



# TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER EL PASO

## Operating Policy and Procedure

**HSCEP OP:** 52.04, **Report and Internal Investigation of Alleged Violations, Non-Retaliation**

**PURPOSE:** The purpose of this Texas Tech University Health Sciences Center El Paso (TTUHSC EP) Operating Policy (OP) is to provide general guidance for reporting and investigation of alleged violations not otherwise addressed in other Texas Tech University Health Sciences Center Operating Policies and to protect the rights of TTUHSC EP Employees and Affiliates who in good faith report violations of law or who participate in any manner in a civil or criminal legal action involving allegations of violation of law.

**REVIEW:** This HSCEP OP will be reviewed in December of each odd-numbered year (ONY) by the Senior Associate General Counsel, the Institutional Compliance Officer, Vice President (VP) Human Resources, and Office of Audit Services, with recommendations for revision forwarded to the Institutional Compliance Committee by March of the following year.

**DEFINITIONS:** In this policy, the following terms are defined as:

**TTUHSC EP Affiliate** means any volunteer, student, non-TTUHSC EP employee, or independent contractor or vendor providing services to or on behalf of TTUHSC EP.

**Allegation** means a report of possible Violation through any means of communication (either oral or written) as outlined herein, including, but not limited to use of the Texas Tech University System (TTUS) Fraud and Misconduct Line, [HSCEP OP 52.03, Compliance Hotline - EthicsPoint](#).

**Employee, Involuntary Termination and Voluntary Termination** are the same as defined in Texas Tech System Regulation 07.07, Employee Conduct, Coaching, Corrective Action and Termination.

**Fraud** has the same meaning as in TTUS [Regents' Rule 07.03](#).

**Good Faith** means that an individual must believe he/she is reporting conduct that constitutes a violation of law or policy, and the belief must be reasonable based on the individual's training and experience.

**Investigation** means the formal development of a factual record based on review of documents, testimony and other information gathered that leads to a conclusion that there is or is not a Violation.

**Source** means a TTUHSC EP Employee or Affiliate or other person who makes a Good Faith Allegation of a suspected or actual Violation pursuant to this OP and/or [HSCEP OP 52.03, Compliance Hotline - EthicsPoint](#).

**Retaliation** in the context of reporting Allegations of a Violation includes, but is not limited to, involuntary termination of or voluntary termination from employment or affiliation with TTUHSC EP, forced resignation, elimination of the position, discrimination in the terms of employment or affiliation with TTUHSC EP, interference with employment or affiliation with TTUHSC EP, harassment, threats of retaliation, unwarranted disciplinary action or any action that affects a TTUHSC EP employee's compensation, promotion, demotion, transfer, work assignment, or performance evaluation. Retaliation includes, but is not

limited to threats, intimidation, coercion, discrimination, reprisals, or adverse actions related to an individual's employment or education.

**Subject** means an individual(s) who is the focus of an Investigation for an alleged Violation.

**Violation** includes any action or activity by a TTUHSC EP employee or Affiliate that constitutes fraud, waste or abuse, violation of federal or state laws, regulations, rules, TTUS *Regents' Rules*, and/or TTUHSC EP policies and procedures. This includes, but is not limited to, corruption, willful omission to perform duty, waste of state resources, malfeasance, bribery, theft, fraudulent claims, fraud, or conversion.

**Title IX Sexual Misconduct** Title IX Sexual Misconduct is governed by Texas Tech University System Regulation 07.06.A. which includes, but is not limited to:

- sexual assault;
- stalking;
- dating violence;
- domestic violence;
- quid pro quo conduct;
- and conduct that is severe, pervasive, and objectionably offensive will constitute Title IX Sexual Misconduct, and be governed by such policy.

The procedure for reporting and filing a formal complaint of Title IX Sexual Misconduct, and the grievance process for addressing such complaints, is set forth in System Regulation 07.06.A.

