

GUSTAVUS ADOLPHUS COLLEGE
PROCEDURES FOR REPORTING AND DEALING
WITH RESEARCH MISCONDUCT
Updated: April 7, 2015

1. Preamble and Summary

Research misconduct is historically a rare occurrence. However, should an instance arise in which misconduct by a member of the Gustavus Adolphus College community is alleged to have occurred, the College must investigate promptly while affording the maximum protection both to the person alleging misconduct and to the subject of the allegation. That is the intent of this policy.

This policy and the associated federal regulations apply to all individuals at Gustavus engaged in research that is supported by, or for which support is requested from, any one of the organizational units of the United States Public Health Service (PHS) (e.g., National Institutes of Health) and the National Science Foundation (NSF). The PHS regulation at 42 CFR Part 93 applies to any research, research training or activities that are related to research or research training. The NSF regulation at 45 CFR Part 689 (10-1-02 Edition) applies to all activities funded by the Foundation, including proposing or performing research funded by NSF, reviewing research proposals submitted to NSF, or in reporting research results funded by NSF. (Links to the PHS and NSF regulations Web sites can be found at the end of this policy.)

As delineated in the PHS regulation (Section 93.105), this College policy limits research misconduct to actions occurring within six years of the date on which the College or the U.S. Department of Health & Human Services (HHS) receives the allegation of misconduct, with certain exceptions as outlined in the referenced Section.

This College policy applies to any person paid by, under the control of, or affiliated with the College, such as faculty, trainees, technicians and other staff members, students, fellows, guests, researchers, or collaborators at Gustavus.

While both PHS and NSF recognize that the primary responsibility for the prevention and detection of misconduct and for the conduct of inquiries and investigations rests with Gustavus, they both retain the right to initiate their own investigations at any time pursuant to the procedures outlined in the referenced regulations.

Misconduct means falsification, fabrication, or plagiarism that significantly depart from the accepted practice of the relevant research community (and as defined similarly in the PHS and NSF regulations). Research misconduct must be committed intentionally, or knowingly, or recklessly. It does not include honest error or honest differences in of opinion.

The College has the burden of proving research misconduct by a preponderance of the evidence; in the case of a claim of honest error or honest difference of opinion, these elements are an affirmative defense that the subject of the allegation (hereinafter “the respondent”) has the burden of proving by a preponderance of the evidence.

The Provost and Dean of the College will serve the Research Integrity Officer (RIO). In that capacity, he/she has primary responsibility for informing all those who fall under this policy of the College's policy with regard to research misconduct and for interpreting this policy.

The procedure to be followed has three stages: *inquiry*, *investigation*, and *resolution*. Those responsible for conducting each phase should be guided by the following important principles:

- The College must vigorously pursue and resolve any charges of misconduct in research.
- The College must provide adequate safeguards for subjects of allegations as well as persons alleging misconduct (hereinafter referred to as "complainant"), bearing in mind the vulnerabilities of an individual position and the sensitive nature of academic reputations.
- Confidentiality must be maintained to the maximum practical extent.
- Conflict of interest, real and potential, must be minimized.
- All stages of the procedure must be fully documented.
- All parties are responsible for acting in such a way as to avoid unnecessary damage to the general enterprise of academic research.
- The College is required to inform appropriate funding agencies of its actions when the work is supported by extramural funding, in accordance with the regulations of the appropriate funding agency.
- If it is found that misleading data or information have been published, Gustavus Adolphus College is responsible for setting the public record straight, for example, by informing the editors of scientific or scholarly journals.

All decisions made as a result of an allegation of misconduct will be made in accordance with this policy and the cited federal regulations.

2. Inquiry

The purpose of this stage is to determine, with minimum publicity and maximum confidentiality, whether an allegation or apparent instance of misconduct warrants a formal investigation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct definitely occurred or who was responsible, but to gather factual information. The findings of the inquiry will be set forth in an inquiry report.

a. Initiating the Inquiry

Any allegation of misconduct in research should be referred in writing to the RIO. When a complaint comes forth, the RIO will provide a confidential assessment. If, in the RIO's judgment, there is an indication that misconduct has occurred, the RIO must pursue an inquiry.

