



Handbook of Operating Procedures

Section: 4.10.3
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MISCONDUCT IN SCHOLARLY ACTIVITY

A. Purpose

The purpose of this policy is to define and specify the applicable standards and the related procedures for dealing with allegations of misconduct in research or in other scholarly or creative activities, including research supported by U.S. Public Health Service (PHS)¹ and National Science Foundation (NSF) funding.

B. Persons Affected

This policy applies to all individuals employed by The University of Texas-Pan American either engaged in research and/or scholarly activity or not, including any person paid by, under the control of, or affiliated with the University such as scientists, trainees, technicians, faculty and other staff members, students, fellows, visiting scientists and guest researchers at the University.

C. Policy

1. Statement Relating to Misconduct in Scholarly Activity

- a. The University of Texas-Pan American (UTPA or University) strives to create a research and scholarship climate that promotes faithful adherence to high ethical standards in the conduct of research or other scholarly or creative activities without inhibiting productivity and creativity. Misconduct in scholarly activity is an offense that damages not only the reputation of those involved but also that of the entire educational community and will not be tolerated.
- b. Misconduct in scholarly activity includes 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 or other scholarly or creative accomplishments. It does not include honest errors or honest differences in interpretations or judgments of data.
- c. Possible sanctions for misconduct in scholarly activity include, but are not limited to: (1) reprimand, (2) removal from a research project, (3) restitution of funds to a funding source, (4) withdrawal or correction of pending or published scholarship, and (5) suspension or termination of employment.

¹ This policy fully complies with Public Health Services Policies on Research Misconduct, 42 CFR Part 93,



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- d. Misconduct in scholarly activity is a major breach of the relationship between a faculty or staff member and the University. In order to maintain integrity, every person engaged in research or scholarly or creative activity must keep a permanent auditable record of all experimental or similar protocols, data, and findings or comparable records. Co-authors on research reports of any type, including publications, must have had a bona fide role in the research and must accept responsibility for the quality of the work reported.
- e. Scholarly activities that involve faculty-student collaboration are encouraged and may be positively recognized in faculty personnel processes. Issues related to faculty-student collaboration may include matters such as expected contributions of each party, order of authorship, and/or type of citation to be given, and must be addressed early in any scholarly project. Decisions must be congruent with the ethics and scholarly customs of each discipline involved. Specific recognition of the nature and scope of individual student contributions must be made in all published materials.
- f. Any inquiry or investigation into allegations of misconduct in research or in other scholarly or creative activities must proceed promptly and with due regard for the reputation and rights of all individuals involved.
- g. The University will take all reasonable steps to assure that:
 - (1) the persons involved in the evaluation of the allegations and evidence have appropriate expertise;
 - (2) no person involved in the procedures is either biased against the accused person(s) (the respondent) or has any personal, professional, or financial conflict of interest involving the respondent; and
 - (3) the matter will be treated confidentially and all affected individuals will receive confidential treatment to the maximum extent possible.
- h. Complainants and witnesses are expected to act in good faith, to cooperate in any review of a misconduct allegation, and to treat the matter confidentially. A complainant or witness determined to have acted in bad faith may be disciplined in accord with applicable University policy.
- i. Retaliation against a complainant or witness is misconduct that may be subject to discipline in accord with applicable University policy.



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- j. Legal advice should be sought from The University of Texas System Office of General Counsel at all stages.
 - k. All records related to the review of an allegation of misconduct in scholarly activity, regardless of outcome, shall be maintained for a minimum of seven years.
2. Promoting Objectivity in Federally-Funded Research/Scholarly Projects by Managing, Reducing or Eliminating Conflicts of Interest

The University maintains a written conflict of interest policy, *HOP* [Section 2.4.2](#), which is managed by the Office of the Vice Provost for Research and Sponsored Projects along with the appropriate college deans. The policy is in compliance with both the Public Health Service (PHS) and the National Science Foundation (NSF) rules and regulations governing principal investigator conflicts of interest. The University has promulgated this policy regarding conflicts of interest to be administered in conjunction with Texas laws setting forth standards of conduct ([Texas Government Code Chapter 572](#)) and the Ethics Standards of the UT System Office of General Counsel (<http://www.utsystem.edu/ogc/ethics/homepage.htm>). The policy includes the definition, procedure, and enforcement provisions for managing, reducing or eliminating conflicts of interest. A copy of the written policy can be obtained from the University's Office of Research and Sponsored Projects.

D. Definitions

- 1. *Fabrication*. Making up of data or results in recoding or reporting research.
- 2. *Falsification*. Manipulating research materials, equipment, or processes or changing or omitting data or results such that the research is not accurately reflected in the research record.
- 3. *Plagiarism*. The appropriation of another person's ideas, processes, results or words without giving appropriate credit.

