



San José State
UNIVERSITY

A campus of The California State University

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S99-10

At its meeting of May 3, 1999, the Academic Senate unanimously passed the following Policy Recommendation presented by Annette Nellen for the Professional Standards Committee.

POLICY RECOMMENDATION

POLICY AND PROCEDURES FOR RESPONDING TO ALLEGATIONS OF SCIENTIFIC OR OTHER MISCONDUCT IN FUNDED RESEARCH

- Whereas: U.S. Department of Health and Human Services (HHS) regulations require grant recipients to have specific procedures in place for responding to allegations of scientific misconduct in research supported by the Public Health Service.
- Whereas: S93-12, Academic Freedom and Professional Responsibility, and S94-5, Board of Academic Freedom and Professional Responsibility (BFR), do not provide the level of detail on procedures for responding to allegations of scientific misconduct that HHS requires.
- Whereas: Policy and procedures governing allegations of scientific or other misconduct in funded research do not pertain only to faculty.
- Whereas: SJSU and the SJSU Foundation have a responsibility to funding agencies to ensure that policy and procedures exist to address research misconduct.
- Resolved: That the attached "Policy and Procedures for Responding to Allegations of Scientific or Other Misconduct in Funded Research" developed by the SJSU Foundation in consultation with the Professional Standards Committee, be implemented.
- Resolved: That, once assigned, the appropriate policy numbers be inserted into this policy per Senate By-Law 13(b), and that passage of this resolution serve as notice to the Senate of such editorial changes.
- Resolved: That the Professional Standards Committee make appropriate changes to S93-12 and S94-5 to reflect the policy and procedures of the attached policy and bring them before the SJSU Academic Senate for approval.

**ACTION BY THE UNIVERSITY PRESIDENT: Approved by President Robert Caret on
May 4, 1999.**

POLICY AND PROCEDURES FOR RESPONDING TO ALLEGATIONS OF SCIENTIFIC OR OTHER MISCONDUCT IN FUNDED RESEARCH

I. INTRODUCTION

General Policy

As stated in S99-8 all members of the San José State University community are expected to perform their scholarly and scientific activities with the highest ethical standards, honesty, and integrity. Instances of misconduct in science, while rare in occurrence, threaten the academic commitment to truth. San José State University will not tolerate misconduct in any aspect of research or scholarly endeavor and will vigorously investigate allegations of misconduct, taking all reasonable steps to protect the rights and interests of individuals whose work or performance is questioned.

Scope and Application

This policy and the associated procedures apply to all individuals at San José State University engaged in research, training, and other scholarly or creative activities (hereinafter referred to as research) funded by the Public Health Service (PHS) and all other grants or contracts. This document contains special procedures for funded research. However, all faculty research and professional activities continue to be governed by the broader scope of S99-8.

Principal Investigators are hereby notified that as a condition of their grant or contract (either during the period of performance or for which an application has been submitted), San José State University is obligated to inform the appropriate regulatory oversight office of the funding agency when it has been determined that there is probable cause to believe that misconduct has occurred. This policy applies to any person paid by or affiliated with San José State University, or its auxiliary organizations.

In all aspects of the application of this policy the maximum attainable level of confidentiality and personal privacy will be sought and maintained. At all times diligent efforts will be taken to maintain or to restore the reputations of those against whom allegations are not confirmed. Diligent efforts will be taken to protect the positions and reputations of persons, who in good faith make allegations of scientific misconduct.

II. DEFINITIONS

Scientific Misconduct is defined as (1) fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic and scientific community for proposing, conducting, or reporting research; or (2) retaliation of any kind against a person who has reported or provided information about suspected or alleged misconduct and who has not acted in bad faith. Misconduct does not include honest error or honest differences in interpretations or judgments of data

Allegation means any written or oral statement or other indication of possible scientific misconduct made to an institutional official.

Inquiry means gathering information and initial fact-finding to determine whether an allegation or apparent instance of scientific misconduct warrants an investigation.

