Policy Number: ADM 07-102
Responsible Executive: Research, Graduate Studies, and New Program Development
Originated: 04/27/2018

MISCONDUCT IN RESEARCH AND SCHOLARLY ACTIVITIES

A. Purpose

The University of Texas Rio Grande Valley (UTRGV) is committed to promoting and adhering to highest ethical standards in the conduct of research and other scholarly or creative activities. Misconduct in research is contrary to the interests of science and the health and safety of the public, and is an offense that damages not only the reputations of those involved and UTRGV, but also the reputations of the entire academic community.

B. Persons Affected

This policy applies to any person who, at the time of the alleged research misconduct, was employed by, under the control of, or was affiliated by contract or agreement with UTRGV, including faculty, staff, trainees, students, visiting scientists, contractors, volunteers, or other guest collaborators.

C. Policy

1. All individuals are expected to report observed, suspected, or apparent research misconduct to the Research Integrity Officer, or to the accused person's immediate supervisor or an appropriate administrative official such as a department chair, research center director, dean or other administrator. An administrative official who receives such a report must immediately contact the Executive Vice President for Research, Graduate Studies, and New Program Development, or the RIO. If an individual is unsure whether a suspected incident falls within the definition of research misconduct, the individual should contact the RIO to discuss the suspected research misconduct informally, which may include discussing anonymously or hypothetically. If the circumstances described do not meet the definition of research misconduct, the RIO will refer the individual or allegation to other offices or officials with responsibility for resolving the problem.

2. All individuals are expected to cooperate with the RIO and other UTRGV officials in the review of allegations and the conduct of inquiries and investigations. All individuals, including respondents, have an obligation to provide evidence relevant to the research misconduct allegations to the RIO or other UTRGV officials as directed.

3. In order to maintain integrity of research or scholarly or creative activities, individuals must keep a permanent auditable record of all experimental or similar protocols, data, and findings or comparable records for the time period required by the UTRGV Records Retention Schedule or the funding agency, whichever is longer. 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.

4. Some allegations of plagiarism involve disputes among individuals who contributed to the development or conduct of a research or scholarly project, but subsequently disagree on the

appropriate credit or recognition. Examples include whether an individual should be a co-author or merely receive an acknowledgment; whether an individual should share ownership of intellectual property, or whether an individual may subsequently make independent use of ideas or results of the research. UTRGV considers disagreements related to these matters to be authorship or credit disputes rather than plagiarism. Decisions regarding individual credit of original work 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.

5. Any inquiry or investigation into allegations of research misconduct or in other scholarly or creative activities will proceed promptly and with due regard for the reputation and rights of all individuals involved. UTRGV will take all reasonable steps to assure that:
   a. the persons involved in the evaluation of the allegations and evidence have appropriate expertise;
   b. 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
   c. the matter will be treated confidentially and all affected individuals will receive confidential treatment to the maximum extent possible.

6. No UTRGV employee may retaliate against any individual making a good faith report of research misconduct or for assisting in an inquiry or investigation of research misconduct. This prohibition against retaliation does not apply to appropriate disciplinary action taken for self-reported misconduct or wrongdoing. This prohibition against retaliation applies to individuals who have reported allegations either internally (under UTRGV policies) or externally to other agencies. Suspected instances of retaliation should be reported immediately to the RIO, or to other UTRGV officials in accordance with ADM 04-301 Non-Retaliation.

7. For research supported by the Public Health Service (PHS), the RIO will report to the ORI as required by applicable regulations. The RIO will also keep the ORI apprised of any developments during the course of an inquiry or investigation that may affect current or potential U.S. Department of Health and Human Services funding for the individual(s) under investigation or that PHS needs to know to ensure appropriate use of federal funds and otherwise protect the public interest. The RIO will immediately notify the ORI at any stage of the inquiry or investigation if it is determined:
   a. There is an immediate health hazard involved;
   b. There is an immediate need to protect federal funds or equipment;
   c. There is an immediate need to protect the interests of the complainant(s) or respondent(s) as well as their co-investigators and associates, if any;
   d. It is probable that the alleged incident is going to be reported publicly;
   e. The allegation involves a public health sensitive issue, e.g., a clinical trial; or
   f. There is a reasonable indication of a possible criminal violation.