All other forms of Sexual Misconduct are addressed pursuant to the Non-Title IX Sexual Misconduct policy, set forth in this Student Handbook and governed by System Regulation 07.06.B.

**Witness** means an individual(s) who is/are requested to provide information and/or documents to investigators during the course of an Investigation of an Allegation.

## **POLICY/PROCEDURE:**

### **A. Reporting an Allegation of a Violation**

#### **1. Reporting Chain**

- a. An Allegation of a known or suspected Violation may be reported to one or more of the following TTUHSC EP resources:
  - A TTUHSC EP supervising manager or administrator of the involved area or as indicated in a TTUHSC EP Operating Policy;
  - The Compliance Hotline at [ethicspoint.com](http://ethicspoint.com) or the toll-free number of 1-866-294- 9352, See e.g., [HSCEP OP 52.03, Fraud and Misconduct Line](#);
  - The TTUHSC EP Institutional Compliance Officer (1-915-215-6484) or TTUHSC EP administrator or manager whom the Source reasonably expects to have either responsibility over the affected area or authority to review the alleged Violation;
  - The TTUS Office of Audit Services;
    - (806) 742-3220
    - <http://www.texastech.edu/offices/audit-services/>
  - Texas State Auditor's Office Fraud Hotline, as follows:
    - 1-800-TX-AUDIT (1-800-892-8348)

- [Texas State Auditor's Office Fraud Hotline](#)
  - State Auditor's Office ATTN: SIU  
P.O. Box 12067  
Austin, TX 78711-2067
  - Title IX Coordinator
    - [titleixcoordinator@ttuhsc.edu](mailto:titleixcoordinator@ttuhsc.edu),
    - (915) 215-5439: or
    - [Dawn Payne \(dawn.payne@ttu.edu\)](mailto:Dawn.Payne@ttu.edu)
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  - A state or federal law enforcement authority including, but not limited to, the Texas Tech Police Department.
- b. When possible, Employees are encouraged to report known or suspected Violations to their supervisor or the Department/Administrator with oversight responsibility where the Alleged Violation arises.
  - c. TTUHSC EP Affiliates should make reports of known or suspected Violations related to TTUHSC EP's operations to the TTUHSC EP Institutional Compliance Officer or the TTUS Office of Audit Service.
  - d. Suspected criminal activity will be reported to the Texas Tech Police Department or other State or federal law enforcement authority.

## 2. Duty to Timely Report Alleged Violations

- a. Employees and TTUHSC EP Affiliates have a duty to promptly report known or suspected Violations to minimize risk to TTUHSC EP and its operations. See, [Regents' Rule 07.03](#), Fraud Policy. Allegations should focus on facts and include sufficient information to assist in evaluating the nature, extent and urgency of the Investigation.
- b. Anonymous Allegations may be made, but must include sufficient information to support initiating an Investigation.
- c. To the extent possible, submitting a written Allegation is encouraged, as well as reporting in a timely manner in order to permit TTUHSC EP an opportunity to review the Allegation(s) and take necessary action as appropriate.

## 3. Confidentiality.

- a. Confidentiality of the identity of the Source(s), Subject(s) and Witness(es) shall be maintained to the extent possible within the limitations of the law, TTUHSC EP policy and the need to conduct a thorough Investigation and prepare a written report.
  - Unless required by law or necessary in the context of reporting the Investigation, the Source's identity shall not be disclosed in the written investigative report.
- b. Information provided or obtained as part of an Investigation shall be considered confidential in accordance with HSCEP OPs.

## B. **Investigation Oversight Areas**

After an Allegation is received, it will be investigated by a department or office referenced below authorized to conduct investigations of alleged violations, unless otherwise addressed in specific HSCEP OPs. These departments and offices include, but are not limited to the following:

1. TTUS Office of Audit Services is responsible for investigating Allegations of known or suspected misuse of institutional resources, including fraud, waste and/or abuse, financial or

non-financial irregularities and the financial consequences of other matters under investigation and any other area as authorized by the Board of Regents.