E. Responsibilities

Not applicable.

F. Procedures

- 1. Procedures for Addressing Misconduct in Scholarly Activity



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- a. All members of the University community are expected to promptly report suspected misconduct in scholarly activity to the appropriate University official.
- b. Allegations of misconduct in scholarly activity should be brought to the attention of the appropriate department chair and dean or to the Vice Provost for Research and Sponsored Projects.
- c. Inquiry
 - (1) The Vice Provost for Research and Sponsored Projects, or a designee, with due regard for the reputations of all parties involved, will ensure that an inquiry into an allegation is conducted. The inquiry must be completed within sixty calendar days unless circumstances clearly warrant a longer period, in which case the inquiry record must include documentation of the reasons for exceeding the sixty day period.
 - (2) Upon determining that an allegation is not frivolous and on or before the date the respondent is notified of the allegation, the Vice Provost for Research and Sponsored Projects shall take all reasonable steps to obtain custody of, inventory, and sequester all records and evidence needed to conduct the misconduct review.
 - (3) The inquiry may be conducted by the Vice Provost for Research and Sponsored Projects, a designated individual, or an ad hoc committee.
 - (4) At the time of or before commencing an inquiry, a good faith effort should be made to notify the respondent of the nature of the allegation. The respondent should be provided a copy of these procedures and, if PHS funding is involved, be referred to PHS policy, 42 CFR Part 93.
 - (5) At the conclusion of the inquiry, a written report shall be prepared and delivered to the Provost/Vice-President for Academic Affairs. The report will include the name and position of the respondent, the allegation(s), a description of the evidence reviewed, a summary of relevant interviews, and a statement of the conclusion(s) reached together with the rationale for such conclusion(s). The report shall be accompanied by all written statements, data, or other evidence considered during the inquiry. The Provost/Vice President for Academic Affairs shall provide the respondent a copy of the report and shall advise the respondent that he/she has ten days after receipt of the report within which to submit comments on it.



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- (6) The Provost/Vice President for Academic Affairs, with such advice or consultation as may be deemed appropriate, shall review the inquiry report, and the respondent's comments (if any), and determine either:
 - (a) that the allegation is not supported by the evidence and that no further proceedings are warranted, in which case diligent efforts shall be undertaken by the University to restore the reputation of the respondent and the person who in good faith made the allegation(s); or
 - (b) that there is a reasonable basis for concluding that the conduct falls within the definition of misconduct under this policy and that there is sufficient evidence to conclude that the allegation may have substance and, thus, further investigation is justified.

d. Investigation

- (1) The investigation must begin within thirty days after the conclusion of the inquiry. An attorney from The University of Texas System Office of the General Counsel will be available to assist with the investigation and represent the University in any hearing.
- (2) The respondent shall be given written notice of all allegations being investigated.
- (3) The respondent should be given the names of the investigation committee members and be permitted to object to a proposed committee member on the basis of a personal, professional, or financial conflict of interest. The Vice Provost for Research and Sponsored Projects shall determine if any objections are sufficiently supported to justify appointing a replacement committee member.
- (4) The investigation committee 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 the misconduct and who was responsible. The committee must conduct a thorough and well-documented examination of all records and evidence relevant to the allegation(s), including interviewing the respondent(s), the complainant(s), and any other available persons who might reasonably have relevant evidence.



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- (5) The investigation should determine if there are other potential instances of misconduct that would justify broadening the scope beyond the initial allegation(s).
- (6) Interviewees should be provided with a copy of a recording, a transcript, or a summary of their testimony and given an opportunity to correct any errors.
- (7) The investigation and final report should be completed within 120 days. This may be extended if “clearly warranted,” in which case the investigation record must include documentation of the reasons for exceeding the 120 day period. If the investigation involves PHS funded research, written permission to extend the investigation must be obtained from PHS (Office of Research Integrity (ORI)).
- (8) Any funding source should be kept informed as the investigation proceeds.
- (9) To conclude misconduct occurred, the investigation committee must find that a preponderance of the evidence establishes that: (1) misconduct, as defined in the policy, occurred; (2) the misconduct is a significant departure from accepted practices of the relevant research or scholarship community; and (3) the respondent committed the misconduct intentionally, knowingly, or recklessly.
- (10) The investigation committee must prepare a written report that includes the following elements:
 - (a) Allegations. Describe the nature of the allegations of scholarly misconduct.
 - (b) Funding support. Describe and document any funding support, including, for example, any grant numbers, grant applications, contracts, and publications listing funding support.
 - (c) Institutional charge. Describe the specific allegations of scholarly misconduct for consideration in the investigation.
 - (d) Policies and procedures. Include a copy of the policies and procedures under which the investigation was conducted.



