

Angelo State University Operating Policy and Procedure

OP 56.02: Misconduct in Research

DATE: August 19, 2015

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to outline and delineate

the policies and procedures of the university with regard to the conduct of

research and scholarly activity.

REVIEW: This OP will be reviewed by June 1 every three years by the dean of the College

of Graduate Studies with recommendations for change presented to the provost

by July 15.

POLICY/PROCEDURE

1. Policy Statement Relating to Misconduct in Research

- a. Angelo State University (ASU) strives to create a climate that promotes faithful adherence to high ethical standards in the conduct of research, scholarship, and creative activities without inhibiting the productivity and creativity of the academic community.
- b. Misconduct in research means fabrication, falsification, plagiarism, or other practices that materially deviate from those that are commonly accepted within the scientific and scholarly community for proposing, conducting, or reporting research. It does not include honest errors or honest differences in interpretations or judgments.
- c. Misconduct in research is a major breach of the relationship between a faculty member, staff member, or student and the institution. In order to maintain the integrity of research projects, every investigator must keep an auditable record of experimental protocols, data, and findings. Coauthors 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.
- d. Any inquiry or investigation of allegations of misconduct in research must proceed promptly and with due regard for the reputation and rights of all individuals or entities involved.
- e. The university will take reasonable steps to assure that the persons involved in the evaluation of the allegations and evidence have appropriate expertise and that persons involved in the procedures are neither biased against the accused person(s) nor have conflicts of interest.
- f. The university will take reasonable steps to protect complainants who make allegations of research misconduct in good faith and others who cooperate in good faith with inquiries and investigations of such allegations.

2. Scope

This policy and the associated procedures apply to any person paid by, under the control of, or affiliated with Angelo State University, such as scientists, trainees, technicians and other staff members, faculty members, students, fellows, guest researchers, or collaborators. The policy and associated procedures will normally be followed when an allegation of possible misconduct in research is received by an institutional official. In the event of conflict between the provisions of this policy and the *Regents' Rules* of The Texas Tech University System, the latter will govern.

3. Definitions

- a. *Allegation* means any written or oral statement or other indication of possible research misconduct made to the dean of the College of Graduate Studies at Angelo State University.
- b. Complainant means a person who makes an allegation of research misconduct.
- c. *Conflict of interest* means the real or apparent interference of one person's interests with the interests of another person, where potential bias may occur because of prior or existing personal or professional relationships.
- d. *Good faith allegation* means an allegation made with the honest belief that research misconduct may have occurred. An allegation is not in good faith if it is unjust and malicious or is made with reckless disregard for or willful ignorance of facts that would disprove the allegation.
- e. *Inquiry* means gathering information and initial fact-finding to determine whether an allegation or apparent instance of research misconduct warrants an investigation.
- f. *Investigation* means 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 misconduct.
- g. *Respondent* means 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.
- h. *Retaliation* means any action that adversely affects the employment or other institutional status of an individual that is taken by an institution or an employee because the individual has in good faith, made an allegation of research misconduct or of inadequate institutional response thereto or has cooperated in good faith with an investigation of such allegation.
- Research misconduct or misconduct in research means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

4. Procedures for Addressing Allegations of Misconduct in Research

- a. Initial allegations, whether oral or written, must be reported to the dean of the College of Graduate Studies (DCGS). If the DCGS has a possible conflict of interest, the allegations will be referred to the Provost and Vice President of Academic Affairs.
- b. The DCGS shall informally review any allegation of misconduct in research and scholarship and determine whether the allegation warrants initiation of the inquiry process according to the policies and procedures for misconduct in research and scholarship, or whether other policies and procedures, such as those relevant to employment grievances, should be invoked. If the DCGS determines that the allegation provides sufficient information to warrant research misconduct follow-up, the complainant will be required to put the allegation in writing, if it has not already been so done. The DCGS will counsel the complainant as to the policies and procedures to be used in the follow-up. If the reporting individual chooses not to make a formal written allegation but the DCGS believes that reasonable cause exists to warrant an inquiry, the inquiry process shall be initiated.
- c. Even if the individual against whom the allegation is made (hereafter referred to as the respondent) leaves or has left the university before the case is resolved, the university may pursue an allegation of misconduct to its conclusion.
- d. Once an allegation is made, the identity of the respondent will be held in strict confidence, to the extent allowed by law, to protect the respondent.
- e. Where the complainant seeks anonymity, the DCGS shall operate in such a way as to maintain the anonymity to the degree compatible with law and due process. Such anonymity cannot, however, be assured. Further, anonymity of the complainant is neither desirable nor appropriate where the testimony or witness of the complainant is important to the substantiation of the allegations.