2. TTUHSC EP Human Resources Office is responsible for investigating allegations of employee misconduct, employee complaints and illegal actions/behaviors and any other employee matters defined in HSCEP Ops, with the exception of Title IX sexual misconduct involving employees.
3. TTUHSC EP has a Title IX Coordinator who oversees TTUHSC EP's compliance with Title IX, which prohibits discrimination based on sex (refer to Title IX website, <https://el Paso.ttuhs.edu/title-ix/default.aspx>). TTUHSC EP has also designated a Deputy Title IX Coordinator for employees. The Title IX Coordinator or his/her designee will investigate complaints of sexual misconduct by or between students. The TTUS Office of Equal Opportunity (Office of EO) will investigate complaints of sexual misconduct by or between employees. See HSCEP OP 51.03 for additional information, including information on reporting sexual misconduct.
4. TTUHSC EP Institutional Compliance Office is responsible for investigating Allegations of known or suspected health care fraud, waste, and/or abuse, billing non-compliance, unauthorized access, use or disclosure of protected health information, and any other matters identified in HSCEP OPs and/or referred to them.
5. TTUHSC EP Office of the Vice President for Research (OVPR) is responsible for investigating allegations of research misconduct (falsification, fabrication, or plagiarism) in accordance with regulations outlined in [HSCEP OP 73.07, Integrity and Allegations of Scientific Misconduct](#). The TTUHSC EP RIO is also responsible for investigation of research-related allegations through authority granted in [HSCEP OP 73.14, Research Compliance](#). TTUHSC EP research review committees (IRB, IACUC, etc.) are responsible for investigation of protocol violations associated with their area of oversight.
6. TTUHSC EP Information Technology Division is responsible for investigating unauthorized access to or misuse of TTUHSC EP computing systems and resources; unauthorized access to or disclosure of electronic data, including confidential or protected information.
7. TTUHSC EP Registrar's Office is responsible for investigating unauthorized access, use or disclosure of student information protected under FERPA.
8. TTUHSC EP Safety Services is responsible for investigating unsafe working conditions, radiation safety violations, and hazardous chemical use and/or transportation.

Each Department/Area conducting an Investigation shall do so in accordance with applicable laws, HSCEP OPs, *Regents' Rules*, and established procedures within the department.

Nothing herein is intended to replace or supersede other existing faculty or employee specific policies and procedures related to workplace conditions, grievances, student misconduct, or other HSCEP investigative operating procedures.

### C. **Responsibilities**

1. Source(s). An individual reporting an Allegation:
  - a. Shall provide initial information based on a Good Faith belief that a Violation will or has occurred and cooperate with any TTUHSC EP investigator, to include responding truthfully to requests by investigators for additional information that is within the individual's knowledge.
  - b. Shall not discuss the contents of the Allegation and/or information related to the

Investigation (including the identities of suspects or Witnesses) with other TTUHSC EP Employees or Affiliates, other than with persons conducting the Investigation, TTUHSC EP Human Resources, or as otherwise allowed or required by law.

- c. Shall not gather or obtain evidence to which the individual does not have a right to access. Source individuals are not investigators and may be subject to disciplinary action in the event he/she improperly obtains documents and/or information related to an Investigation of the reported Violation.
- d. Will be informed by the person conducting the investigation when the Investigation concludes, but does not have the right to be informed of the outcome of the Investigation, and has no right to obtain any information protected by law.

2. Witness(es). Witnesses identified in an Investigation:

- a. Have a duty to cooperate fully with TTUHSC EP and TTUS investigators, provide truthful and relevant information to the extent his/her cooperation will not undermine protection against self- incrimination under federal or state law.
- b. Shall not discuss or disclose information related to the Investigation or their testimony with other Employees or TTUHSC EP Affiliates, other than those conducting the Investigation, TTUHSC EP Human Resources, or as otherwise allowed or required by law,
- c. Will be informed if they become a Subject of the Investigation based on information obtained during the Investigation, unless it is determined that such disclosure could result in actual or perceived interference of the investigation.

