

Research Misconduct Policy P210

Standard Operating Procedures (SOPs)

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1. Who is covered by this policy and SOPs?

Policy P210 applies very broadly to anyone who reports a suspected instance of research misconduct by a member of the university community, and to all members of the university community engaged in research and scholarly activities, sponsored or unsponsored, regardless of where the activity is performed. The university community consists of all faculty, staff, students, users, and visitors hosted by any of these. In this Policy the word 'member' stands for anyone included in this definition.

2. What kind of research is covered?

'Research' in Policy P210 can be translated as 'research and scholarly activity' and refers generally to creative activities that a member performs or expects to submit to public scrutiny in any form of publication, performance, portfolio, or sample of work regardless of medium or venue. Covered research is not limited to scientific research, but includes design work, literary composition, and policy studies. This policy does not cover student academic dishonesty which must be referred to the student Academic Judiciary.

3. What is 'Research Misconduct'?

Despite the very large categories of people and activities covered, the specific acts of misconduct relevant to Policy P210 are defined very narrowly. Research misconduct is defined as *fabrication, falsification, or plagiarism* in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion. The Policy does not apply to authorship or collaboration disputes unless the activity in question is funded by the National Science Foundation. (See Section 9 below for agency-specific requirements.)

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 record.

Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Acts of retaliation against any party involved in a research misconduct proceeding will be regarded as equivalent to research misconduct under this policy.

This policy sets forth procedures for determining whether research misconduct has occurred, which requires demonstration that:

There is a significant departure from accepted practices of the relevant research community with respect to the criteria above; and

The misconduct has been committed intentionally, knowingly, or recklessly, i.e. not inadvertently; and

An allegation of misconduct is supported by a *preponderance of evidence*.

4. What to do if you become aware of research misconduct.

Members of the university community, as defined above, are obliged to report research misconduct whether the misconduct is observed or suspected. The report may take any form – letter, e-mail, phone call, or personal visit – to the Vice President for Research, who serves as the university's Research Integrity Officer (RIO). The RIO may delegate some responsibilities in connection with Policy P210 to the Assistant Vice President for Research Compliance.

Allegations of misconduct are serious, and must be made in good faith.

If you are unsure whether a suspected incident falls within the definition of research misconduct above, then you should discuss the incident confidentially with your supervisor, mentor, or any other individual you feel may be able to help you. You may also discuss the incident informally with the RIO. The RIO will keep all such communications strictly confidential consistent with the nature of the information disclosed and whether he/she decides the allegation fits the definition of research misconduct. If further action is needed, confidentiality will be maintained except as required by law or for purposes of the investigation as described below.

5.1 What should you expect if you report a suspected incident of research misconduct?

You will have to be specific enough in your allegation of misconduct to allow the process to move forward. You may request anonymity, however the ability to keep your identity anonymous will depend on the type of allegation you are making, and the specifics regarding the allegation. The process within the university does require that you be identified as the 'complainant' but the RIO will strictly limit disclosure of your identity, as well as that of the 'respondent', to those who need to know in order to carry out a fair, thorough and objective proceeding. Any records or evidence that may convey the identity of others will also be kept confidential, except as otherwise required by law. You too are expected to maintain confidentiality during the proceeding, and you are obliged to cooperate during the ensuing steps of the determination process. For example you may have to be interviewed by an inquiry or investigation panel, and submit whatever evidence you have relevant to the incident.

To the extent possible, you and any others involved in the process will be protected from retaliation of any kind. Acts of retaliation should be reported immediately to the RIO.

5.2 What should you expect if you are accused of research misconduct?

You should expect the university to live up to its commitment to a fair, thorough and objective proceeding to determine whether research misconduct has actually occurred. Unless the RIO determines that the allegation does not fit the definition of misconduct, he/she will notify you of the allegation and provide you with a copy of Policy P210 and these SOPs, and ask you to respond to the allegations and supporting evidence. The RIO will advise you to consult with a legal or personal adviser who is not a principal or likely to be a witness in the case. This should be someone who can advise you during the multistep determination process, should a full investigation be necessary.

You should read Policy P210 and these SOPs carefully so you understand the definitions of research misconduct and the sequence of events and requirements of the determination process.