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- (e) Research records and evidence. Identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody but not reviewed.
 - (f) Statement of findings. For each separate allegation of scholarly misconduct identified during the investigation, provide a finding as to whether scholarly misconduct did or did not occur, and if so —
 - (i) Identify whether the scholarly misconduct was falsification, fabrication, plagiarism, or another practice that seriously deviates from those that are commonly accepted within the academic community for proposing, conducting, or reporting research or other scholarly or creative activity, and if it was intentional, knowing, or in reckless disregard;
 - (ii) Summarize the facts and the analysis which support the conclusion and consider the merits of any reasonable explanation by the respondent;
 - (iii) Identify any specific funding support;
 - (iv) Identify whether any publications need correction or retraction;
 - (v) Identify the person(s) responsible for the misconduct; and
 - (vi) List any current support or known applications or proposals for support that the respondent has pending.
 - (g) Comments. Include and consider any comments made by the respondent and/or complainant on the draft investigation report.
- (11) The respondent should be given a copy of the draft investigation report and given an opportunity, 30 days is recommended, to comment.
- (12) On a case-by-case basis, the complainant(s) may be given a copy of the draft report and given an opportunity, 30 days is recommended, to comment. In such case, the complainant(s) should be required to sign a confidentiality agreement.

e. Decision



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- (1) The investigation report and all relevant documents and materials shall be provided to the President who shall decide whether to accept the investigation committee report and its findings and recommendations and what actions the University will take in response to the report. The report may be returned to the committee for further fact-finding and/or analyses.
 - (2) Written notice of the final decision, and any action taken, will be provided to the respondent and, if required, to any funding agencies.
 - (3) Written notice of the final decision, and any action taken, may also be provided, as appropriate, to journals, professional societies, licensing boards, collaborators in the activity, or other relevant parties.
- f. If it is determined that the alleged misconduct is not substantiated, diligent efforts shall be undertaken by the University to restore the reputation of the respondent. All diligent efforts will also be taken to protect the position and reputation of the person(s) who, in good faith, made the allegations.
2. Additional Procedures for Allegations of Misconduct in Science Related to Federally Funded Projects

In the event that allegations of misconduct in science are made with regard to an application for or a grant of funds for research, research training, a research related activity, or a cooperative agreement with the Public Health Service (PHS) or with the National Science Foundation, or with any other Federal agency, appropriate interim administrative actions will be taken to protect federal funds and ensure that the purposes of the Federal financial assistance are being carried out. In addition, the following action must be taken:

- a. Notify (in writing) the Federal agency (the Office of Research Integrity (ORI) for PHS) when it appears, at any time during the inquiry, investigation, or other procedures that:
 - (1) an immediate health hazard is involved; or
 - (2) there is an immediate need to protect federal funds or property, or to protect the interests of the person(s) making the allegations or of the person(s) against whom allegations have been made and/or their co-investigators; or
 - (3) it is probable that the alleged misconduct will be made public; or



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- (4) information exists reasonably indicating that there has been a criminal violation, in which case the Federal agency must be notified within 24 hours of obtaining such information.

- b. Notify (in writing) the Federal agency of any developments during the course of the investigation which disclose facts that may affect current or potential Federal funding for individual(s) under investigation or that the Federal agency needs to know to ensure appropriate use of Federal funds otherwise protect the public interest.

- c. Notify (in writing) the Federal agency that a decision has been made to initiate an investigation, including the name of the person(s) against whom allegations of misconduct have been made, the general nature of the allegations, and the Federal application or grant number(s) involved;

- d. Notify (in writing) the Federal agency of any decision that an inquiry or other procedure based upon the allegations will not be pursued to completion together with the reasons for such decision.

- e. Provide the Federal agency with a final report within 120 calendar days after initiation of investigation of any disciplinary or termination procedure, including a description of such procedures, the sanction imposed, how and from whom relevant information was obtained, the conclusions reached, the basis of such conclusions, and any statement or views of the person(s) found to have engaged in misconduct. Maintain and provide to any funding organization, upon request, all relevant research records and records of the institution's research/scholarly misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

- f. When relevant, promptly request an extension of time from the Federal agency when it appears that disciplinary or termination procedures will not be completed within 120 days. The request must include an interim report on progress to date, an explanation for the delay in completion, and an estimate of the anticipated date of completion.

G. Review

The Divisional Head for this policy is the Provost/Vice President for Academic Affairs and this policy shall be reviewed every five years or sooner if necessary by the following Stakeholders:



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1. Vice Provost for Research and Sponsored Projects – Senior Reviewer
2. Academic Affairs Executive Team
3. Faculty Senate Chair