



FLORIDA STATE UNIVERSITY

7A-2 MISCONDUCT IN RESEARCH, CREATIVE ACTIVITY, AND SCHOLARSHIP

Responsible Executive: Gary K. Ostrander, Vice President for Research
Approving Official: Gary K. Ostrander, Vice President for Research
Effective Date: July 5, 2016
Revision History: May 14, 1991; August 1, 2014; April 1, 2015

I. Policy

In fostering academic freedom, it is the policy of Florida State University to uphold the highest standards of integrity in research, creative activity (e.g., art, dance, music, theatre, design, etc.), and scholarship—all of which will be collectively known herein as Activity/Activities—and to protect the right of its employees and students to engage in these Activities. Employees and students are expected to adhere to the professional standards and accepted practices established by their relevant disciplinary communities, and to encourage adherence to those standards and practices by their colleagues and by those under their supervision.

The University is committed to complying with and enforcing applicable federal, state, and local laws and to following procedures required by the University or by funding agencies from which contract and grant funds are secured. Employees and students are to be aware of any special contract or grant provisions regarding standards of research, creative activity, and scholarship; and of procedures required by funding agencies for resolving allegations of misconduct. Application for funding from an agency shall indicate that the investigator/project director agrees to the procedures required by that agency should it be necessary to investigate an allegation of misconduct.

It is the policy of the University to inquire into and, if necessary, investigate and resolve promptly and fairly all instances of alleged misconduct; and to comply in a timely manner with University and funding agency requirements for reporting cases of possible misconduct. Particularly unacceptable behaviors or actions are *fabrication*, *falsification*, and *plagiarism* in any Activity. Deviations which are believed to constitute misconduct are to be reported to an appropriate University official, usually the Vice President for Research. Misconduct does not include honest error or honest difference in interpretations or judgment of data.

Applicability

This Policy applies to faculty (e.g., regular, part-time, emeritus, specialized, etc.), staff, students or other trainees (such as graduate students and postdoctoral scholars), and any other members of the University community who propose, conduct, report, oversee, or review research on behalf of the University. This Policy also applies to those who are involved in scholarship and creative activity.



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Cases of student misconduct involving research related to academic credit are resolved through the Academic Honor Policy, but are not precluded from additional review under this Policy. In certain cases, the Student Conduct Code might also apply.

FSU subcontractors, collaborators, and other third parties are expected to comply with their respective institutional policies and procedures for investigating misconduct allegations. Such policies shall comply with federal or other sponsors' regulations where applicable. When the other institution does not have an appropriate misconduct policy, the policies and procedures of the University will apply.

This Policy does not address and specifically excludes fiscal improprieties, issues concerning the ethical treatment of human or animal subjects, authorship disputes, sexual harassment or discrimination, criminal matters, and general matters not within the definition of misconduct.

This document does not distinguish among disciplines. It is acknowledged, at the very least, that Activities may take on a different character from discipline to discipline. However, each discipline has its professional standards of conduct, and to the extent that fabrication, falsification, or plagiarism is rejected by those professional standards, this document applies to the activities of those disciplines.

Definitions

For the purposes of this Policy, **Misconduct** means fabrication, falsification, or plagiarism in proposing, performing, reporting, or reviewing research; as well as scholarship and creative activity. It does not include honest error or differences of opinion.

- A. ***Fabrication*** is making up data or results and recording or reporting them.
- B. ***Falsification*** is manipulating materials, equipment, or processes, or changing or omitting data or results such that the research, scholarship, or creative activity is not accurately represented in the record.
- C. ***Plagiarism*** is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

A finding of misconduct requires that there be a significant departure from accepted practices of the relevant disciplinary community; that the misconduct be committed intentionally, knowingly, or recklessly; and that the allegation be proven by a preponderance of the evidence.

Misconduct is a specific instance of impropriety within the broader domain of personal and professional conduct. Allegations of misconduct outside the scope of this Policy should be directed to the appropriate FSU official.