Investigation means 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 misconduct.

Respondent means the person(s) against whom an allegation of scientific misconduct is directed or the person(s) whose actions are the subject of an inquiry or investigation.

III. RESPONSIBILITY

The Associate Vice-President for Graduate Studies and Research (AVP GS&R) shall be responsible for (1) filing the required University assurances of established policy and procedures for dealing with scientific misconduct with federal agencies funding research, and (2) ensuring that complaints of alleged misconduct on a federally-funded, sponsored project be handled in accordance with appropriate federal regulations.

IV. PROCEDURES

Allegations

Allegations of scientific misconduct should be directed first to the dean of the college, or the appropriate agency in which the alleged misconduct has occurred. The dean or equivalent head shall write an intake interview report and transmit it within twenty-four hours of receipt of the complaint to the AVP GS&R. Anonymous allegations cannot be accepted. The personal privacy of those making allegations will be maintained within the constraints of due process in the conduct of inquiries and investigations, as described below.

Upon receiving an allegation of scientific misconduct, the AVP GS&R will immediately assess the allegation to determine whether there is sufficient evidence to warrant an inquiry, whether funded support or applications for funding are involved, and whether the allegation falls under the definition of scientific misconduct.

If a preliminary assessment determines that the allegation provides sufficient evidence to allow specific follow-up, the AVP GS&R shall promptly inform the Provost, the respondent and the supervisor(s) of the respondent of the nature of the allegations, the nature of the inquiry, and the rights of the parties involved. If the respondent is a Unit 3 faculty member the AVP GS&R shall consult with the Office of Faculty Affairs throughout the inquiry phase and any investigation. The Office of Faculty Affairs shall consult with the Board of Academic Freedom and Professional Responsibility (BFR), as appropriate per S99-9.

Inquiries

The AVP GS&R, in consultation with a selected and appropriate committee of experts (Inquiry Committee), shall conduct an inquiry to determine if sufficient evidence exists to warrant a formal investigation of the charges. The Inquiry Committee shall consist of no less than three individuals who do not have real or apparent conflicts of interest in the case, and have the necessary expertise to evaluate the evidence and conduct the inquiry. A member of the San José State University Foundation may be appointed as an ex-officio member of the committee if the interests and legal obligations of the Foundation should be represented.

The charge of the Inquiry Committee will be to make a preliminary evaluation of the evidence and testimony of the respondent, whistleblower, and key witnesses. The purpose is not to determine whether scientific misconduct definitely occurred or who was responsible, but rather to determine whether there is sufficient evidence of possible misconduct to warrant an investigation.

An inquiry and written inquiry report must be completed within 60 calendar days of its initiation unless circumstances clearly warrant a longer period. A written report shall state what evidence was reviewed, summarize relevant interviews, and include the conclusions of the inquiry. A copy of the report of the inquiry shall be given to the respondent(s) and their comments on that report shall be made part of the record. Persons who raised the allegation should be provided with those portions of the report that address their role and opinions in the inquiry. If the inquiry takes longer than 60 days to complete, the record of the inquiry shall include documentation of the reasons for exceeding the 60-day period.

If the Inquiry Committee does not recommend a more formal investigation, the AVP GS&R shall report the findings of the inquiry process to the Provost, and if relevant, the federal oversight agency. Detailed documentation of the inquiry shall be maintained for at least three years after the termination of the

inquiry and in the case of federally funded research, must be provided upon request to authorized federal personnel.

Investigations

If findings from the inquiry process provide sufficient basis for conducting an investigation, a committee charged with the responsibility of conducting a formal investigation (Investigation Committee) will be appointed by the AVP GS&R within 30 days of the completion of the inquiry. The Provost, respondent, and, if relevant, the Federal oversight agency will be given immediate written notification of an impending investigation.

