



Angelo State University Operating Policy and Procedure

OP 56.02: Misconduct in Research

DATE: November 17, 2020

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 are made against a member of the faculty, a member of the staff, or a student at Angelo State University.

REVIEW: This OP will be reviewed by June 1 every three years by the dean of the College of Graduate Studies and Research with recommendations for change presented to the Provost and Vice President for Academic Affairs (PVPAA) by July 15.

SCOPE

This policy applies to all research, scholarly, and creative activity conducted at Angelo State University. The policy does not apply to course work and other academic class activities that are covered by other policies (e.g. 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 Angelo State University.

This policy and the procedures herein will be followed when the Research Integrity Officer (RIO) of the institution 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 interests of the university and parties involved. Any change in procedures must ensure fair treatment of the individual subject to the allegation, and any substantive changes of the procedure must be approved by the PVPAA in advance of the change.

DEFINITIONS

- 1.** Research Integrity Officer (RIO) – College of Graduate Studies and Research dean who is 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.
- 2.** Allegation – Any written statement or indication of possible misconduct
- 3.** Complainant(s) – A person or persons who make an allegation
- 4.** 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.

5. Inquiry – Preliminary information gathering and fact finding to conclude whether an allegation warrants an investigation
6. 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
7. 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.
8. 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.
9. 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
10. Respondent(s) – The person 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 Angelo State University faculty, staff, or student body, and the alleged misconduct involves extramural funding, the RIO, in consultation with the PVPAA, shall consult with the source of the

extramural funds for guidance on investigating, reporting, and responding to such allegations. Angelo State 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 Angelo State University faculty, staff, or student body, the allegation shall be dealt in the following manner:

1. Reporting Misconduct or Retaliation

- a. 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.
- b. 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. If the RIO has a possible conflict of interest, the allegations will be referred to the Provost and Vice President of Academic Affairs (PVPAA).
- c. 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. The RIO will apprise the PVPAA of all allegations of misconduct in research and scholarship.

INQUIRY

1. The RIO shall make an immediate inquiry into any allegation. The RIO shall make an initial finding of whether:
 - a. The subject matter and individuals accused in the reported allegation are within the scope of this policy.
 - b. The allegations are sufficient to warrant an investigation into the alleged misconduct.
2. Prior to 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 complainant and respondent; however, the RIO may interview other persons relevant to the investigation if necessary.

3. 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 30 days after receipt of the allegation. Any extension of this period will be based on good cause, approved in advance by the PVPAA, and recorded in the inquiry file. If deemed necessary, the RIO may appoint a Research Integrity Officer Assistant (RIOA) to aid in securing relevant materials and conduct interviews. Interviews with the complainant(s) and respondent(s) must be transcribed. Once transcribed, the complainant(s) and the respondent(s) will proofread their respective document. If errors are found in either transcription, the complainant(s) and the respondent(s) will have an opportunity to report those errors to the RIO to have them corrected.
4. 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.
5. 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.
6. A report of the findings from the inquiry shall be made in writing to the PVPAA. Reports of inquiries shall be maintained in the office of the RIO for a period of three years. The respondent shall have the opportunity to review drafts of the inquiry reports and to be informed of the results of the inquiry.
7. If results of the inquiry indicate that the allegation was made with malicious intent, the RIO shall determine what action should be taken against the complainant.
8. After reviewing documentation from the complainant(s) and after consultation with the PVPAA and university counsel, the RIO has the authority to recommend an appropriate disciplinary action (if needed) for the respondent(s). The respondent(s) will have the opportunity to agree or disagree with the RIO's decision. If the RIO and respondent(s) cannot reach an agreement on the disciplinary action, a formal investigation will be initiated by the RIO. No presumption that misconduct occurred is created if the RIO determines that an investigation is warranted.

