

15.99.03.E1.02 Conducting an Inquiry

Approved: June 28, 2002

This Standard Administrative Procedure is provided as a guide to implement TEES Rule 15.99.03.E1

1. CONDUCT OF AN INQUIRY

General procedures are described in section 5.0 of System Regulation 15.99.03. TEES Rule 15.99.03.E1 and the associated Standard Administrative Procedures apply to individuals whose primary employer is TEES (see Preface and Definitions in 15,99.03.E1).

2. INITIATION AND PURPOSE OF THE INQUIRY

If the designated officer determines that the allegation provides sufficient information to allow specific follow-up and falls under TEES's definition of misconduct, he/she will inform the Agency Director and initiate the inquiry process within 15 working days of receiving the complaint. This time limit may be extended by the designated officer for good cause; the extension must be documented in the record. In initiating the inquiry, the designated officer should clearly identify the original allegation and any related issues that should be evaluated. The purpose of the inquiry is to evaluate the available evidence and testimony of the respondent, complainant, and key witnesses to determine whether there is sufficient evidence of possible misconduct in research or scholarship to warrant an investigation. It is not the purpose of the inquiry to reach a final conclusion about whether misconduct definitely occurred or who was responsible. The findings of the inquiry must be set forth in an inquiry report.

3. SEQUESTRATION OF RESEARCH RECORDS

3.1 Immediate Sequestration

If the relevant research records, including copies of electronic data files, have not been obtained at the preliminary assessment stage, the designated officer or, if directed by the designated officer, the research standards officer will immediately locate, collect, inventory, and secure them to

prevent the loss, alteration, or fraudulent creation of records. Any evidence or relevant material that comes to light during the inquiry should be immediately sequestered.

3.2 Institutional Access

Research records and electronic data files produced under most grants and cooperative agreements to TEES are the property of TEES and employees cannot interfere with the TEES's right of access to them. Under contracts, certain research records may belong to the contracting agency, but the agency should be provided access to contract records in the custody of the agency or institution for purposes of reviewing misconduct allegations.

3.3 Original Records

The documents and materials to be sequestered shall include all the original items (or copies if originals cannot be located) that may be relevant to the allegations. These include, but are not limited to, research records as defined in section 2.17 of TEES Rule 15.99.03.E1.

3.4 Sequestration of the Records from the Respondent

The designated officer shall notify the respondent that an inquiry is being initiated simultaneously with the sequestration so that the respondent can assist with location and identification of the research records. The designated officer shall obtain the assistance of the respondent's supervisor and a representative of the Office of General Counsel in this process, as necessary. If the respondent is not available, sequestration may begin in the respondent's absence. The respondent shall not be notified in advance of the sequestration of research records to prevent questions being raised regarding missing documents or materials and to prevent accusations against the respondent of tampering with or fabricating data or materials after the notification. In addition to securing records from the respondent, the designated officer may need to sequester records from other individuals, such as co-authors, collaborators, or complainants. As soon as possible, a copy of each sequestered record will be provided to the individual from

whom the record was taken, if requested. Whenever possible, equipment necessary to the respondent, including computers, will be returned after documentation or making copies of relevant information. If this is not possible, equivalent equipment shall be made available to the respondent.

3.5 Inventory of the Records

A dated receipt shall be signed by the designated officer or his/her designee and the person from whom an item is collected, and a copy of the receipt shall be given to the person from whom the record is taken. If it is not possible to prepare a complete inventory list at the time of collection, one shall be prepared as soon as possible, and then a copy shall be given to the person from whom the items were collected.

3.6 Security and Chain of Custody

The designated officer or research standards officer shall lock records and materials in a secure place. The person(s) from whom items are collected may be provided with a copy of any item. Where feasible, that person shall have access to his/her own original items under the direct and continuous supervision of an institutional official. This will ensure that a proper chain of custody is maintained and that the originals are kept intact and unmodified. Questions about maintaining the chain of custody of records should be referred to the General Counsel's office.

4. NOTIFICATION OF RESPONDENT

4.1 Contents of Notification

Within five working days of the initiation of the inquiry, the designated officer shall notify the respondent in writing of the opening of the inquiry. This time limit may be extended for good cause by the designated officer with approval of the Agency Director; the extension must be documented in the record. The notification shall identify the research project in question and the specific allegation(s); define misconduct in research or scholarship; identify any funding involved; list the names of the members of the inquiry committee (if appointed) and expert witnesses (if any); explain the

respondent's right to challenge the appointment of a member of the committee or expert for bias or conflict of interest, right to be assisted by counsel, right to be interviewed, right to present evidence to the committee, and right to comment on the inquiry report; address the respondent's obligation as an employee of TEES to cooperate; describe TEES' rule on protecting the complainant against retaliation and the need to maintain the complainant's confidentiality during the inquiry and any subsequent proceedings.