8. To the extent permitted under law, UTRGV will protect the privacy of complainants who make good faith reports of research misconduct and of respondents without compromising public

health and safety. In the course of an inquiry or investigation, UTRGV may share information only as necessary with individuals who need to know to fulfill the purposes of this policy.

9. All records related to the review of an allegation of misconduct in research and scholarly activities, regardless of outcome, shall be maintained in accordance with the UTRGV Records Retention Schedule.

D. Procedures

1. *Rights and Responsibilities of Complainants and Respondents*

   a. Complainant - The complainant may have an opportunity to testify before the inquiry and investigation committees, to review portions of the inquiry and investigation reports pertinent to the complainant's allegations or testimony, to be informed of the results of the inquiry and investigation, and to be protected from retaliation. If the RIO determines the complainant may be able to provide pertinent information on any portions of the draft report, the RIO will give the complainant the relevant portions for comment. The complainant is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with an inquiry or investigation.

   b. Respondent - The respondent will be informed of the allegations when an inquiry is opened and may be notified in writing of the final determinations and resulting actions. The respondent will be given an opportunity to be interviewed by and present evidence to the inquiry and investigation committees, to review the draft inquiry and investigation reports, and to receive advice from the respondent's personal counsel. Counsel may accompany the respondent in meetings but may not ask questions or offer testimony. The role of counsel is limited to that of advisor to the respondent unless a formal grievance hearing is held, pursuant to established UTRGV policies, as a result of an investigation. The respondent is responsible for maintaining confidentiality and cooperating with the conduct of an inquiry or investigation. If the respondent is not found guilty of research misconduct, he or she has the right to receive assistance from the university in restoring his or her reputation.

2. *Conducting the Inquiry*

   a. Upon receiving an allegation of research misconduct, the RIO will immediately assess the allegation to determine whether the allegation falls under the definition of research misconduct; the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified; and there is sufficient evidence to warrant an inquiry. An inquiry must be conducted if these criteria are met. Upon determining that an inquiry must be conducted, the RIO will advise the relevant dean, department chair or center director that an inquiry is being initiated.

i. 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 an investigation. The purpose of the inquiry is not to reach a final conclusion about whether research misconduct definitively occurred or who was responsible.
ii. In initiating the inquiry, the RIO should clearly identify the original allegation and any related issues that should be evaluated.
iii. The findings of the inquiry must be set forth in an inquiry report.
iv. The inquiry should normally be completed within 60 calendar days after the submission of the allegations that are the subject of the inquiry. Any extension of this period will be based on good cause, as determined by the Executive Vice President for Research, Graduate Studies, and Economic Development, and will be recorded in the inquiry file.

b. Sequestration of the Research Records -- As a part of an inquiry, the RIO must ensure that all original research records and materials, and all documents relevant to the allegation are immediately secured. For research supported by PHS, on or before the date on which the respondent is notified, or the inquiry begins, whichever is earlier, the RIO must take all reasonable and practical steps to: (i) obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding and (ii) inventory the records and evidence and sequester them in a secure manner. Where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments. The RIO may consult with ORI for advice and assistance in this regard.

c. Inquiry Process – The RIO will conduct the inquiry, which will normally involve only interviews of the complainant and the respondent and an examination of key, relevant documents. If considered necessary, the RIO may also interview essential witnesses and other research records and materials. The RIO will evaluate the evidence and testimony obtained during the inquiry and will determine, after consultation with the Executive Vice President of Research, Graduate Studies, and New Program Development, and the Office of Legal Affairs, whether there is sufficient evidence of research misconduct to warrant an investigation.
i. The RIO may enlist the assistance of a person or persons with relevant technical expertise, selected in accordance with procedures set out below for establishing an Investigative Committee, to examine relevant research records.
ii. The scope of the inquiry does not include exhaustive interviews or extensive analyses of research records, or a decision as to whether research misconduct occurred.

d. Inquiry Report – A written inquiry report must be prepared that states the allegation(s); the PHS support, if any; a summary of the inquiry process used; a list of the research records reviewed; summaries of any interviews; a description of the evidence in sufficient detail to demonstrate whether an investigation is warranted or not; and the RIO's determination as to whether an investigation is recommended and, if not, whether any

other actions should be taken. The Office of Legal Affairs will review the inquiry report for legal sufficiency.