The RIO has a great deal of discretion throughout the misconduct determination process, and you are obliged to cooperate with actions he/she may take to obtain custody of, inventory, and sequester research data, records and evidence relevant to the allegation. The RIO must maintain such material securely consistent with Policy P210 and applicable laws and regulations. Chain of custody for the material will be documented and receipts provided for any evidence taken into custody. Based on information disclosed in the allegation, *the RIO may take these or other actions even prior to notifying you of the allegation.*

6. How the university responds to reports of research misconduct

The RIO manages the university response to allegations of research misconduct. If the determination process runs its full course it will produce a report with recommendations that goes to the university president who is the Deciding Official (DO). The DO may accept the report and recommendations, modify them, or send them back to the RIO for further consideration. The DO makes the final decision regarding research misconduct findings. The RIO keeps the DO apprised of key steps in the process, beginning with a notification that an allegation of research conduct has been received.

The determination process moves in a series of steps:

I. Assessment

The RIO has two weeks following receipt of an allegation to decide whether it is sufficiently credible and specific to allow any potential evidence to be identified, and whether the allegation falls within the definition of research misconduct. He/she must decide whether the information accompanying the allegation warrants taking steps prior to notifying the respondent as described in section 5.2. Once decided, as necessary, the RIO will contact the complainant to acknowledge receipt and the respondent to provide notice of the allegation and solicit a response. The RIO also determines whether the research was performed with support from an agency with special research misconduct reporting requirements, and complies with those requirements.

The RIO, in consultation with others as required, will determine if an allegation impacts multiple regulatory areas (e.g., Human subjects, animal subjects, Conflict of Interest, grant expenditures, etc.). Review of the allegation of misconduct will precede all other internal institutional proceedings that relate to, or arise out of, the alleged misconduct unless:

- Safety of research subjects is at risk
- Public health is potentially endangered
- An external (and known) criminal investigation is being conducted relevant to the allegation

Misconduct involving a collaborating site will be handled through coordination between the Institutional RIOs.

During this phase the RIO may interview the complainant and respondent, gather data, or consult with others at his/her discretion. When the RIO arrives at a decision, he/she prepares an assessment report that describes the reasons for the decision as well as other information. The report is provided to the relevant parties, including the DO. (see Assessment Report format in section 10).

The assessment step is intended to screen out flawed allegations, but is otherwise relatively permissive so tensions created by the allegation can be resolved in an objective process.

II. Inquiry

Having determined the allegation deserves further attention, the RIO secures relevant evidence as described in section 5.2 and creates an Inquiry Panel. Panel members will be individuals who are highly regarded within the university, have relevant expertise, and no conflicts of interest. The respondent will have an opportunity to review the Panel membership list and register any objections, for whatever reason, within 10 calendar days of receipt of the list. The RIO will make the final decision on Panel membership.

The Inquiry Panel will conduct its business within 60 calendar days following its formation, according to the Rules described in section 8. The Panel's objective is not to make a determination whether misconduct has occurred, but to conduct a review of the

evidence beyond the very brief assessment phase to determine whether it justifies a full investigation. If, however, the respondent makes a legally sufficient admission of research misconduct at this stage then the Panel may make a determination in its report and the Investigation step may be omitted. Such a determination may only occur if all relevant issues are resolved. The Panel prepares a Report as described in section 10 which is transmitted through the RIO to the DO who makes the final decision as to the next step.

The inquiry step adds depth to the screening process that cannot be achieved in the short time frame of the initial assessment. It advances to the Investigation phase at once if a majority of the Panel members conclude that a full investigation is warranted by the evidence.

III. Investigation

This step will begin within 30 calendar days after the DO determines that an investigation is warranted, should be completed within 120 days thereafter. 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 recommended findings on whether research misconduct has been committed, by whom, and to what extent. The investigation will also determine whether there are additional instances of possible research misconduct that would justify broadening the scope beyond the initial allegation.

The investigation will be performed by a Panel appointed by the RIO as soon as possible after a determination that investigation is warranted. Panel members will have qualifications like those of the Inquiry Panel, but the Investigation Panel need not be the same as the Inquiry Panel. To ensure appropriate expertise and/or to avoid conflicts of interest the RIO may appoint outside members (i.e. not members of the university community). The Panel must have at least three members, but may have more at the discretion of the RIO. As is the case for the Inquiry Panel, the respondent will have an opportunity to review and react to the list of proposed Panel members. The Panel will conduct its business according to the rules in section 8.