Other Relevant Definitions

- **Record** of Research, Scholarship, or Creative Activity means the record of data or results that embody the facts resulting from the Activity, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, photographs, videos, and any



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documents and materials provided to or obtained by a government agency or an institutional official in the course of the misconduct proceeding.

- **Advocacy** means the presence of an individual (Advocate) to provide support and consultation to the Respondent throughout the misconduct proceedings. Advocates may include individuals such as legal counselors or personal advisors whom the Respondent selects to serve in this role, and who may accompany him or her to meetings throughout the proceedings. Advocates will not be active participants in the process but may request a recess/opportunity to caucus during the formal proceedings in order to provide advocacy and counsel as needed. Individuals may select a collective bargaining unit representative as an advocate on their behalf, if they so wish.
- **Agency** means a public or private agency or organization providing funds to support research, scholarship, or creative activity.
- **Allegation** means a disclosure of possible misconduct through any means of communication. The disclosure may be by written or oral statement or other communication to the Vice President for Research or other institutional official.
- **Assessment** means the process of evaluating an allegation of misconduct in order to determine whether the allegation falls within the definition of misconduct provided herein, and is sufficiently credible and specific so that potential evidence of misconduct may be identified. This initial step is conducted by the RIO in order to determine if an inquiry is required. An inquiry must be conducted if the above stated criteria are met. If this is the case, the RIO in consultation with the Vice President for Research will launch the inquiry phase, including the convening of an Inquiry Committee.
- **Complainant** is the person who in good faith makes an allegation of misconduct.
- **Deciding Official (DO)** means the University official who makes final determinations on allegations of misconduct and any institutional administrative actions. The DO at FSU is the Vice President for Research or his/her designee.
- **Good faith** as applied to a Complainant or witness means having a belief in the truth of one's allegations or testimony that a reasonable person in the Complainant or witness's position could have based on the information known to the Complainant or witness at the time. An allegation or cooperation with a misconduct proceeding is not in good faith: (1) if it is made with knowing or reckless disregard for information that would negate the allegation or testimony or (2) if his/her acts or omissions are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the misconduct proceeding.

Good faith as applied to a committee member means cooperating with the misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping the University meet its responsibilities. A committee member does not act in good faith if his/her acts or omissions on the committee are dishonest or influenced by personal,



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professional, or financial conflicts of interest with those involved in the misconduct proceeding.

- **Inquiry** means gathering information and initial fact-finding to determine whether an allegation or suspected misconduct warrants an investigation.
- **Institution** means Florida State University.
- **Investigation** means the formal development of a factual record and the examination of that record leading to: (1) a decision not to make a finding of misconduct, or (2) a recommendation for a finding of misconduct which may include a recommendation for other appropriate actions, including administrative actions.
- **ORI** means the Office of Research Integrity of the Public Health Service (PHS). The function of this federal office is to promote integrity in biomedical and behavioral research supported by the PHS, by monitoring institutional investigations of scientific misconduct and facilitating the responsible conduct of research.
- **PHS** means the Public Health Service. PHS is the umbrella organization in the U.S. Federal Government consisting of eight Health and Human Services health Agencies, the Office of Public Health and Science, and the Commissioned Corps (a uniformed service of more than 6,000 health professionals). The National Institutes of Health (NIH) is the largest Agency within the PHS.
- **Preponderance of the evidence** means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- **Regulation** means any regulation applicable to a sponsored agreement or to the handling of misconduct allegations related to Activities performed under it.
- **Research Integrity Officer (RIO)** means the University official responsible for: (1) assessing allegations of misconduct to determine if they fall within the definition of misconduct and warrant an inquiry on the basis that the allegation is sufficiently credible and specific so that potential evidence of misconduct may be identified; (2) overseeing inquires and investigations; and (3) the other responsibilities described in this document, the implementing [Procedures](#), or as directed by the VPR/DO. The RIO at FSU is the Director of the Office of Research Compliance Programs.
- **Respondent** means the person against whom an allegation of misconduct is directed or the person whose actions are the subject of the inquiry or investigation. There can be more than one Respondent in any inquiry or investigation.
- **Retaliation** means an adverse action taken against a Complainant, witness, or committee member by an institution or one of its members in response to a good faith allegation of misconduct, or in response to good faith cooperation with a misconduct proceeding.