The RIO may initiate an inquiry without a specific complaint if evidence of misconduct comes to the RIO's attention. As with a formal allegation, the RIO must pursue an inquiry if he or she determines that there is an indication that misconduct has occurred.

b. Inquiry Procedure

The RIO is responsible for overseeing the inquiry, which will be conducted by an Inquiry/Investigative Committee consisting of the RIO, the chair of the appropriate department, and a total of two to four other members who have the appropriate background to judge the issues being raised. The RIO will appoint committee members, in consultation with the chair of the relevant department and the chair of the Faculty Senate. Committee members may be from within or outside the Gustavus community and must have no real or apparent conflicts of interest bearing on the question.

The RIO will notify the respondent of the proposed committee membership within 10 calendar days of the committee's appointment. If the respondent submits a written objection to any appointed member of the committee based on bias or conflict of interest within five calendar days of the respondent's receipt of the committee list, the RIO will determine whether or not to replace the challenged member with a qualified substitute.

An inquiry formally begins when the RIO notifies the respondent in writing of the charges and the procedures to be followed during this stage of the process. This notification and other documents throughout the process are to be retained for seven years after the completion of the College-initiated proceeding or the proceeding of a funding agency, whichever is later.

If an inquiry is initiated, the RIO should decide whether interim administrative action is required to protect the interests of research subjects, students, colleagues, the funding agency, or the College while the inquiry proceeds.

c. Findings of the Inquiry

A written report will be prepared describing whether a formal investigation is or is not warranted and whether any actions should be taken if an investigation is not recommended. The RIO will transmit the report to the respondent and complainant.

The RIO will provide the respondent with a copy of a draft inquiry report for comment and rebuttal, and will provide the complainant, if he or she is identifiable, with portions of the draft inquiry report that address the complainant's role and opinions in the investigation. Within 14 calendar days of their receipt of the draft report, the complainant and respondent will provide their comments, if any, to the 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/Investigation Committee may revise the report as appropriate.

The Inquiry/Investigation Committee will normally complete the inquiry and submit its report in writing to the RIO no more than 60 calendar days following its first meeting, unless the President approves an extension for good cause. If there is an extension, the reason for it will be entered into the records of the case and the report. The respondent will also be notified of the extension.

If the inquiry warrants an investigation, the College will either inform the NSF's Office of the Inspector General (OIG) immediately and keep it informed during the investigation, or PHS's Office of Research Integrity (ORI) within 30 days. Upon request of either Office, Gustavus will provide its Research Misconduct policy and other policies and procedures under which the inquiry was conducted; research records and evidence reviewed, transcripts or audio recordings of any interviews, and copies of all relevant documents; and the charges for the investigation to consider.

3. Investigation

An investigation will be initiated within 30 calendar days after an inquiry results in a finding that an investigation is warranted. The purpose of the investigation is to explore in detail the allegations, to examine the evidence in depth, to determine specifically whether misconduct has been committed, by whom, and to what extent, and to identify one or more sanctions. The findings of the investigation will be set forth in an investigation report.

If an investigation is initiated, the RIO should decide whether interim administrative action is required to protect the interests of research subjects, students, colleagues, the funding agency, or the College while the investigation proceeds.

The same panel that conducted the inquiry will be given the additional charge of examining the data and making the appropriate findings and recommendations, which it will submit to the RIO within the time limits established in this policy. A finding of misconduct must be by agreement of a majority of the full committee.

Once a formal investigation begins, the committee should inform the respondent in writing of all allegations so that a response may be prepared. The complainant and the respondent should be fully informed of the procedure chosen by the committee for conducting the investigation.

The investigation will ordinarily be completed within 120 days of its initiation. This includes conducting the investigation, preparing the report of findings, the imposition of any recommended sanctions, and submitting the report to any funding agency as may be required by regulation or statute. If this deadline cannot be met, the President may approve an extension for good cause. In the event of an extension, an interim report of the reasons for the delay and progress to date should be prepared and submitted to the ORI or OIG for approval. This interim report becomes part of the record of the investigation and the final report. The respondent will be notified of the extension.

The RIO will provide the respondent with a copy of a draft investigation report for comment and rebuttal, and will provide the complainant, if he or she is identifiable, with portions of the draft investigation report that address the complainant's role and opinions in the investigation. Within 14 calendar days of their receipt of the draft report, the complainant and respondent will provide their comments, if any, to the committee. Any comments that the complainant or respondent submits on the draft report will become part of the final investigation report and record. Based on the comments, the Inquiry/Investigation Committee may revise the report as appropriate.