4.2 No Specific Respondent

If no specific respondent has been identified at this stage of the process, the designated officer or research standards officer shall notify each potential respondent that an inquiry will be initiated (e.g., each co-author on a questioned article or each researcher on a questioned grant application).

5. RESPONSIBILITY FOR CONDUCTING AN INQUIRY

The designated officer shall have the overall responsibility for the conduct of the inquiry, following the procedures set forth in this standard administrative procedure.

5.1 Appointment of Inquiry Committee

5.1.1 Committee Membership

The designated officer, in consultation with other institutional officials as appropriate, and with the approval of the Agency Director, shall appoint the committee and the research standards officer within five working days of the initiation of the inquiry. This time limit may be extended for good cause by the designated officer with approval of the Agency Director; the extension must be documented and becomes part of the record. The inquiry committee shall include three individuals who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to evaluate the evidence and issues related to the allegation, to interview the principals and key witnesses, and to conduct the inquiry. These individuals may be faculty, scientists, subject matter experts, administrators, lawyers, or

other qualified persons, and they may be from inside or outside the experiment station. The committee shall include a research standards officer, who will serve as a non-voting, ex officio resource to the committee (refer to definition, section 2.18 of TEES Rule 15.99.03.E1), and three members with expertise in an appropriate area. If circumstances mitigate against establishing a 3-member committee, the designated officer, with the concurrence of the Agency Director, may appoint a single member. That single member may be the research standards officer.

5.1.2 Experts

The designated officer, in consultation with the inquiry committee, shall determine whether additional experts other than those appointed to the committee to conduct the inquiry must be consulted during the inquiry to provide special expertise to the committee regarding the analysis of specific evidence. In this case, the experts serve in a strictly advisory capacity to the committee; they do not vote and generally do not interview witnesses. The experts chosen may be from inside or outside of the institution.

5.1.3 Bias or Conflict of Interest

The designated officer shall take reasonable steps to ensure that the members of the committee and experts have no bias or personal or professional conflict of interest with the respondent, complainant, or the case in question. In making this determination, the designated officer shall consider whether the individual (or any members of his/her immediate family):

- 5.1.3.1 has any financial involvement with the respondent or complainant;
- 5.1.3.2 has been a co-author on a publication with the respondent or complainant;
- 5.1.3.3 has been a collaborator or co-investigator with the respondent or complainant;
- 5.1.3.4 has been a party to a scientific controversy

- with the respondent or complainant;
- 5.1.3.5 has a supervisory or mentor relationship with the respondent or complainant;
- 5.1.3.6 has a special relationship, such as a close personal friendship, kinship, attorney/client, or physician/patient relationship with the respondent or complainant; or
- 5.1.3.7 falls within any other circumstance that might appear to compromise the individual's objectivity in reviewing the allegations.

5.1.4 Objection by Respondent

The designated officer or research standards officer shall notify the respondent of the proposed committee membership within five working days after the committee is appointed. This time limit may be extended for good cause by the designated officer with approval of the Agency Director; the extension must be documented in the record. If the respondent submits a written objection to any appointed member of the inquiry committee or expert, based on bias or conflict of interest, within five working days after receiving notification of committee membership, the designated officer shall immediately determine whether to replace the challenged member or expert with a qualified substitute and shall notify the respondent. This time limit may be extended for good cause by the designated officer with approval of the Agency Director; the extension must be documented in the record.

5.1.5 Confidentiality

The members of the Inquiry committee and experts shall agree to observe the confidentiality of the proceeding and any information or documents reviewed as part of the inquiry. Outside of the official proceedings, the members of the committee may not discuss the proceedings with the respondent, complainant, witnesses, or anyone not authorized by the designated officer to have knowledge of the inquiry.

5.1.6 Provision of Assistance

The designated officer, in consultation with a representative of the Office of General Counsel, shall provide staff assistance and guidance to the committee and the experts on the procedures for conducting and completing the inquiry, including procedures for maintaining confidentiality, conducting interviews, analyzing data, and preparing the inquiry report.

5.2 Admission of Guilt

In cases in which the respondent admits to the misconduct or situations in which the allegations and apparent evidence are straightforward, such as an allegation of plagiarism or simple falsification, the designated officer, in consultation with the Agency Director, dean(s) of the college(s) or equivalent in which the misconduct is alleged to have occurred and other institutional officials as appropriate, may utilize the inquiry committee as the investigation committee assuming the inquiry committee had at least 3 voting members.

6. EMERGENCY NOTIFICATION

The designated officer shall notify the federal funding agency if any of the conditions listed in section 4.7 of TEES Rule 15.99.03.E1 are present.

7. CONDUCTING INTERVIEWS

7.1 General Approaches to Conducting an Interview

An interview at the inquiry stage is held to allow each respondent, complainant, or witness to tell his/her side of the story.