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Rights and Responsibilities

Vice President for Research/Deciding Official (VPR/DO)

The VPR/DO ensures the implementation of this Policy and oversees the [Procedures Concerning Allegations of Misconduct in Research and Creative Activity \(Procedures\)](#). The VPR/DO ensures that the Procedures are promptly applied by the RIO when allegations of misconduct are reported. The VPR/DO serves as the Deciding Official (DO) for Florida State University. In accordance with [Procedures](#), the VPR/DO, in consultation with other institutional officials as appropriate, may determine and invoke sanctions or disciplinary actions imposed as a result of the investigation committee's findings and the VPR/DO's final decision.

Research Integrity Officer

The Director of the University's Office of Research Compliance Programs serves as the Research Integrity Officer (RIO), and has primary responsibility for applying this Policy and the [Procedures](#). The RIO serves as the University's independent and objective agent in misconduct proceedings. The RIO is appointed by and reports directly to the VPR/DO. A complete list of RIO responsibilities is provided in the [Procedures](#).

Complainant

The Complainant is responsible for making allegations in good faith. The Complainant has the opportunity to submit evidence to and be interviewed by the inquiry and investigation committees. If the RIO or committees determine that the Complainant may be able to provide pertinent information or clarification to any portion of the committees' draft reports, these portions may be given to the Complainant for comment.

Respondent

The Respondent is responsible for cooperating with all elements of an inquiry and investigation, including sequestration of Activity Records relevant to the allegations. The intentional destruction of Records or the failure to maintain and produce Records supporting a questioned activity may be considered to be evidence of misconduct. Activity Records should be sequestered by the RIO in a manner which causes minimal disruption to the Respondent's work. The RIO will provide the Respondent with an inventory of items sequestered and will generally provide copies of most sequestered items within two or three business days after sequestration, although specialty copies such as gels and films may require a longer period of time to duplicate.

The Respondent is entitled to:

- (1) A good faith effort from the RIO to notify the Respondent in writing at the time of or before beginning an inquiry and receive a copy of the University's policies and procedures on misconduct, as well as applicable external agency misconduct policies;
- (2) An opportunity to be interviewed by and present evidence to the inquiry or investigation committee, to review transcripts of any recordings made during the interview and to request corrections to those transcripts, and have the corrected transcript included in the record of the proceeding;



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- (3) An opportunity to comment on the inquiry report and have his/her comments attached to the report;
- (4) Be notified of the outcome of the inquiry;
- (5) Be notified in writing of the allegations to be investigated within a reasonable time after the determination that an investigation is warranted, but before the investigation begins, and be notified in writing of any new allegations, not addressed in the inquiry or in the initial notice of investigation, within a reasonable time after the determination to pursue those allegations;
- (6) Have interviewed during the inquiry or investigation any witness who has been reasonably identified by the Respondent as having information on relevant aspects of the proceedings, have the recording or transcript provided to the witness for correction, and have the corrected recording or transcript included in the record of investigation;
- (7) Receive a copy of the draft investigation report and, concurrently, a copy of, or supervised access to the evidence on which the report is based, and be notified that any comments must be submitted within ten (10) days of the date on which the copy was received and that the comments will be considered by the University and addressed in the final report; and
- (8) Have an Advocate present (at Respondent's own expense) at meetings related to the misconduct proceedings. The presence of such Advocate will be for consultation and support; the Advocate will not be an active participant in the process; and, shall not advocate for the Respondent at such meetings. Any participant in a formal proceeding may request a recess/opportunity to caucus during the proceedings in order to allow for advocacy and counsel as needed.

The Respondent should be given the opportunity to admit that misconduct occurred and that he/she committed the misconduct. With the advice of the RIO and/or other institutional officials, the DO may terminate the University's review of an allegation that has been admitted, provided the University has received from any relevant agency any required approval of institutional acceptance of the admission and any proposed settlement.