4. Resolution

The Office of Research Integrity (PHS) or Office of the Inspector General (NSF) should be notified promptly following the investigation and a final determination of no finding of misconduct or a finding of research misconduct, with determined sanctions. Upon request, the College will provide the requesting Office records and evidence relevant to the research misconduct allegation. A full record of the investigation should be retained by the College in a secure and confidential file (but not in the personnel file of the respondent) for at least seven years.

a. No Finding of Misconduct

In the event of a finding of no misconduct, the RIO should decide what steps need to be taken to clear the record and to protect and restore the reputation of all parties involved.

If the allegations are found to have been maliciously motivated, the RIO may wish to recommend to the President appropriate disciplinary action. If the allegations are found to have been made in good faith, precautions should be taken to prevent retaliatory actions.

b. Finding of Misconduct

The RIO should forward the committee report to the President with a recommendation of sanctions and other action to be taken. The President should review the full record of the inquiry and investigation, and make a final determination as to sanctions and any other appropriate actions. Any federal agency or other entity initially informed of the investigation should be notified promptly of the outcome.

Possible sanctions for faculty and staff include removal of the responsible person from the project, special mentoring of future work, or dismissal from employment by the College. (The procedures for dismissal can be found in the College's FACULTY MANUAL and the Support Staff Handbook.) For students the sanctions recommended to the President might include suspension or termination of the privilege of being employed to do research, suspension or termination of the privilege of doing research as independent study for credit, failure in the research project for which the student is enrolled for credit, suspension from the College, or dismissal from the College, pursuant to the terms of the Gustavus Guide.

In addition to ORI or OIG notification, parties directly affected by the misconduct should be notified of the final disposition of the case and provided with any required documentation. The list may include the complainant; co-authors, co-investigators, collaborators; and editors of journals that have published fabricated, falsified, or plagiarized results.

5. Appeal

A faculty member, staff member or student found to have committed misconduct in research and against whom sanctions are imposed by the President may file an appeal in accordance with the

relevant provisions of the FACULTY MANUAL, Support Staff Handbook, and Gustavus Guide, respectively. The appeal process should be completed within 120 days of filing of the appeal. In addition, the process for appeal outlined in the cited federal regulations, 42 CFR Part 93 [PHS] and 45 CFR Part 689 [NSF], will be available to a respondent.

6. Other Considerations

Regardless of whether Gustavus determines that misconduct has occurred, the RIO will undertake reasonable efforts to protect complainants who made allegations of misconduct in good faith and others who cooperate in good faith with inquiries and investigations of such allegations. All meetings of the Inquiry/Investigative Committee at which witnesses are interviewed will be audio-recorded. The FACULTY MANUAL, Support Staff Handbook, and Gustavus Guide will govern all other procedural matters as they relate to the inquiry and/or investigation of a faculty member, staff member, or student, respectively.

Other reporting requirements: In cases involving funds provided by PHS, or any organizational unit thereof, the RIO shall notify the Office of Research Integrity at any stage of the inquiry or investigation that any of the following conditions exist:

- 1) The health or safety of the public is at risk, including an immediate need to protect human or animal subjects;
- 2) There is an immediate need to protect HHS resources or interests;
- 3) Research activities should be suspended;
- 4) There is a reasonable indication of possible violation of civil or criminal law;
- 5) Federal action is required to protect the interests of those involved in the research misconduct proceeding;
- 6) The research misconduct proceeding may be made public prematurely; or
- 7) The research community or public should be informed. Section 93.318.

In cases involving funds provided by the NSF, the RIO shall notify the Office of the Inspector General during any stage of the inquiry or investigation that any of the following conditions exist:

- 1) The health or safety of the public is at risk;
- 2) NSF's resources, reputation, or other interests need protecting;
- 3) There is a reasonable indication of possible violation of civil or criminal law;
- 4) Research activities should be suspended;
- 5) Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or
- 6) The scientific community or the public should be informed. Section 689.4.

Attachments:

The Public Health Service Policies on Research Misconduct:

http://ori.hhs.gov/documents/42_cfr_parts_50_and_93_2005.pdf

NSF Policy on Research Misconduct:

<http://www.nsf.gov/oig/resmisreg.pdf>