

Office/Contact: Division of Research and Economic Development

Source: 42 C.F.R. Part 93, Subpart C; SDBOR Policy 4.8.1

Link: <https://www.ecfr.gov/cgi-bin/text-idx?SID=0f9229414acd955a64404e629297f95d&mc=true&node=sp42.1.93.c&rgn=div6;>

<https://public.powerdms.com/SDRegents/documents/1726703>

SOUTH DAKOTA STATE UNIVERSITY Policy and Procedure Manual

SUBJECT: Research, Scholarly, and Creative Activity Misconduct

NUMBER: 8:12

1. Purpose

This policy and its procedures provide a framework subject to SDBOR Policy 4.8.1 that resolves allegations of research, scholarly, and creative activity (RSCA) misconduct against University employees as rapidly and fairly as possible, and are intended to also satisfy the requirement that as a condition of receiving federal or state funding, the University comport with federal or state regulations in addressing allegations of research misconduct.

2. Definitions

- a. RSCA Misconduct: conduct, shown by a preponderance of the evidence, that an employee intentionally, knowingly, or recklessly:
 - i. stole, destroyed, or damaged the research property of others with the intent to alter the research record;
 - ii. fabricated, falsified, plagiarized, or engaged in other practices that fraudulently or recklessly deviate from those that are commonly accepted within the academic community, whether in proposing, performing, or reviewing research, or in reporting or presenting research results;
 - iii. fabricated, falsified, plagiarized, or engaged in other practices that fraudulently or recklessly deviate from those that are commonly accepted within the academic community in authoring, creating, or presenting original scholarly or creative artistic works; and/or
 - iv. directed, encouraged, or allowed others to engage in RSCA Misconduct.

The term does not include honest error or honest differences in interpretations or judgments of data, texts, objects, or other scientific, scholarly, or creative artistic subject matter that are inherent in the scientific, scholarly, or creative artistic processes, but are normally corrected by further research or scholarly debate or criticism. It does not include violations of related policies or requirements, such as those governing the review or conduct of human subjects research, disclosure or avoidance of financial conflicts of interest, grant administration requirements, or other matters generally applicable to institutional personnel.

- b. Questionable Research Practices: practices, shown by a preponderance of the evidence, that do not rise to the level of RSCA Misconduct but nevertheless violate applicable laws, regulations, or other governmental requirements, or University rules or policies, of which the respondent had received notice or reasonably should have been aware.

3. Policy

- a. RSCA Misconduct represents a breach of the standards of the University, sponsors, the public, and/or the scholarly communities for accuracy, validity, and integrity in research, scholarly, and creative activities. It is the policy of the University to inquire into and, if necessary, investigate and resolve all instances of alleged RSCA Misconduct; and to comply with applicable sponsor requirements for reporting cases of possible research misconduct when external funds are involved.
- b. This policy applies to:
 - i. Any person who, at the time of the alleged RSCA Misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with the University, regardless of research, scholarly, or creative funding source; and
 - ii. RSCA Misconduct occurring within the seven (7) years preceding the date the Research Integrity Compliance Officer (“RICO”) receives a complaint of misconduct, with the following exceptions:
 1. If the respondent continues or renews any incident of alleged RSCA Misconduct that occurred before the seven-year limitation through the citation, republication or other use of the research, scholarly, or creative record or work that is alleged to have been fabricated, falsified, or plagiarized.
 2. If the University, following consultation with any applicable funding agency, determines that the alleged misconduct is having or could have a substantial adverse effect on the health or safety of the public.
 3. The circumstances indicate that the alleged conduct was not reasonably discoverable earlier.
- c. All members of the University community are expected to report observed, suspected, or apparent RSCA Misconduct, and to cooperate with the RSCA Misconduct process.
- d. Where the provisions of 42 CFR Part 93, other applicable statutes and regulations, and amendments thereto apply because of the nature of the RSCA Misconduct and federal or state funding associated with the research or scholarship, those provisions shall be incorporated into this policy and procedure, superseding any conflicting provision herein.

