



January 28, 1997

Dear Colleague,

This letter describes what happens under National Science Foundation (NSF) regulations when someone makes an allegation of misconduct in science, engineering, or education.

“Misconduct” was defined in the regulations adopted by the Foundation in July 1987, which appear in the Code of Federal Regulations (CFR) at 45 CFR 689. They were revised in May 1991. You should be able to get a copy of these regulations at your local library or you may write to us and request a copy.

NSF regulations define misconduct as (1) fabrication, falsification, plagiarism, or other serious deviation from accepted practices in proposing, carrying out, or reporting results from activities funded by NSF; or (2) retaliation of any kind against a person who reported or provided information about suspected or alleged misconduct and who has not acted in bad faith.

In addition to the common forms of misconduct, this definition proscribes “. . . other serious deviation from accepted practices. . . .” Thus, the definition allows for less common forms of misconduct that the research community would recognize as unacceptable. The definition is not intended to elevate ordinary errors in research to the level of misconduct and does not contemplate that NSF will act as an arbitrator of mere personality clashes or technical disputes between researchers. A new feature of the definition is that any retaliation by individuals or institutions against a whistleblower is itself regarded as misconduct.

Although allegations may be reported directly to the Office of Inspector General (OIG), researchers will ordinarily report any misconduct allegations to the institution with which they are affiliated.

Allegations Reported to an Institution

Institutions that receive NSF funds are required to establish policies and procedures for handling misconduct allegations. NSF regulations require an institution that receives an allegation to complete an inquiry within 90 days. An “inquiry” is a preliminary review of information that attempts to determine whether an allegation of misconduct has any substance.

If the inquiry finds insufficient basis for the allegation, the matter is closed. In such cases, the institution does not have any obligation to inform us. If the inquiry finds there is a substantive possibility that misconduct has occurred involving an NSF proposal or award, the institution must notify us and promptly begin an investigation.

An “investigation” is a formal examination and evaluation of relevant facts to determine whether misconduct has occurred and, if so, to assess its gravity and propose what action should be taken. The appropriate university official may then take disciplinary action on behalf of the institution.

Institutions conduct investigations according to their established procedures. If you have a question about how an investigation is being conducted, you should contact the responsible academic official. While we do not establish specific procedures that institutions must follow, we are concerned that subjects, informants, and witnesses affected by investigations be accorded fundamental fairness and due process. We review all investigations undertaken by institutions with these concerns in mind.

The institution is expected to complete an investigation, reach a disposition within 180 days, and provide a report to us. We evaluate these investigative reports and sometimes ask the institution for clarification or additional information. In most cases, the institution’s report is accepted and adopted in whole or in part as our final report. In some instances, we do not accept the institution’s report, but initiate our own investigation, which results in our final report. After this stage is reached, the procedure is the same as on page 4.

Allegations Reported to OIG

In some cases, we will receive and evaluate allegations that have not been reported to or reviewed by an academic institution.

THE INQUIRY: When we receive an allegation, the first action we take is to determine whether it meets the definition of misconduct and whether the alleged misconduct is connected with an NSF proposal or award. If these conditions are not met, we cannot take any further action because the allegation is not under our jurisdiction. It is not enough for the misconduct to have occurred in an institution receiving NSF funds.

Notification of the Subject: After we have established jurisdiction, we usually send an inquiry letter to the individual who is the subject of the allegation. This letter states that we have received an allegation about the scientist or engineer and that the individual’s institution has not yet been notified. We solicit comments or explanations to help us understand and evaluate the allegation. The source of the allegation is not identified. We also inform the researcher of his or her rights under NSF’s misconduct regulations and the Privacy Act. Our letter establishes a deadline by which we expect a reply and includes the name and telephone number of a person in our office to whom questions can be addressed.

The response to our initial letter is critical in determining what happens next. If we receive a satisfactory explanation from the subject, we declare the matter closed and so inform both the subject and the source of the allegation. By contacting only them, we restrict the spread of unfounded accusations. If, however, we receive no response or conclude that the subject’s response does not adequately resolve the allegation, we usually defer further inquiry to the institution.

Ordinarily, we defer an inquiry by writing a letter to the authorized institutional representative (usually the person who signs the proposal or award on behalf of the sponsoring institution). Our letter provides a description of the allegation and the subject's response. The source of the allegation is not named or identified. If the institution accepts the case, we formally defer to the institution. In other cases, we may choose to complete the inquiry ourselves.

Under our rules, the institution is expected to provide us with an inquiry report within 90 days. This report provides the names and titles of those responsible for the inquiry; a description of the methods and procedures employed; a summary of the materials and testimony collected; and the final conclusions, supported by the reasoning behind them.

If the institution's inquiry report finds the allegation without merit, we evaluate the report for adequacy and decide whether to accept the finding. If we accept the finding that misconduct has not occurred, we notify all parties and declare the matter closed. On the other hand, an investigation is initiated if (1) the institution finds the allegation has merit, (2) we do not accept the institution's findings of no misconduct, or (3) our own inquiry finds that the allegation seems valid.

THE INVESTIGATION: As with the inquiry, we will usually ask the institution to conduct the investigation and provide us with the information and conclusions generated. In a small number of cases, we will not defer a particular matter to the institution, but will proceed directly with our own investigation.

Institutions are allowed 180 days to conduct investigations and report their findings to us. The report must include:

- a description of the allegations investigated,
- a list of the individuals responsible for conducting the investigation,
- the methods and procedures used to gather information and evaluate the allegation,
- a summary of the records compiled,
- a statement of the findings with the reasoning supporting those conclusions, and
- a description and explanation of any actions recommended and/or imposed by the institution.

