, the VPR shall select impartial experts and make efforts to avoid real or apparent conflicts of interest. Committee members shall have the requisite expertise, based on the VPR's discretion, to effectively review and evaluate all relevant facts and materials.
- c. The VPR shall notify the respondent of the proposed committee membership. If the respondent submits a written objection to an appointed member of the committee based on a bias or conflict of interest within five days after notification, the VPR will determine whether to replace the individual with a qualified substitute.
- d. The VPR shall prepare a charge for the ad hoc committee describing the allegations made and any related issues identified prior to the investigation. The charge shall define scientific misconduct and identify the name of the respondent. The charge shall state that the committee is to evaluate the evidence and testimony of the complainant, respondent, and witnesses to determine whether, based upon a preponderance of the evidence, scientific misconduct occurred, who was responsible, and its seriousness.
- e. The investigating committee shall complete the investigation within 120 days. Any extension of this period will be based on good cause and approved in advance by the VPR. If the committee judges that disciplinary action is warranted, the committee will also make a recommendation to the VPR concerning what action should be taken. Possible disciplinary actions include, but are not limited to:
  - Issuing a formal reprimand;
  - Requiring special administrative arrangements to ensure compliance with applicable regulations;
  - Restricting particular research activities;
  - Removing the individual from the graduate faculty; and
  - Filing a formal charge of unfitness for continued employment at Texas Tech University.
- f. The respondent shall be treated fairly and his/her identity shall be kept confidential to the extent possible without compromising public health or safety or the ability to conduct the investigation efficiently and effectively. The respondent shall have the opportunity to review all evidence and to present evidence. The respondent is entitled to employ outside counsel at his/ her own expense for the duration of the proceedings. The respondent's counsel may accompany the respondent in meetings but may not ask questions or offer testimony. The respondent shall have the opportunity to review all drafts of the investigation reports and to be informed of the committee's decision.

## 5. Action

- a. If the inquiry or investigation involves a project funded by the Public Health Service (PHS), the National Science Foundation (NSF), or other agencies that have mandated notification policies, the VPR shall follow the respective agency's policies regarding notification.

- b. Following the investigation, the VPR, in consultation with the PSVP, shall decide what action should be taken.
- c. Records of the proceedings and the committee's findings shall be maintained in the office of the VPR for a period of seven years following the close of the investigation and the acceptance of any reports required by federal agencies.

## 6. Appeal

- a. Any person who has been found by the preceding procedures to have committed misconduct in research or scholarly activity may appeal that finding to the President of Texas Tech University if the person alleges the decision is:
  - Not based on consideration of all available evidence;
  - Not constitutionally permissible; or
  - Significantly noncompliant with the university's established standards or procedures.

This appeal must be filed in writing within 14 days after the accused is informed of the committee's finding. Failure of the accused to appeal to the PSVP or President within the prescribed time limits will make the decision of the VPR final.

- b. Within 14 days of receiving an appeal, the PSVP or President shall begin a review and investigation of the committee's finding and shall issue a decision on the appeal within 45 days of the appeal. In considering the appeal, the PSVP or President may act alone or involve others, as appropriate. The decision of the appeal shall be final.