3. Subject(s). Subjects of an Investigation:

- a. Shall be informed of the Allegations at the beginning of a formal Investigation, unless it is determined that such disclosure could result in actual or perceived interference of the Investigation. In such cases, the Subject's immediate supervisor shall be informed of the Allegations, unless it is determined that such disclosure could result in actual or perceived interference of the Investigation, in which case a senior administrator will be notified.
- b. Shall cooperate with investigators, to the extent their cooperation will not undermine protection against self-incrimination under federal or state law.
- c. Shall not discuss the contents of the Allegation and/or information related to the Investigation with other Employees or TTUHSC EP Affiliates (including the identities of Subjects or Witnesses), other than with persons conducting the Investigation, TTUHSC EP Human Resources, or as otherwise allowed or required by law.
- d. Have the right to consult with private legal counsel or applicable federal or state agencies, i.e., EEOC, Texas Workforce Commission.
- e. Shall not interfere with an Investigation including, but not limited to, withholding, destroying, or tampering with documents or evidence, or attempting to influence, coerce and / or intimidate Witnesses.
- f. Will be informed of the outcome of the Investigation; however, Subjects do not have a right to any information that is protected by law.
- g. Based on the results of the Investigation under this policy, Subjects may be subject to disciplinary action taken in accordance with applicable TTUHSC EP academic or personnel conduct and disciplinary procedures.

4. Investigator(s). The individual in charge of conducting the Investigation shall:

- a. Undertake an investigation when:
    - The Allegation, if determined to be true, would constitute a Violation;
    - The Allegation is accompanied by information specific enough to be investigated; or
    - The Allegation has, or directly points to, corroborating evidence capable of being pursued.
  - b. Prior to the initiation of the Investigation, notify TTUHSC EP senior administrator(s) over the Department/School/Area being investigated of the investigation. If the senior administrator is the Subject of the Allegation, notify their immediate supervisor.
  - c. Notify the local Human Resources (HR) Director or Assistant Vice President of Human Resources (AVPHR) when there is a need to request that IT review an employee's possible misuse of computing resources related to an investigation.
  - d. Notify the Source that his/her identity may become known for reasons outside the control of the investigator(s) or TTUHSC EP.
  - e. Inform individuals who are interviewed of the confidential nature of the Investigation and the confidentiality agreement executed by TTUHSC EP employees, students, and volunteers pursuant to [HSCEP OP 52.09, Confidential Information](#). Those individuals who are interviewed may be requested to sign the TTUHSC EP Investigation Confidentiality Agreement (Attachment A).
  - f. Allocate appropriate resources and expertise to effect a timely, comprehensive and objective Investigation.
  - g. Conduct the investigation in an independent, unbiased and confidential manner.
  - h. Monitor the progress of the Investigation, providing periodic reports to appropriate TTUHSC EP senior administrator(s) and/or applicable TTUHSC EP committee(s).
  - i. Submit a final report with findings and recommendations to appropriate TTUHSC EP senior administrator(s) and/or TTUHSC EP oversight committee(s). Findings that a Violation occurred shall be based on credible evidence obtained during the Investigation.
  - j. Notify the AVP HR if employee misconduct is found.
  - k. Be available to provide clarification and/or additional information to TTUHSC EP senior administration and/or HR representatives.
5. All Employees have a duty to cooperate with Investigations conducted pursuant to this OP or other TTUHSC EP policies and Regents' Rules.
  6. During the course of an Investigation, an Employee may be placed on administrative leave, according to applicable TTUHSC EP policy, when it is determined that such a leave would serve the best interests of the Employee or TTUHSC EP, and that granting such leave is consistent with applicable TTUHSC EP personnel policies.
  7. TTUHSC EP students and/or volunteers may be suspended or otherwise removed when it is determined to be in the best interests of TTUHSC EP and in accordance with applicable policies.