4. Procedures

- a. Allegation
 - i. All allegations of RSCA Misconduct from sources inside or outside the University will be received or forwarded to the RICO, who will then provide notice to the University President. Anonymous allegations are acceptable; however, enough detail and/or corroborating evidence must be provided to determine whether an inquiry should be initiated. If a complainant is not made anonymously but the complainant requests anonymity, the University will try to

honor the request during the inquiry; however, if the matter is referred to an investigation panel and the complainant's testimony is required, anonymity will no longer be available. Allegations should be based on facts and provide detailed information.

- ii. The RICO, on the behalf of and with the approval of the University President, will initiate the inquiry process within ten (10) calendar days of receiving the allegation. If the RICO has any unresolved personal, professional, or financial conflicts of interest with the complainant, respondent, or witnesses, as determined by the University President, the President will designate a different person or persons who lack any of the above conflicts of interest to conduct the RICO's obligations under this policy for the allegation in question.
- iii. The RICO will provide written notice of receipt of the allegation to the non-anonymous complainant. The notice of receipt shall include reference to SDBOR Policy 4.8.1 and this policy, summarize the procedure for processing these complaints, specify that persons complaining in good faith are protected from all retaliation and to report such retaliation should it occur, and that complaints based on malice or that are false will subject the complainant to discipline.

b. Inquiry

- i. The inquiry is a preliminary evaluation of the allegations to determine if the allegation is substantive, and if so, whether there is enough evidence of possible RSCA Misconduct to warrant an investigation. Its purpose is not to reach a conclusion about whether RSCA Misconduct occurred or who was responsible.
- ii. The RICO must initially determine whether the allegation is substantive on its face (i.e. sufficiently credible and specific so that potential evidence of RSCA Misconduct may be identified). After a determination that the allegation is facially substantial, the RICO will:
 - 1. Provide notice to the respondent, in a face-to-face meeting, if possible, within five (5) business days, including:
 - a. A written summary of the allegation of RSCA Misconduct;
 - b. A statement that he or she shall have reasonable access to the evidence supporting the allegations and a description of the reasonable access, as well as notice that the respondent may represent themselves or be represented by someone of their choice in this process; and
 - c. An explanation of the process for addressing the allegation.
 - 2. Simultaneous to or before notifying the respondent, sequester all records and evidence relevant to the allegation, as described in subsection 4.e, and notify appropriate university officials, as needed for sequestration.
- iii. The RICO will conduct an initial review of the evidence and confidentially solicit input from persons with subject-matter expertise in the relevant academic

discipline or practices to determine whether the allegations have substance (i.e., whether the complaint is not frivolous or there is some material fact to support it). If necessary, the RICO will contact the appropriate officials and agencies to protect public health, Federal or state funds and equipment, and the integrity of the supported research process.

- iv. The RICO will generate a draft written report of the inquiry and recommendations for further interim measures or additional possible allegations. The report shall comply with the requirements of any applicable funding agency and will articulate whether the alleged RSCA Misconduct has any substance, whether the allegations were made in good faith, and the basis for such determinations. The Office of General Counsel will review the report for legal sufficiency.
- v. The RICO will provide the respondent with a copy of the inquiry report, reasonable access to the data and other evidence supporting the allegations, and a ten (10)-day limit to submit written comments on it. These comments will be attached to the final inquiry report. Based on the comments, the RICO may revise and prepare it in final form.
- vi. The final inquiry report should be completed in no more than sixty (60) calendar days following the initiation of the inquiry, unless reasonable and necessary circumstances warrant a longer period. Any extension will be explained in the inquiry report. If the funder's regulations require it, the RICO will notify the sponsor of the delay or seek the funder's approval.
- vii. The RICO will transmit the final inquiry report and any comments or recommendations to the University President. If the inquiry finds no substance to the allegations, the University President will take such corrective action as the President determines is necessary to clear the reputation of the respondent, and to ensure no retaliation occurs to those complainants found to have acted in good faith. If the inquiry finds that the allegations have substance, the President shall establish a panel to conduct a formal investigation. The inquiry is complete with this determination.
- viii. The RICO, on the behalf of the University President, will notify appropriate University officials of the decision to proceed with an investigation, as well as any relevant sponsors, including federal or state sponsors, if so required.