i. The RIO will provide the respondent with a copy of the draft inquiry report for comment and rebuttal. The RIO also will provide the complainant (if the complainant can be identified) with a summary of the inquiry findings for comment.
ii. In distributing the draft inquiry report, or a summary thereof, to the respondent and complainant, the RIO will inform the recipient of the confidentiality under which the draft report is being made available and may establish reasonable conditions to ensure such confidentiality. For example, the RIO may request the recipient sign a confidentiality statement or to come to his or her office to review the report.
iii. Within 14 calendar days of their receipt of the draft report, the complainant and respondent will provide their comments, if any, to the inquiry committee. Any comments that the complainant or respondent submits on the draft report will become part of the final inquiry report and record. Based on the comments, the inquiry committee may revise the report as appropriate.

e. Inquiry Decision and Notification - The RIO will make the determination of whether findings from the inquiry provide sufficient evidence of possible research misconduct to justify conducting an investigation. The RIO will notify both the respondent and the complainant in writing of the decision of whether to proceed to an investigation and will remind them of their obligation to cooperate if an investigation is warranted. The RIO will also notify all appropriate UTRGV officials of the inquiry decision. For research supported by PHS, if the RIO decides to proceed to an investigation, the RIO will notify the ORI of the decision to begin the investigation and provide ORI a copy of the inquiry report. The notification must be made within 30 days of the decision that an investigation is warranted.

3. *Conducting the Investigation*

a. Purpose – The purpose of the investigation is to explore in detail the allegations, to examine the evidence in depth, and to determine specifically whether misconduct has been committed, by whom, and to what extent. The investigation will also determine whether there are additional instances of possible misconduct that would justify broadening the scope beyond the initial allegations. This is particularly important where the alleged misconduct involves clinical trials or potential harm to human subjects or the general public, or if it affects research that forms the basis for public policy, clinical practice, or public health practice.
i. The investigation committee will be appointed and the investigation process initiated within 30 days of the completion of the inquiry.
ii. The findings of the investigation will be set forth in an investigation report.

b. Sequestration of Research Records – The RIO will immediately secure any additional pertinent research records that were not previously secured during the inquiry. The sequestration should occur before or at the time the respondent is notified that an investigation has begun.

i. The need for additional sequestration of records may occur for any number of reasons, including UTRGV's decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured.
ii. The same procedures will be followed for sequestration during the investigation as were followed during the inquiry. See Section D.1.b above.

c. Appointment of the Investigation Committee – The RIO, in consultation with other UTRGV officials as appropriate, will promptly appoint an investigation committee and a committee chair. The RIO will notify the respondent of the proposed committee membership. If the respondent submits a written objection to any appointed member of the committee based upon bias or conflict of interest within five calendar days, the Executive Vice President for Research, Graduate Studies, and New Program Development will determine whether to replace the challenged member with a qualified substitute.
i. The investigation committee will be composed of at least three (3) persons, including a committee chair, who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to effectively interview the principles and other witnesses and to evaluate the evidence and issues related to the allegations.
ii. Committee members may be scientists, subject matter experts, administrators, lawyers, or other qualified persons within or outside UTRGV. At least one committee member shall have an active faculty appointment at UTRGV.
iii. Members of the investigation committee may also have assisted in the earlier inquiry concerning the allegations.

d. Charge to Committee – The RIO will prepare a written charge for the investigation committee that describes the allegations and any other related issues identified during the inquiry, define research misconduct, and identifies 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 upon a preponderance of the evidence, research misconduct occurred and, if so, to what extent, who was responsible, and its seriousness. The investigation committee will also be charged with the preparation of a written investigation report meeting the requirements of this policy.
i. To conclude that misconduct occurred, the investigation committee must find that a preponderance of the evidence establishes that misconduct (as defined by this policy) occurred; 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.
ii. If during the investigation additional information becomes available that substantially changes the subject matter of the investigation or would suggest additional respondents, the committee will notify the RIO, who will then determine whether it is necessary to notify the respondent of the new subject matter or to provide notice to additional respondents.