INVESTIGATION

1. If an investigation is warranted or in the case where the RIO and respondent disagree on disciplinary actions, the RIO shall appoint an *ad hoc* Research Integrity Committee (RIC) within 10 days after completion and/or reception of the report finding an investigation is warranted. The RIO will ensure that all original research records and materials relevant to the allegation are immediately secured. The purpose of the investigation is to:

- a. Explore in detail the allegations;
- b. Examine all evidence in depth;
- c. Determine if misconduct has occurred, and if so, by whom, and to what extent; and
- d. Report to the RIO 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.

2. 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.
3. The RIO will appoint no less than three persons to serve on the Research Integrity Committee (RIC). At least two members will be senior faculty who are without conflict of interest, hold no appointment in the departments of either the complainant(s) or the respondent(s), and preferably have appropriate expertise for evaluating the information relevant to the case.
4. The RIO will notify the respondent(s) of the proposed committee membership within 5 working days. If the respondent(s) submits a written objection to any appointed member of the RIC based on bias or conflict of interest within 5 working days of the respondent(s)'s receipt of the committee membership, the RIO will determine whether to replace the challenged member or members with a qualified substitute.
5. Every effort should be made to complete the investigation within 30 working days; however, it is acknowledged that in some cases this time period may be difficult to meet. In such cases, the RIC shall compile a progress report, identify reasons for the delay, and notify the RIO in writing of the additional time necessary for the investigation.
6. The complainant(s), respondent(s) and members of the RIC may be accompanied by counsel to meetings. However, the counsel may not ask questions or offer testimony.
7. The RIO, with the assistance of institutional counsel, will convene the first meeting of the RIC 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 RIC will elect a chairperson to handle procedural and administrative matters at this first meeting.
8. 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 who have information regarding key aspects of the allegations. All interviews must be recorded and transcribed.
9. 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. In addition to making a judgment on the veracity of the charges, the committee may recommend to the RIO appropriate disciplinary actions if warranted.

10. For good cause, interim administrative sanctions may be initiated by the RIO prior to conclusion of the investigation when the continuing actions of the respondent(s) pose a danger to persons or property or pose an ongoing threat of disrupting the academic process.
11. Nothing herein shall prohibit the university from instituting disciplinary proceedings against the respondent(s) under university policy or *Regents' Rules*.

FINDINGS

1. After all evidence has been received and hearings completed, the RIC shall meet in closed sessions to deliberate and prepare its findings and recommendations. The committee shall find no research misconduct unless a majority of the members conclude that the preponderance of the credible evidence substantiates the allegations(s).
2. Upon completion of the investigation, the committee will submit to the RIO 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 disciplinary actions taken by the institution.
3. The RIO will provide the respondent(s) with a copy of the draft investigation report for comment and rebuttal. The respondent(s) will be allowed 5 working days to review and comment on the draft report. The respondent(s)'s comments will be attached to the final report. The findings of the final report will take into account the respondent(s)'s comments in addition to all the other evidence.
4. The RIO will provide the complainant(s) with those portions of the draft investigation report that address the complainant(s)'s role and opinions in the investigation. The report will be modified, as appropriate, based on the complainant(s)'s comments.
5. The draft investigation report will be transmitted to the institutional counsel for a review. Comments will be incorporated into the report as appropriate.
6. In distributing the draft report, or portions thereof, the RIO will inform the recipient of the confidentiality under which the draft report is made available. The RIO may request the recipient to sign a confidentiality statement or to come to his or her office to review the report.
7. Once all documentation is finalized, the RIO will review the report and make a recommendation of disciplinary action to the PVPAA.

APPEAL

1. 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 PVPAA Angelo State University if the person alleges the decision is:
 - a. Not based on consideration of all available evidence;

- b. Not constitutionally permissible; or
- c. 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 PVPAA within the prescribed time limits will make the decision of the RIO final.

2. Within 14 days of receiving an appeal, the PVPAA shall begin a review and investigation of the committee's finding and shall issue a decision on the appeal within 30 days of the appeal. In considering the appeal, the PVPAA may act alone or involve others, as appropriate. The decision of the appeal shall be final.

RECORD RETENTION

After completion of a case and all ensuing related actions, the RIO will prepare a complete file, including the record of any inquiry or investigation and copies of all documents and materials furnished to the RIC. The RIO 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.