#### **D. Protection Against Retaliation**

##### **1. General Concepts**

- a. During an investigation of an alleged Violation, no Retaliation shall knowingly be taken against any person or entity who makes a Good Faith Allegation of known or suspected Violations or who cooperates, e.g., provides information and/or documentation.
- b. No Employee or TTUHSC EP Affiliate shall directly or indirectly use or attempt to use official authority or influence of his/her supervisory position or office for the purpose of interfering with the right of a person to report violations and/or provide information during the course of an Investigation.

No Employee or TTUHSC EP Affiliate shall be retaliated against because of lawful acts he/she takes on his/her own behalf, or for others to pursue any civil or criminal action filed under federal and/or state laws, including, but not limited to, the Federal False Claims Act<sup>1</sup>, or the Texas Medicaid Fraud Prevention Act.<sup>2</sup> Lawful acts include, but are not limited to, investigation of, initiation of, testimony for, or assistance in any civil or criminal legal action involving Allegations of Fraud or violation of federal and/or state laws, rules or regulations.

2. Rights of Employees. An Employee who is retaliated against for reporting, in Good Faith, Fraud, or other violation of federal or state law, regulation or rules to an appropriate law enforcement authority may seek relief under [Texas Government Code, Chapter 554, Protection for Reporting Violations of Law](#).
3. Disciplinary Action for Unlawful Retaliation
  - a. Employee. Any Employee found to have engaged in retaliation which violates this operating policy may be subject to discipline, including, but not limited to, termination, and other legal action.
    - Non-faculty Employees. The procedures set forth in [Texas Tech System Regulation 07.07](#) shall apply to non-faculty employees.
    - Faculty Employees. Where applicable, the procedures set forth in [HSCEP OP 60.01, Tenure and Promotion Policy](#), or the respective Schools' Faculty Grievance Policies, shall apply to faculty.
  - b. TTUHSC EP Affiliate. Any TTUHSC EP Affiliate who violates this policy is subject to loss of privileges within TTUHSC EP, removal from TTUHSC EP facilities, and/or possible legal action.
  - c. Correcting Identified Retaliation. If an Employee or TTUHSC EP Affiliate is knowingly retaliated against for reporting a Good Faith Allegation of a Violation, or for lawful acts to pursue any civil or criminal action under state or federal law, then appropriate remedial action will be taken.
  - d. Personnel Actions. Nothing herein is intended to prevent personnel action related to an Employee's performance based on information, observation, evidence or any other item that is not related to the fact that the Employee was a Source or Witness under this policy.

## E. **Sanctions**

1. False Reports or Testimony. A Source who makes an Allegation in bad faith or knows or has reason to know that such Allegation is false or materially inaccurate may be subject to disciplinary action in accordance with HSCEP policies. A Witness or Subject who provides information that is false or known to be inaccurate may be subject to disciplinary action in accordance with HSCEP policies.
2. Improper Disclosure of Investigation. Any person who discloses information related to an on-going Investigation in violation of this policy may be subject to disciplinary action in

accordance with HSCEP policies.

3. Failure to Cooperate. An Employee or TTUHSC EP Affiliate who fails or refuses to cooperate during an Investigation may be subject to appropriate disciplinary action in accordance with HSCEP policies.

F. **Media Inquiries**

A TTUHSC EP Employee contacted by any person from print or electronic media, e.g., print news, electronic, talk show hosts, etc., seeking information regarding any internal Investigation of alleged violations shall notify the TTUHSC EP Office of Institutional Advancement.

G. **Right to Change Policy.**

TTUHSC EP reserves the right to change, modify, amend or rescind this policy in whole or in part at any time.

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1 31 USC 3729 et. seq.

2 Texas Human Resources Code, Chapter 36, as currently amended.