e. First Investigation Committee Meeting – The RIO, with the assistance of the Office of Legal Affairs, 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 investigation committee will be provided with a copy of these instructions and, where PHS funding is involved, the PHS regulations. The RIO will be present or available throughout the investigation to advise the committee as needed.

f. Investigation Process – The investigation committee must 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 the allegation. The investigation committee also must 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.
   i. The investigation normally will involve examination of all documentation including, but not necessarily limited to, relevant research records, computer files, proposals, manuscripts, publications, correspondence, memoranda, and notes of telephone calls.
   ii. The committee should, when possible, interview the complainant(s), the respondent(s), and other individuals who might have information regarding aspects of the allegations. Interviews of the respondent should be tape recorded or transcribed. All other interviews should be transcribed, tape recorded, or summarized. Summaries or transcripts of the interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigation file.
   iii. The investigation committee must take all reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical.

g. Elements of the Investigation Report – The investigation committee shall prepare a draft investigation report for the RIO that contains the following elements:
   i. Description of the nature of the allegation of research misconduct, including identification of the respondent;
   ii. Description and documentation of the PHS support, including identification numbers of any grants that are involved, grant applications, contracts, and publications listing PHS support;
   iii. Description of the specific allegations of research misconduct considered in the investigation;
   iv. Reference to and a copy of this policy and any other applicable UTRGV or UT System policies and procedures under which the investigation was conducted;
   v. Identification and a summary of the research records and evidence reviewed and identification of any evidence taken into custody but not reviewed;
   vi. A statement of findings for each allegation of research misconduct identified during the investigation. Each statement of findings must: (a) identify whether research misconduct was found and whether that research misconduct was falsification,

fabrication, or plagiarism, and whether it was committed intentionally, knowingly, or recklessly; (b) 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 the respondent to establish, by a preponderance of the evidence, that the respondent did not engage in research misconduct because of honest error or a difference of opinion; (c) identify the specific PHS support, if any; (d) identify whether any publications need to be corrected or retracted; (e) identify the person(s) responsible for the misconduct; and (f) list any current support or known applications or proposals for support that the respondent has pending with PHS and non-PHS federal agencies.

h. Comments on Draft Report – The RIO will provide the respondent with a copy of the draft investigation report and, concurrently, a copy of or supervised access to, the evidence on which the report is based. The RIO will provide the complainant (if identifiable) with those portions of the draft investigation report that address the complainant's role and opinions in the investigation. The draft investigation report will be transmitted to the Office of Legal Affairs for a review of its legal sufficiency, and comments may be incorporated by the committee into the report as appropriate.
   i. The respondent must submit comments on the draft investigation report, if any, within 30 calendar days of the date the respondent received the draft investigation report. The respondent's comments will be attached to the final report. The findings of the final report should take into account the respondent's comments in addition to all other evidence.
   ii. The complainant must submit on the draft investigation report, if any, within 30 calendar days of the date the respondent received the draft investigation report. The complainant's comments will be attached to the final report. The findings of the final report should take into account the complainant's comments in addition to all other evidence.
   iii. In distributing the draft investigation report, or portions thereof, to the respondent and complainant, the RIO will inform the recipient of the confidentiality under which the draft report is being made available and may establish reasonable conditions to ensure such confidentiality. For example, the RIO may request the recipient sign a confidentiality statement or to come to his or her office to review the report.

i. Submission of Report and Institutional Decision -- After comments have been received and the necessary changes have been made to the draft investigation report, the investigation committee will transmit the final report with attachments, including the respondent's and complainant's comments, to the Executive Vice President of Research, Graduate Studies, and New Program Development. Based on a preponderance of the evidence, the Executive Vice President of Research, Graduate Studies, and New Program Development will make the final determination of whether to accept the investigation report, its findings, and the recommended institutional actions. For research supported by PHS, if this determination varies from that of the investigation committee, the Executive Vice President of Research, Graduate Studies, and New Program Development, in UTRGV's letter transmitting the report to ORI, will explain in detail the basis for

rendering a decision different from that of the investigation committee. The Executive Vice President of Research, Graduate Studies, and New Program Development's explanation should be consistent with the definition of research misconduct, university policies and procedures, and the evidence reviewed and analyzed by the investigation committee. The Executive Vice President of Research, Graduate Studies, and New Program Development may also return the report to the investigation committee with a request for further fact-finding or analysis. For research supported by PHS, the Executive Vice President of Research, Graduate Studies, and New Program Development's determination, together with the investigation committee's report, constitutes the final investigation report for purposes of ORI review.