When it concludes its work, the Investigation Panel prepares a report according to the guidelines of section 10, which is provided to the respondent in draft form for comment. Respondent's comments, which must be returned within 30 calendar days from receipt, will be included in the final report. The RIO may at his/her discretion provide a copy of all or parts of the draft report to the complainant for comment under the same conditions as apply to the respondent's comments. Complainant and respondent must agree to keep the draft report confidential.

The RIO transmits the Investigation Report to the DO who makes the final determination regarding the occurrence of research misconduct and appropriate institutional actions in response to the determination. The DO also notifies complainant, respondent, and any relevant federal, sponsoring, or law enforcement agencies, journal editors, etc. as appropriate.

Several features of the determination process are notable. First, the institution bears the burden of proof for a finding of research misconduct, and the respondent bears the burden of proof for any affirmative defenses raised, including honest error or a difference of opinion. Second, all determinations are based on 'a preponderance of evidence' which is a standard of evidence stronger than 'some credible evidence' and weaker than 'clear and convincing evidence' or 'beyond reasonable doubt.' University counsel will be available throughout the proceeding to assist in clarifying evidentiary standards and other legal issues. Third, departure of the respondent from university employment will not preclude or terminate the research misconduct proceeding or otherwise limit any university responsibilities.

Other important issues regarding the university's response include:

Restoration of respondent's reputation in a finding of no research misconduct. 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 may consider notifying those individuals aware of, or involved in, the investigation of the final outcome, publicizing the final outcome in any forum in which the allegation of research misconduct was previously publicized, and expunging all reference to the research misconduct allegation from the respondent's personnel file. Institutional actions to restore the respondent's reputation must be approved by the DO.

Protection against retaliation. 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 research misconduct in good faith and of any witnesses and committee members who cooperate in good faith with the research 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. As stated above, allegations of retaliation will be taken seriously and treated as if they were allegations of research misconduct.

7. If you decide to serve on a research misconduct advisory panel, what are your obligations?

You must be certain that you have no conflict of interest, or even the appearance of a conflict, with respect to the principals (complainant and respondent) or the content of the alleged misconduct. You must read Policy P210 and these SOPs carefully, paying particular attention to the definition of research misconduct. Panel members should make every effort to focus narrowly on the evidence relevant to intentional fabrication, falsification, and plagiarism, and not on personalities and personal biases or conflicts.

Panelists accept the responsibility to study carefully all material submitted by the principals and to review any additional material relevant to their role on the Panel (e.g. as a subject matter expert or as an experienced professional in a different field). You are obliged to keep these materials and all other Panel business strictly confidential during *and after* the lifetime of the Panel. You need to make yourself available for Panel meetings, and to set aside time to work on reports.

Advisory panels are supported by staff from the Office of Research Compliance and the Office of University Counsel who will arrange for advice and assistance during the determination process, including the preparation of reports. Service on a Panel is not expected to

require released time from other work obligations you may have. You should discuss any concerns about time commitments with the RIO prior to agreeing to serve.

The value you add to a research misconduct advisory panel is your own sense of professional integrity in the performance and dissemination of creative work in your field. You are expected to be aware of the standards of your field or profession and to have applied them in your own research. Service on a panel is an important aspect of your role as a member of the university community.

8. Rules for Advisory Panels

8a. Inquiry Panels

When an inquiry is required, the Inquiry Panel is charged by the RIO, with legal counsel present, as follows:

- The time for completion of the inquiry will be identified (see 6.II above),
- The allegations and any related issues identified during the allegation assessment will be described.
- The panel will be advised 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;
 - an investigation is warranted if the committee determines: (1) there is a reasonable basis for concluding that the allegation falls within the definition of research misconduct and, (2) the allegation may have substance, based on the committee's review during the inquiry.
 - the inquiry committee is responsible for preparing or directing the preparation of a written report of the inquiry that meets the requirements of Policy P210, and these SOPs.

The inquiry committee may interview the complainant, the respondent, and key witnesses and examine relevant research records and materials. The complainant and respondent will be given a copy of the transcript of their interview to confirm, within seven days, the accuracy of the record (e.g., scientific terms used etc). Then the inquiry committee will evaluate the evidence, including the testimony and complainant/respondent feedback.