c. Investigation

- i. The purpose of an investigation is to explore in detail the allegations, to examine the evidence in depth, and to determine 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.
- ii. Within fifteen (15) calendar days of a final determination calling for an investigation, the University President will:

1. Appoint a panel of three individuals per SDBOR Policy 4.8.1. The RICO, on the behalf of the University President, will notify the respondent of the proposed panel members within five (5) business days of their appointment. If the respondent submits to the RICO and University President a written objection based on a substantial personal, professional, or financial conflict of interest to any appointed group member within five (5) days after receiving notice, the RICO, on the behalf of and as approved by the University President, shall replace the challenged member with a qualified substitute.
 2. Ensure, through the RICO, the sequester of any additional pertinent research records that were not previously secured during the inquiry, as described in subsection 4.e.
 3. Where the respondent is a member of a certified bargaining unit, the RICO, on the behalf of the University President, will notify the bargaining agent or their designee that an inquiry has led to the convening of an investigation panel.
- iii. The panel will schedule a hearing and provide notice of the same to the complainant, respondent, any witnesses, and the certified bargaining unit agent, where applicable. The notice issued to complainant and respondent will contain the evidence obtained by the panel and a request to provide any additional relevant evidence or witnesses. The notice will also contain the rights of complainant and respondent at the hearing, including the right to representation, the right to examine and cross-examine witnesses, and the right to present and examine evidence.
 - iv. At the hearing, the panel will receive any objections to the evidence provided, review the evidence and conduct interviews of the complainant, the respondent, and key witnesses. All interviews will be transcribed or recorded.
 - v. The panel will make a good faith effort to determine the extent of the misconduct and whether there is evidence of other instances of misconduct related to other research with which the respondent is involved. If it becomes aware of information that gives rise to an additional possible allegation of RSCA Misconduct, the panel may add it to the current investigation, which may result in a continuation of the hearing until the relevant additional respondent(s) and/or witnesses are notified and/or evidence is obtained, as well as a reissuance of the notice of hearing to include the additional allegations. If added, the panel will provide the respondent notice of the additional allegation and allow fourteen (14) calendar days for the respondent to submit a detailed written response to the allegation. The respondent will provide all relevant research records that have not yet been produced, whether specifically requested by the panel or not.
 - vi. The panel's responsibility is to determine if, based on a preponderance of the evidence, it recommends a finding of RSCA Misconduct. The determination need not be unanimous, but it requires a majority. A separate determination will be made for each allegation of RSCA Misconduct.

- vii. The panel will generate a draft investigation report that complies with any applicable federal or state regulations and will be reviewed by the Office of General Counsel for legal sufficiency.
- viii. An investigation shall ordinarily be completed within one hundred and twenty (120) days of the appointment of the panel, unless an extension of time has been granted by the University President and relevant funding agency, if applicable, for reasonable and necessary circumstances. This includes conducting the investigation, preparing the report of findings, submitting the report to the University President for developing an appropriate response, and submitting the report and intended response to the funding agency, where applicable.
- ix. If RSCA Misconduct is found, the University President will decide, with the help of the RICO and the Office of General Counsel as appropriate, what, if any, institutional administrative actions are appropriate, and 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 at issue, current employers of the respondent, or other relevant parties should be notified of the outcome of the case. Such actions will be taken to ensure the integrity of research, scholarship, or creative activity; to protect the rights and interests of research subjects and the public; and the institutional observance of legal requirements and responsibilities.
- x. If the panel does not find that the respondent engaged in RSCA Misconduct, the proceeding shall be closed. The University President shall decide, after consultation with the respondent, what actions, if any, need to be taken to restore the respondent's reputation, if it has been damaged because of the proceeding. The President then shall implement those actions as appropriate, including issuing a statement of exoneration if the President believes this is required.
- xi. The University President will provide notice of the final decision to both the respondent and the complainant and will ensure compliance with all notification requirements of sponsoring agencies. The notice will contain an explanation of the right of appeal.

d. Generally

- i. To the extent possible, the disclosure of respondents' and complainants' identities and records identifying research subjects shall be limited to those who have a need to know in order to carry out these proceedings. In distributing any investigation documents, the RICO or the panel, as appropriate, will inform the recipient of their confidentiality and the reasonable conditions to protect their confidentiality.
- ii. The RICO will be present or available throughout these proceedings to advise the investigative panel and University President as needed, and will serve as liaison between them and the complainant, respondent, and witnesses. The RICO will not participate in the panel's deliberations or vote on whether RSCA Misconduct occurred.