As with inquiry reports, we carefully review investigation reports before accepting them. We can accept an institution's report in whole or in part, request additional information, or initiate our own, independent investigation. In this way, we develop our own final report. Its purpose is not to replace the institution's report or challenge the actions taken by the institution, but to serve as the basis for any actions NSF will take on its own behalf.

If our final investigation report does not conclude that misconduct has occurred, we will notify the subject of the investigation and close out the case. The person who originally made the allegation is also usually informed of the outcome.

If our investigation report confirms misconduct, we will make sure that the subject of the investigation has been or is provided a copy of the report. We accept no report as final without ensuring that the subject has an opportunity to respond. Comments or rebuttals receive full consideration and may lead to a revision of the report. When we issue a final investigation report that concludes that misconduct has occurred, it must also recommend findings and any appropriate actions to be made or taken by NSF management.

FINDINGS AND ACTIONS: Institutions may take action when misconduct has been found, according to their own regulations. In addition, NSF may take appropriate action if it finds misconduct has occurred. OIG has no authority to make findings or take action. Our authority is limited to recommending findings and actions.

Examples of actions that we can recommend and the Foundation can take fall into three groups. First, NSF can send a letter of reprimand to the individual or institution involved, can set conditions on NSF awards that affect the individual or institution involved, or can require special certifications or assurances of compliance. As a second alternative, the Foundation can place restrictions on activities or expenditures under awards. Last, the Foundation can suspend or terminate an active award, or can initiate an action to debar an individual or institution from receiving awards from any agency of the government and from working under another investigator's award.

In deciding what recommendation to make, we consider:

- how serious the misconduct was,
- the state of mind with which it was committed, and
- whether it was an isolated event or part of a pattern.

NSF Management Review and Disposition

When our investigation report is complete, we send it with our conclusions and recommendations to the Deputy Director of NSF for adjudication. If the Deputy Director finds that misconduct has occurred and decides to take action, the Foundation will provide a notice of the proposed action and information about appeal rights directly to the individual or institution involved. The Deputy Director's decision can be appealed to the Director of NSF.

Specific Questions

Here are answers to some commonly asked questions about how allegations of misconduct are handled.

Is it necessary for me to report misconduct?

While it is sometimes unpleasant to report misconduct that you observe, it is essential to do so. Only in that way can the research community keep its own house in order and maintain both integrity and public confidence in science and engineering. It is not necessary for you to have complete evidence of the misconduct: If you have any substantial information, simply report it truthfully. Your position will be that of a source of information, not an accuser. The matter will not be regarded as a complaint coming from you, but as a case that OIG or the institution is evaluating on its own behalf as a representative of the research community.

Should possible misconduct be reported to OIG, or to my institution?

Ordinarily, the institution should be contacted about incidents that occur within its walls. However, if you prefer to contact OIG, you should feel free to do so. Occasionally, a question of misconduct arises that involves someone at another institution. In such cases, you will often find it more satisfactory to contact OIG than to approach that person or institution directly. In addition, if you have contacted your institution about a misconduct matter and found it unable or unwilling to deal with the problem, you should contact OIG.

If I report misconduct by my superiors or colleagues, will OIG keep my identity confidential?

Issues involving the protection of “whistleblowers” (individuals who report misconduct) are difficult and have attracted national attention. OIG’s policy is not to divulge the names of people who provide information about possible misconduct. In addition, informants can request confidential informant status. This will give protection against disclosure of their identity under the Privacy and Freedom of Information Acts. However, no government agency can provide *absolute* assurances that a confidential source will not be asked to testify publicly, especially if the misconduct at issue is also a violation of federal criminal law. If you have concerns about our ability to keep your identity confidential, you can provide information anonymously. You may also want to speak with an attorney in OIG’s Office of Counsel to get a better understanding of your right to confidentiality under federal law. You can do this anonymously.

Why does OIG inform the institution about allegations of misconduct that it receives?

Both NSF management and OIG believe that proposing and awardee institutions bear primary responsibility for preventing, detecting, investigating, and resolving allegations of misconduct. OIG considers its practice of deferring most misconduct allegations to the sponsoring institution the best way to resolve disputes and maintain the integrity of research. As noted above, OIG only notifies the institution when it has been determined that an inquiry or investigation by the institution is required.

If I am told that I have been accused of misconduct, should I retain an attorney to represent me during the inquiry or investigation?

Individuals must make a decision about whether to retain counsel. They are entitled to be represented by counsel at their own expense at any stage of the proceedings. However, they are not required to obtain the assistance of counsel.

Are the procedures outlined in this letter always followed just as described? Are there reasons for deviating from them?

The purpose of this letter is to give the scientific and engineering community a general and informal description of the procedure that OIG usually follows. It does not cover every unusual circumstance. In unusual situations you may want to contact OIG directly. OIG's procedures are governed by NSF's regulations on misconduct in science and engineering, the Inspector General Act, and other applicable laws. This letter is not intended to, and does not, create new rights, procedures, or responsibilities not otherwise mandated by applicable laws and regulations.

James J. Zwolenik, Ph.D.
Assistant Inspector General for Oversight
Office of Inspector General
National Science Foundation
4201 Wilson Boulevard
Arlington, VA 22230
(703) 306-2100

OIG 97-1
(Revision of OIG 91-1)