After consultation with the RIO and legal counsel, the committee members will decide whether to recommend an investigation based on the criteria in Policy P210, and these SOPs. The scope of the inquiry does not normally include deciding whether misconduct definitely occurred, determining definitely who committed the research misconduct, or conducting exhaustive interviews and analyses. However, if a legally sufficient admission of research misconduct is made by the respondent, misconduct may be determined at the inquiry stage if all relevant issues are resolved, and if the RIO and inquiry committee do not believe that other potential misconduct exists.

8b. Investigation Panels

When an investigation is required, the Investigation Panel is charged by the RIO, with legal counsel present, as follows:

- The time for completion of the inquiry will be identified (see 6.III above),
- The allegations and related issues identified during the inquiry are described.
- The respondent, and funding sources are identified;
- The committee is informed that it must conduct the investigation in accordance with Policy P210 and these SOPs;
- Research misconduct is defined
- The committee is informed that:
 - it must evaluate the evidence and testimony to determine whether, **based on a preponderance of the evidence**, research misconduct occurred and, if so, the type and extent of it and who was responsible. As addressed above, the university has the burden of proof for making a finding of research misconduct, and 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.
 - in order to determine that the respondent committed research misconduct it must find that:
 1. research misconduct, as defined in Policy P210 has occurred.
 2. the research misconduct is a significant departure from accepted practices of the relevant research community; and
 3. the respondent committed the research misconduct intentionally, knowingly, or recklessly; and
 4. the allegation is proven by a preponderance of the evidence
 - an investigation report that meets the requirements of Policy P210 and these SOPs must be written at the conclusion of the process.

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 process to be followed by the investigation committee and the RIO is as follows:

- Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research 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;

- To the extent possible and necessary, 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 the 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 research misconduct, and continue the investigation to completion.

9. Reporting obligations to certain funding agencies and others

When a final decision on a misconduct case has been reached, the RIO will notify both the respondent and the complainant in writing. After informing federal agencies as applicable (see below), 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 funding or sponsoring agencies.

If the activity in question involves Public Health Service and/or National Science Foundation funds, there are additional procedures that must be followed by SBU during the conduct of a research misconduct case.

Throughout the research misconduct proceeding, 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 PHS or NSF supported research process. In the event of such a threat, the RIO will, in consultation with other institutional officials and ORI/OIG, take appropriate interim action to protect against any such threat. Interim action might include, but not be limited to, additional monitoring of the research process and the handling of federal funds and equipment, reassignment of personnel or of the responsibility for the handling of federal funds and equipment, additional review of research data and results or delaying publication. The RIO must, at any time during a research misconduct proceeding, notify ORI/OIG immediately if he/she has reason to believe that any of the following conditions exist:

- Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;
- HHS 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, (or, in the case of NSF funds, of others potentially affected);
- 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; or

- The research community or public should be informed.

PHS Funded activities

The Office of Research Integrity (ORI) oversees and coordinates PHS activities relating to misconduct.

Where PHS funds are involved, the requirements at 42 CFR 93 must be met by SBU. Possible actions to be taken by ORI (including initiation of its own investigation) are identified in 42 CFR 93, and should be noted.

Unless an extension has been granted, the RIO will, within the 120-day period for completing an investigation, submit the following to ORI: (1) a copy of the final investigation report with all attachments; (2) a statement by the Deciding Official (President) of whether the institution accepts the findings of the investigation report; (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.

The RIO will maintain and provide to ORI upon request “records of research misconduct proceedings” (as defined by 42 CFR § 93.317). Unless custody has been transferred to HHS or ORI has advised in writing that the records no longer need to be retained, records of research misconduct proceedings will be maintained in a secure manner for 7 years after completion of the proceeding or the completion of any PHS proceeding involving the research misconduct allegation. 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.

The RIO will notify 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: (1) 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 will be reported to ORI, as prescribed in Policy P210 and 42 CFR § 93.315.

For PHS funded activities, Policy P210 and applies only to allegations of research misconduct that occurred within six years of the date the institution or federal agency received the allegation, subject to the subsequent use, health or safety of the public, and grandfather exceptions in 42 CFR § 93.105(b) of PHS policy.