f. Inquiry

(1) Purpose

- (a) If the DCGS determines that an allegation has *prima facie* merit, he or she will immediately initiate the inquiry process. The DCGS will ensure that all original research records and materials relevant to the allegation are immediately secured.
- (b) The purpose of the inquiry is to make a preliminary evaluation of the available evidence and testimony of the respondent, complainant, and key witnesses to determine whether there is sufficient evidence of possible research misconduct to warrant a formal investigation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct definitely occurred or who was responsible. The findings of the inquiry must be set forth in an inquiry report.

(2) Structure

(a) The DCGS shall, after a decision to proceed with an inquiry, appoint an individual (hereafter referred to as the Fact Finder) to conduct an official inquiry. This Fact Finder will have no real or apparent conflicts of interest, hold no

- appointment in the departments of either the complainant or the respondent, and have appropriate expertise for evaluating the information relevant to the case. The Fact Finder may be a scientist, subject matter expert, administrator, lawyer, or other qualified person, and may be from inside or outside the institution.
- (b) Records of the inquiry are confidential to the extent allowed by law and are to be passed on to an *ad hoc* Committee of Investigation if formal review is initiated. In any case, the records shall be kept secure, and if no misconduct is found, the records should be destroyed three years after completion of an inquiry or after such period as may be specified by state law, whichever is greater. At the option of the Fact Finder, proceedings either will be recorded or transcribed, and the records will be made available to appropriate and involved parties upon request.

(3) Process

- (a) The DCGS will notify the respondent of the proposed Fact Finder within 15 working days from the date the decision was made to proceed with an inquiry. If the respondent submits a written objection to the appointed Fact Finder based on bias or conflict of interest within 5 working days of the respondent's receipt of the notice, the DCGS will determine whether to replace the challenged Fact Finder with a qualified substitute.
- (b) The DCGS will prepare a charge for the Fact Finder that describes the allegation and any related issues identified during the allegation assessment and states that the purpose of the inquiry is to make a preliminary evaluation of the evidence and testimony of the respondent, complainant, and key witnesses to determine whether there is sufficient evidence of possible research misconduct to warrant a formal investigation. The DCGS and the institutional counsel will be available throughout the inquiry to advise the Fact Finder as needed.
- (c) The Fact Finder will normally interview the complainant, the respondent, and key witnesses as well as examine relevant research records and materials. All involved parties are obligated to cooperate with the Fact Finder by supplying requested documents and information. The scope of the inquiry does not include deciding whether misconduct occurred or conducting exhaustive interviews and analyses.
- (d) During the inquiry, access to copies of all non-privileged documents reviewed by the Fact Finder will be available to all appropriate parties. All materials will be considered confidential to the extent allowed by law and shared only with those with a need to know. During the inquiry, the DCGS and the Fact Finder are responsible for the security of relevant documents. Copies of all documents and related communications are to be securely maintained in the graduate dean's office.
- (e) The inquiry phase will be completed within thirty (30) working days of its initiation unless the Fact Finder determines that circumstances clearly warrant a longer period. In such circumstances, the Fact Finder will advise the DCGS who will advise all relevant parties. The record of the inquiry will include documentation of the reason for exceeding the thirty day period.

(f) All principals in the inquiry may be accompanied by a representative for advice and counsel. However, the principals must speak for themselves.