As in the case of inquiries, the Investigation Committee will be comprised of an appropriate panel of experts who do not have real or apparent conflicts of interest in the case, and have the necessary expertise to evaluate the evidence and conduct the investigation. In cases involving sponsor funded research, regardless of funding source, the AVP GS&R may also appoint a member of the San José State University Foundation to serve as an ex-officio member of the committee to represent the interests and legal obligations of the Foundation.

The charge of the Investigation Committee will be to evaluate the evidence and testimony of the respondent, whistleblower, and key witnesses to determine whether, based on a preponderance of the evidence, scientific misconduct occurred and, if so, to what extent, who was responsible, and its seriousness.

An investigation and written investigative report should be completed within 90 calendar days of its initiation. A final report of the investigation will include the policies and procedures under which the investigation was conducted, how and from whom information was obtained relevant to the investigation, the findings and the basis for the findings, the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct, as well as a description of any sanctions taken by San José State University. Detailed documentation of the investigation shall be maintained for at least three years after the termination of the investigation and, in the case of federally funded research, must be provided to authorized federal personnel who will decide whether the federal agency will proceed with their own investigation.

At the conclusion of the investigation the respondent shall be provided a copy of the investigative report and advised to submit any written response within 15 calendar days for inclusion as an appendix. Persons who raised the allegation should be provided with those portions of the report that address their role and opinions in the investigation.

The entire investigative process (appointment of Investigation Committee, actual investigation, written report including sanctions imposed and appendix from respondent, and if relevant submission of report to Federal oversight agency) should be completed within 120 calendar days of initiation of investigation, unless appropriate extensions are requested and granted.

Additional Considerations Relevant to Both Inquiries and Investigations

Notification (marked “confidential”) shall be sent to the appropriate official within the San José State University Foundation for inclusion in the relevant proposal and/or grant files. San José State University officials will take interim administrative actions, as appropriate, to protect sponsor funds and ensure that the purposes of the financial assistance are carried out.

In the case of federally funded research the AVP GS&R will report to the directors of the appropriate oversight offices in the federal agencies supporting the research (e.g. the Office of Research Integrity in the PHS):

- Any immediate health hazards,
- An immediate need to protect federal funds or equipment, individuals affected, and the public interest,
- Any probability that the alleged incident is going to be reported publicly,

- Any reasonable indication of possible criminal violation, which must be reported within 24 hours of obtaining that information,
- Plans and reasons for terminating an inquiry or investigation without completing the relevant requirements of the federal regulation (e.g. PHS regulation at 42 C.F.R. Part 50, Subpart A),
- A request for a time extension if unable to complete an investigation within 120 days, including an explanation for the delay, an interim report on the progress to date, an outline of what remains to be done, and an estimated date of completion.

Sanctions

When allegations of scientific misconduct have been substantiated appropriate sanctions shall be imposed on the respondent in accordance with the policy agreements governing faculty and staff bargaining units and, if relevant, the policies and procedures of the pertinent auxiliary organization.

V. REFERENCES

1. *Title 42 Code of Federal Regulations, Part 50, Subpart A – Responsibility of Public Health Services Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in Science.*
2. Department of Health and Human Services, Office of Research Integrity – Model Policy and Procedures for Responding to Allegations of Scientific Misconduct; <http://ori.dhhs.gov/models.htm>.
3. *National Science Foundation Grants Policy Manual (GPM 95-26) Section 930 - Misconduct in Science.*

History

The policy and procedures for addressing allegations of scientific misconduct were previously provided in S93-12, Academic Freedom and Professional Responsibility, and S94-5, Board of Academic Freedom and Professional Responsibility (BFR). A review of SJSU policy by the Office of Public Health and Science (PHS) within the Department of Health and Human Services (HHS) resulted in a request (in October 1998) more specifically to address inquiry and investigation procedures as provided in HHS regulations on responding to allegations of scientific misconduct. In Spring 1999, the above policy was created (and S93-12 and S94-5 were modified) to address the HHS requirements more fully.