7.2 Issues to Cover

Before an interview, the inquiry committee shall provide each witness with a summary of the matters or issues intended to be covered at the interview. The summary of the issues to be covered will be provided in a reasonable time prior to testimony. If the committee raises additional matters, the witness shall be given an opportunity to supplement the record in writing or in another interview. The witness shall be informed that his/her cooperation and truthful answers are

expected. Purposefully misleading the inquiry committee or knowingly providing false or misleading testimony may result in a charge of misconduct and/or disciplinary action.

7.3 Using Experts

The inquiry committee may request that experts attend or participate in interviews to assist in its evaluation of the allegations and related issues. In addition, an expert may be asked to prepare questions for the committee to use at the interview.

7.4 Transcribing Interviews

Interviews with the respondent, complainant, or witnesses will not be transcribed or recorded.

7.5 Access to Counsel

Witnesses as well as the respondent may be accompanied and advised by legal counsel or by a non-legal adviser who is not a principal or witness in the case. However, the counsel or advisor may only advise the witness and may not participate directly in the interview.

7.6 Interviewing the Complainant

In interviewing the complainant, the inquiry committee shall attempt to obtain as much additional evidence regarding the substance of the allegation as possible and attempt to determine the complainant's view of the significance and impact of the alleged misconduct. However, it is not the complainant's responsibility to prove his/her allegations.

7.7 Interviewing the Respondent

The respondent shall be asked to provide his/her own response to the allegations, including any analysis of the primary data. If the respondent claims that an honest error or difference of scientific judgment occurred, he/she shall provide any evidence to support that claim.

7.8 Recording Admissions

If the respondent admits to the misconduct, he/she should be asked immediately to sign a statement attesting to the

occurrence and extent of the misconduct, acknowledging that the statement was voluntary and stating that the respondent was advised of his/her right to seek the advice of counsel. The committee shall consult with a representative of the Office of General Counsel on the specific form and procedure for obtaining this statement. The admission will be sufficient evidence to justify an investigation.

8. DELIBERATIONS

The inquiry committee shall evaluate the evidence and testimony obtained during the inquiry. After consultation with the designated officer, the research standards officer, and if necessary an attorney from the Office of General Counsel, the committee members shall recommend to the designated officer whether there is sufficient evidence of possible misconduct to recommend further investigation. The scope of the inquiry does not include deciding whether misconduct occurred or conducting exhaustive interviews and analyses.

9. INQUIRY REPORT

A written inquiry report must be prepared that states the names and titles of the committee members and the experts, if any; the allegations; the type of support; a summary of the inquiry process used; a list of the research records reviewed; a description of the evidence in sufficient detail to demonstrate whether an investigation is warranted; and the committee's recommendation as to whether an investigation is warranted and whether any other actions should be taken if an investigation is not warranted. The Office of General Counsel should review the report for legal sufficiency. All relevant dates should be included.

9.1 Comments on the Draft Report by the Respondent

The designated officer or research standards officer shall provide the respondent with a copy of the draft inquiry report for comment and rebuttal. Within five working days of the respondent's receipt of the draft report, the respondent shall provide comments, if any, to the inquiry committee, and these comments will become part of the final report and record. This time limit may be extended for good cause by the designated officer with approval of the Agency Director;

the extension must be documented in the record. Based on the comments, the inquiry committee may revise the report as appropriate.

9.2 Time Limit for Completing the Inquiry Process

The inquiry committee will complete the inquiry and submit the report in a judicious time frame. It is recognized that an uncomplicated case may be completed in 30 days, whereas more complex cases may take longer, dependent upon the number of witnesses, scheduling problems, etc. If longer than 90 days is required, an extension must be requested from the Agency Director. If the Agency Director approves the extension, the reason for the extension will be entered into the records of the case and the report. The respondent will also be notified of the extension. If funding is derived from a sponsor and if the sponsor prescribed time limits, those time limits shall take precedence.

10. INQUIRY DECISION AND NOTIFICATION

10.1 Decision by the Designated Officer

The Agency Director, in consultation with the designated officer, shall determine whether findings from the inquiry provide sufficient evidence of possible misconduct to justify conducting an investigation. The inquiry is completed when the designated official makes this determination. The designated official shall make a decision within five working days of receiving the final report. Any extension of this period shall be based on good cause and recorded in the inquiry file. The designated officer shall send written notification of the decision to both the respondent and the complainant. In the event an investigation is opened, the designated officer shall remind them of their obligation to cooperate. The designated officer also shall notify all appropriate institutional officials of the decision.

11. RECORDS RETENTION

Refer to section 11.2 of TEES Rule 15.99.03.E1 and Standard Administrative Procedure 15.99.03.E1.06, Guidelines for Gathering Storage and Retention of Dates and Results.

OFFICE OF RESPONSIBILITY: Office of Policy Administration
HISTORY: New Standard Administrative Procedure