(4) Findings

- (a) Upon completion of an inquiry, the Fact Finder will decide whether there is sufficient evidence of possible misconduct to merit further formal investigation. The outcome of the inquiry will be conveyed in writing to the DCGS. The written report must state the name and title of the Fact Finder, the allegations, a summary of the inquiry process used, a list of research records reviewed, summaries of any interviews, and a description of the evidence in sufficient detail to demonstrate whether an investigation is warranted, as well as the findings, conclusions and recommendations of the Fact Finder. Institutional counsel will review the report for legal sufficiency.
- (b) Within five days of receipt of the draft inquiry report, the DCGS will provide the respondent and complainant a copy of the draft inquiry report for comment and rebuttal. Within 10 working days of their receipt of the draft report, the respondent and complainant will provide their comments, if any, to the Fact Finder. Any comments that the complainant or respondent submits on the draft report will become part of the final inquiry report. Based on such comments, the Fact Finder may revise the report as appropriate.
- (c) If he/she determines that the outcome of the inquiry indicates a need for formal investigation, the DCGS shall, after notification to the appropriate dean(s) and legal counsel, notify both the respondent and the complainant in writing. Under certain circumstances, as defined by the applicable federal regulations, the institution may be expected to notify the sponsoring agency or funding source prior to the initiation of an investigation.
- (d) If the DCGS finds that an allegation is unsupported but has been submitted in good faith, he/she will take no further action, other than informing all parties, will be taken. The proceedings of an inquiry, including the identity of the respondent, will be held in strict confidence to the extent allowed by law.
- (e) If the Fact Finder finds the allegation was not made in good faith, those findings will be reported to the DCGS. At this time the DCGS may take such actions or impose such sanctions on the complainant as are appropriate to the situation and are in accord with university disciplinary procedures.

g. Formal Investigation and Determination

(1) Purpose

(a) A formal investigation will be initiated when the DCGS determines that the inquiry findings warrant such an investigation. The purpose of the formal investigation is to explore the allegations further and to determine whether misconduct in research and scholarship has been committed, by whom, and to what extent. In the course of an investigation, additional information may emerge that justifies broadening the scope of the investigation beyond the initial allegations. The respondent will be informed in writing when significant new

directions of investigation are undertaken. If this occurs, the DCGS will immediately sequester any relevant research records that were not previously sequestered during the inquiry stage.

(2) Structure

- (a) The DCGS will, after a decision to proceed with an investigation, and after consultation with the president of the Faculty Senate, the academic vice president, and the dean of the respondent's college, appoint an Investigating Committee of no less than three persons. At least two members will be senior faculty who are without conflict of interest, hold no appointment in the departments of either the complainant or the respondent, and preferably have appropriate expertise for evaluating the information relevant to the case. At least one member shall be a person who is not associated with Angelo State University. The Fact Finder shall not serve on the Investigating Committee. The Investigation Committee shall be appointed within 15 working days of the notification to the respondent that an investigation is planned.
- (b) The DCGS will notify the respondent of the proposed committee membership within 5 working days (i.e., no later than 20 working days after notification to the respondent that an investigation is planned.) If the respondent submits a written objection to any appointed member of the Investigation Committee based on bias or conflict of interest within 5 working days of the respondent's receipt of the committee membership, the DCGS will determine whether to replace the challenged member or members with a qualified substitute.
- (c) Every effort should be made to complete the investigation within 120 working days; however, it is acknowledged that in some cases this time period may be difficult to meet. In such cases, the Investigating Committee shall compile a progress report, identify reasons for the delay, and notify the DCGS in writing of the additional time necessary for the investigation. The DCGS shall convey to the funding agency such information as may be required by it at intervals as required by the sponsoring agency.
- (d) Both the principals and the Investigating Committee may be assisted or represented by counsel who will be allowed to make presentations and argue the matter.