NSF-Funded Activities (45 CFR 689)

The Office of the Inspector General (OIG) oversees and coordinates NSF activities related to misconduct.

Where NSF funds are involved, the requirements at 45 CFR 689 must be met by SBU. Possible actions to be taken by OIG (including initiation of its own investigation) are identified in 45 CFR 689, and should be noted.

If the institution wishes NSF to defer conducting its own inquiry and investigation on the matter in question, NSF requires:

1. immediate notification if an initial inquiry supports a formal investigation
2. updates throughout investigations
3. notification prior to decision to conduct an investigation if
 - the seriousness of apparent misconduct warrants
 - if immediate health hazards are involved
 - if NSF's resources, reputation, or other interests need protecting
 - if federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected, or
 - if the scientific community or the public should be informed.
4. submission of the final report from any investigation. OIG will assess the accuracy and completeness of the report and whether the investigating entity followed reasonable procedures. It will either adopt the findings in part or in whole, or, normally within 30 days, initiate a new investigation.
5. periodic status reports of the inquiry stage take longer than 90 days, or if the investigation takes longer than 180 days (at which point, NSF may commence with its own investigation)

OIG may initiate its own inquiry, or contact the institution to encourage the initiation of an inquiry if alleged misconduct is brought to its attention by means other than via reporting from the institution.

If NSF conducts a formal investigation, prompt written notice will be made to the individual or institutions to be investigated, unless notice would prejudice the investigation, or unless a criminal investigation is underway or under active consideration. In the case of consideration of a criminal investigation by the Department of Justice, FBI etc., the OIG will determine what information may be disclosed to the subject of the investigation

Specific procedures pertaining to inquiries, investigations and appeals are available in the NSF regulations on the matter, 45 CFR 689.

10. Structure and content of reports

10a. Assessment Report

At the conclusion of the assessment process by the RIO, an assessment report will be written that describes:

- the specific allegation(s),
- the date received and source,
- description of evidence gathered/reviewed,
- reasons for determination of whether or not an inquiry is warranted, and,
- in the case where an inquiry is warranted, provide guidance to Inquiry panel on issues it might pursue.

10b. Inquiry Report

At the conclusion of the inquiry process, a written inquiry report will be prepared that includes the following information:

- the names and titles of the committee members and experts who conducted the inquiry;
- a summary of the inquiry process used;
- a list of the research records reviewed;
- summaries of any interviews;
- the name and position of the respondent;
- a description of the allegations of research misconduct;
- the PHS/NSF support, if any, including, for example, grant numbers, grant applications, contracts and publications listing PHS support;
- the basis for recommending or not recommending that the allegations warrant an investigation; (and whether any other actions should be taken if an investigation is not recommended.)
- any comments on the draft report by the respondent or complainant (see section 6.II above)

The final report is transmitted through the RIO to the DO who makes the final decision as to the next step.

10c. Investigation Report

At the conclusion of the investigation process, 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 research misconduct, including identification of the respondent;
- Describes and documents any federal support, including, for example, the numbers of any grants that are involved, grant applications, contracts, and publications listing PHS support;
- Describes the specific allegations of research misconduct considered in the investigation;
- Includes the institutional policies and procedures under which the investigation was conducted, unless those policies and procedures were provided to ORI previously;
- Identifies and summarizes the research records and evidence reviewed and identifies any evidence taken into custody but not reviewed; and
- Includes a statement of findings **for each allegation** of research misconduct identified during the investigation. Each statement of findings must:
 - identify whether the research misconduct was falsification, fabrication, or plagiarism, and whether it was committed intentionally, knowingly, or recklessly;
 - 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

respondent to establish by a preponderance of the evidence that he or she did not engage in research misconduct because of honest error or a difference of opinion;

- identify the specific federal support;
- identify whether any publications need correction or retraction;
- identify the person(s) responsible for the misconduct; and
- list any current support or known applications or proposals for support that the respondent has pending with non-PHS federal agencies.ⁱ

The RIO transmits the Investigation Report to the DO who makes the final determination regarding the occurrence of research misconduct and appropriate institutional actions in response to the determination. The DO also notifies complainant, respondent, and any relevant federal, sponsoring, or law enforcement agencies, journal editors, etc. as appropriate (see section 9 above).

Inquiries/Allegations:

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