i. When a final decision has been reached, the Executive Vice President of Research, Graduate Studies, and New Program Development will notify both the respondent and the complainant in writing.
ii. The Executive Vice President of Research, Graduate Studies, and New Program Development will also 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.
iii. The Executive Vice President of Research, Graduate Studies, and New Program Development is responsible for ensuring compliance with all notification requirements of funding or sponsoring agencies.

j. Time Limit for Completing the Investigation Report – An investigation should ordinarily be completed within 120 calendar days of its initiation (taking into account any granted extensions), with the initiation being defined as the first meeting of the investigation committee. This includes the committee conducting the investigation, preparing the report of findings, submitting the draft report to the RIO for the purpose of making the draft report available to the respondent and the complainant for comment, preparing the final report, and submitting the report to the RIO for approval. The 120-day period should also include the institutional review and decision and notification to the involved parties and, for research supported by PHS, submitting the report to the ORI. The RIO is responsible for submitting the required documentation to the PHS or other funding agency. For research supported by PHS, an extension may be requested from the ORI when it appears that the investigation will not be completed within the 120-calendar day time frame. 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. If the request is granted, the RIO will file periodic progress reports as requested by the ORI.

E. Definitions

1. *Allegation* – Disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement to a UTRGV official.

2. *Complainant* – A person who in good faith makes an allegation of research misconduct.

3. *Conflict of interest* - The real or apparent interference of one person's interests with the interests of another person, where potential bias may occur due to prior or existing personal, professional, or financial relationships.

4. *Good Faith* – as applied to a complainant or witness, means having a belief in the truth of one's allegation or testimony that a reasonable person in the complainant's or witness's position could have based on the information known to the complainant or witness at the time. An allegation or cooperation with a research misconduct proceeding is not in good faith if made with knowing or reckless disregard for information that would negate the allegation or testimony. Good faith as applied to a committee member means cooperating with the research misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping UTRGV meet its responsibilities under this policy or applicable law. A committee member does not act in good faith if the member's acts or omissions on the committee are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the research misconduct proceeding.

5. *Inquiry* – preliminary information gathering and preliminary fact finding that is used to determine whether an allegation or apparent instance of research misconduct warrants an investigation.

6. *Investigation* - The formal development of a factual record leading to a decision not to make a finding of research misconduct or to a recommendation for a finding of research misconduct, which may include a recommendation for other appropriate actions, including administrative action.

7. *Office of Research Integrity (ORI)* – office to which the U.S. Department of Health and Human Services (DHHS) has delegated responsibility for addressing research integrity and misconduct issues related to U.S. Public Health Services (PHS) supported activities.

8. *Research* – a systematic experiment, study, evaluation, demonstration or survey designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes.

9. *Research Integrity Officer (RIO)*- The UTRGV official responsible for making an inquiry into allegations of scientific misconduct and determining when such allegations warrant an investigation. The Research Integrity Officer will be appointed by the Executive Vice President for Research, Graduate Studies, and New Program Development.

10. *Research Misconduct* – means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

a. Fabrication is making up data or results and recording or reporting them.
b. 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.
c. Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
d. Research misconduct does not include honest error or differences of opinion.

11. *Research Record* – the record of data or results that embody the facts resulting from scientific inquiry, including but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and any documents and materials provided to HHS or an institutional official by a respondent in the course of the research misconduct proceeding.

12. *Respondent* - The person(s) against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

13. *Retaliation* - for purposes of this policy means an adverse action taken against a complainant, witness, or committee member by UTRGV or one of its employees in response to (i) a good faith allegation of research misconduct or (ii) good faith cooperation with a research misconduct proceeding.

F. Related Statutes or Regulations, Rules, Policies, or Standards

PHS policy, 42 CFR Part 93, Public Health Service Policies on Research Misconduct

NSF Proposal and Award Policies and Procedures Guide (PAPPG), Chap. VII.C.

Texas Government Code Chapter 572, Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest

G. Dates Reviewed or Amended

Not applicable.