(3) Process

- (a) The DCGS, with the assistance of institutional counsel, 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. The Investigating Committee will elect a chairperson to handle procedural and administrative matters at this first meeting.
- (b) The DCGS will define the subject matter of the investigation in a written charge to the committee that describes the allegation and related issues identified during the inquiry, define research misconduct, and identify the name of the respondent. The charge will state that the committee is to evaluate the evidence and

- testimony of the respondent, complainant, and key witnesses to determine whether, based on a preponderance of the evidence, research misconduct occurred and, if so, to what extent, and who was responsible.
- (c) The investigation normally will include examination of all documentation, including, but not necessarily limited to, relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. The committee will make every attempt to interview all individuals involved in making the allegation or against whom the allegation is made, as well as other individuals who might have information regarding key aspects of the allegations. Respondent interviews must be recorded or transcribed. All other interviews must be recorded, transcribed, or summarized. If summarized, the summaries of these interviews will be provided to the interviewed party for comment or revision and included as part of the investigatory file. The investigation must be sufficiently thorough to permit the Committee to reach a decision about the validity of the allegation(s) and the scope of the wrongdoing or to be sure that further investigation is not likely to alter an inconclusive result. In addition to making a judgment on the veracity of the charges, the Committee may recommend to the DCGS appropriate sanctions if warranted.
- (d) For good cause, interim administrative sanctions may be initiated by the DCGS prior to conclusion of the investigation when the continuing actions of the respondent poses a danger to persons or property or poses an ongoing threat of disrupting the academic process.
- (e) Nothing herein shall prohibit the university from instituting disciplinary proceedings against the respondent under university policy or *Regents' Rules*.

(4) Findings

- (a) After all evidence has been received and hearings completed, the Investigating Committee shall meet in closed sessions to deliberate and prepare its findings and recommendations. The committee shall find no academic misconduct unless a majority of the members conclude that the preponderance of the credible evidence substantiates the allegations(s).
- (b) Upon completion of the investigation, the committee will submit to the DCGS a full written report that details the Committee's findings and recommendations. The report must describe the policies and procedures under which the investigation was obtained, state the findings and explain the basis for the findings. If any individual(s) is (are) found to have engaged in misconduct, the report will include the actual text or an accurate summary of the views of this (these) individual(s) as well as a description of any sanctions imposed and administrative actions taken by the institution.
- (c) The DCGS will provide the respondent with a copy of the draft investigation report for comment and rebuttal. The respondent will be allowed 5 working days to review and comment on the draft report. The respondent's comments will be attached to the final report. The findings of the final report will take into account the respondent's comments in addition to all the other evidence.

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- (d) The DCGS will provide the complainant with those portions of the draft investigation report that address the complainant's role and opinions in the investigation. The report will be modified, as appropriate, based on the complainant's comments.
- (e) The draft investigation report will be transmitted to the institutional counsel for a review. Comments will be incorporated into the report as appropriate.
- (f) In distributing the draft report, or portions thereof, the DCGS will inform the recipient of the confidentiality under which the draft report is made available. The DCGS may request the recipient to sign a confidentiality statement or to come to his or her office to review the report.

h. Resolution

- (1) Finding of Absence of Research Misconduct
 - (a) All research sponsors and others initially informed of the investigation will be informed in writing that allegations of misconduct were not supported. If the allegations are deemed to have been made in bad faith, the Committee will report those findings to the DCGS who will determine if any administrative action will be taken against the complainant. If the allegations, however incorrect, are deemed to have been made in good faith, no additional measures are indicated and efforts will be made to prevent retaliatory actions. In publicizing the finding of no misconduct, the university will consider whether public announcements will be harmful or beneficial in restoring any reputation(s) that may have been damaged.

(2) Finding Research Misconduct

- (a) The DCGS shall consider the recommendations of the committee and shall be responsible for recommending sanctions to the Provost and Vice President for Academic Affairs. The Provost and Vice President for Academic Affairs will make the final determination whether to accept the investigation report, its findings, and the recommended institutional actions. If this determination varies from that of the investigation committee, he or she may return the report to the investigation committee with a request for further fact-finding and analysis or render a decision different from the recommendation.
- (b) When a final decision has been reached, the DCGS will notify both the respondent and the complainant in writing. In addition, the Provost and Vice President for Academic Affairs 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. The DCGS is responsible for ensuring compliance with all notification requirements of funding or sponsoring agencies. If the sanctions involve a recommendation for termination of employment/enrollment, the university academic termination procedures will be invoked. The university must take action appropriate for the seriousness of the misconduct, including, but not limited to, one or more of the following, subject to existing university policies:

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- 1) withdrawal or correction of all pending or published abstracts and papers emanating from the research where research 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;
- 3) restitution of funds as appropriate.

i. Appeal

(1) Individuals may appeal the judgment of the Investigating Committee and/or the sanction. A written statement of the grounds for the appeal must be submitted to the president within thirty (30) days of written notification of the sanctions. 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 a written appeal, the president will evaluate the evidence and make a determination. The president shall reopen the investigation if the previously unconsidered material evidence so warrants and may reopen the investigation if circumstances so dictate. The president's decision will be conveyed to all involved in a timely fashion, but must be conveyed within thirty (30) working days. In the case of termination, the appropriate university policies on termination for cause shall be followed. Interim sanctions may be imposed during the appellate process.

j. Record Retention

After completion of a case and all ensuing related actions, the dean of the College of the Graduate Studies will prepare a complete file, including the record of any inquiry or investigation and copies of all documents and materials furnished to the dean of the College of Graduate Studies or the Fact Finder or the Investigating Committee. The DCGS will keep the file for three years after completion of the case or, in the case of an externally funded project, for the duration of the funding agency's minimum records retention period, to permit later assessment of the case by the Office of Research Integrity or other authorized federal agency personnel.

5. Requirements for Reporting to the Office of Research Integrity (ORI) for Public Health Service (PHS) Funded Research

- a. Title 42 of the *Code of Federal Regulations*, Part 93 ("Public Health Service Policies on Research Misconduct") requires institutions that apply for or receive Public Health Service (PHS) support for research or research training to "develop and implement policies and procedures for (1) reporting and responding to allegations of research misconduct, [and] (2) providing HHS with the assurances necessary to permit the institution to participate in PHS supported research."
- b. An institution's decision to initiate an investigation must be reported in writing to the Director, ORI, on or before the date the investigation begins. At a minimum, the notification must include the name and position of the person(s) against whom the

allegations have been made, the general nature of the allegation as it relates to the PHS definition of research misconduct (see Definitions above), and the PHS applications or grant number(s) involved. ORI must also be notified of the final outcome of the investigation and must be provided with a copy of the investigation report. Any significant variations from the provisions of the institutional policies and procedures should be explained in any reports submitted to ORI.

- c. If an institution plans to terminate an inquiry or investigation for any reason without completing all relevant requirements of the PHS regulation, the DCGS will submit a report of the planned termination to ORI, including a description of the reasons for the proposed termination.
- d. If the institution determines that it will not be able to complete the investigation in 120 days, the DCGS will submit to ORI a written request for an extension that explains the delay, reports on the progress to date, estimates the date of completion of the report, and describes other necessary steps to be taken. If the request is granted by ORI, the DCGS will file periodic progress reports as requested by the ORI.
- e. When PHS funding of applications for funding are involved and an admission of research misconduct is made, the DCGS will contact ORI for consultation and advice. Normally, the individual making the admission will be asked to sign a statement attesting to the occurrence and extent of the misconduct. When the case involves PHS funds, the institution cannot accept an admission of research misconduct as a basis for closing a case or not undertaking an investigation without prior approval from ORI.
- f. The DCGS will notify ORI at any stage of the inquiry or investigation if:
 - (1) 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 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 his/her co-investigators and associates, if any;
 - (4) it is probable that the alleged incident is going to be reported publicly, or;
 - (5) there is a reasonable indication of possible criminal violation. In this instance, the institution must inform ORI within 24 hours of obtaining that information.

6. Annual Report on Possible Research Misconduct

ASU is responsible for submitting an Annual Report on Possible Research Misconduct to the U.S. Department of Health and Human Services' Office of Research Integrity (ORI). ASU must also send the ORI any additional information requested by the ORI to the extent allowed by law.