- iii. The RICO will monitor the treatment of complainants and witnesses to ensure that they are not retaliated against for involvement in the proceedings. Retaliation is a disciplinable violation pursuant to ARSD 55:10:07:04 (CSA employees) and SDBOR Policies 4.3.1 (NFE employees) and 4.4.8 (faculty).
 - iv. The respondent may have an attorney or other advisor present at all proceedings.
 - v. The University can close a RSCA Misconduct proceeding at the inquiry or investigation stage if the respondent admits to having engaged in RSCA Misconduct, or a settlement has been reached between the University and the respondent. Prior to agreeing to such a closure, the RICO shall provide any applicable funding agency with notice, if required, and comply with any other applicable funding agency requirement.
 - vi. The termination of the respondent's University employment or affiliation, by resignation or otherwise, before or after an allegation of possible RSCA Misconduct has been reported, will not preclude or terminate these procedures. If the respondent refuses to participate in the process after resignation, the RICO or the panel, as appropriate, will use its best efforts to reach a conclusion concerning the allegations, noting in its report the respondent's failure to cooperate and its effect on the panel's review of the evidence.
 - vii. A panel may find by a preponderance of the evidence that, while a respondent's conduct does not warrant investigation or constitute misconduct, it nevertheless constitutes a questionable research practice. Any such finding shall be referred to the RICO for review. The RICO may deem further action appropriate, including disciplinary action pursuant to applicable University policies, procedures, and contracts.
 - viii. The decision of the University President may be appealed to the Board of Regents, which is authorized to conduct a limited review of the investigatory panel's factual findings in accordance with SDBOR Policy 4.8.1. The University President, or the RICO on the behalf of the President, will notify a funding agency, where applicable, that an appeal has been brought to the Board and will advise the funding agency of the outcome of the appeal.
- e. Sequestration
- i. The RICO has the authority and responsibility, on the behalf of the University President, to take custody of and sequester (i.e., secure, inventory, and store) research records and/or other information and documentation relevant to allegations of RSCA Misconduct.
 - ii. The affected college, department, or unit will make personnel available with the necessary technical expertise to assist the RICO during the sequestration and shall maintain confidentiality throughout the process.
 - iii. The respondent shall immediately provide all potentially relevant research records that relate to the allegation in response to the sequester, regardless of where the research records are located. The lack of records adequately

documenting the questioned research is evidence of RSCA Misconduct where it is established by a preponderance of the evidence that both:

1. The respondent intentionally, knowingly, or recklessly had research records and destroyed them; had the opportunity to maintain the records but did not do so; or maintained the records and failed to produce them in a timely manner; and
 2. The respondent's conduct constitutes a significant departure from accepted practices of the relevant research community.
- iv. Upon request and where appropriate, copies of, or reasonable, supervised access to, the sequestered evidence will be provided to the respondent. Copies of sequestered evidence will also be provided upon request to the individual(s) who provided the original material to the RICO except for materials not amenable to copying.
 - v. Records of RSCA Misconduct proceedings, including the evidence, will be maintained by the RICO in a secure manner for seven (7) years after completion of University proceedings or, when related to external funds, the completion of any external proceedings involving the RSCA Misconduct allegation. Records of any corrective action taken by the University President shall be maintained in the employee's personnel records.

5. Responsible Administrator

The Vice President for Research and Economic Development, successor, or designee is responsible for the annual and ad hoc review of this policy and procedures. The University President is responsible for approval of modifications to this policy.

SOURCE: Approved by President on 2/14/2020. Revised 01/31/2024 (clerical).