Deans

The deans ensure implementation of the Policy in their respective colleges. The deans shall report knowledge of allegations of misconduct to the VPR/DO. The deans shall ensure cooperation of Respondents and other individuals in their respective colleges in instances of allegations of misconduct, including, but not limited to, the sequestration of Activity Records and/or other relevant information and documentation relative to the allegations of misconduct. The Dean plays an important role in the selection of committee members, in accordance with the [Procedures](#).



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Inquiry Committee

The inquiry committee is responsible for conducting an initial review of the available evidence to determine whether or not to conduct an investigation, as well as interviewing the Respondent and key witnesses. An inquiry does not require a full review of all the evidence related to the allegations.

Upon concluding its inquiry, the Inquiry Committee is responsible for determining whether sufficient credible evidence exists to warrant a full investigation of any or all of the allegations. It is not the responsibility of the inquiry committee to make a final determination based on the merits of the allegations.

The inquiry committee may also identify, in the course of its duties, issues that would justify broadening the scope beyond the initial allegations, and may recommend that the University examine these issues. If the inquiry committee expands the scope of the misconduct process beyond the initial allegations, the RIO will notify the Respondent in writing and the Respondent will be given an opportunity to respond to the additional issues.

The inquiry committee prepares a final report that meets the requirements as outlined in the [Procedures](#), including recommending whether each allegation warrants an investigation and the basis for its recommendations.

Investigation Committee

The investigation committee is responsible for conducting a thorough examination of all facts and evidence relevant to the allegations, including interviewing the Respondent, Complainant, and others as necessary and appropriate, to determine based on a preponderance of evidence whether misconduct has occurred and, if so, to determine the responsible person(s) and the nature and seriousness of the misconduct.

The investigation committee may also identify, in the course of its duties, if there are issues that would justify broadening the scope beyond the initial allegations, and may recommend that examine these issues. If the investigation committee expands the scope of the misconduct process beyond the initial allegations, the RIO will notify the Respondent in writing and the Respondent will be given an opportunity to respond to the additional issues.

The investigation committee prepares a final report that meets the requirements as outlined in the [Procedures](#), including a finding for each allegation of whether misconduct occurred, the nature and seriousness of the misconduct, and the responsible individual(s).

Inquiry/Investigation Committee Chair

The committee chair is selected from among the committee members by the VPR/DO, and serves as the individual who takes the lead in drafting the committee report based on the committee's findings. Working with the RIO, the committee chair handles the compilation of comments from the other committee members into the final committee report and ensures the report is distributed to the committee members for final signature. The elements of the committee report must be in accordance with the required elements outlined in the [Procedures](#).



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The committee chair ensures that the Respondent is afforded the opportunity to comment, that the Respondent's comments are considered by the committee, and that the Respondent's comments are reflected in and/or attached to the final committee report.

General Principles

Responsibility to Report Misconduct

To the extent possible, consistent with a fair and thorough review of an allegation, disclosure of an allegation should be limited to those who need to know about them. Therefore, a suspected instance of misconduct is to be reported immediately to the VPR/DO. The VPR/DO shall notify the RIO and any other University administrator he or she deems appropriate. FSU has an anonymous [hotline](#), which is a simple, anonymous way to confidentially report activities that involve certain improper conduct or violations of FSU policies and procedures, regulations, or state and federal laws.

If an individual is unsure whether a suspected incident falls within the definition of misconduct, he or she may contact the RIO to informally discuss the suspected misconduct. If the circumstances described by the individual do not meet the definition of misconduct, the RIO may refer the individual or allegation to other offices or officials with responsibility for resolving the problem as necessary and appropriate.

No retaliatory action will be taken against anyone for reporting or inquiring in good faith about potential breaches of FSU policies or seeking guidance on how to handle suspected breaches.

Responsibility of the University to Respond to Credible Allegations

Because Florida State University values the credibility of its institutional Activities and the integrity of its community, all allegations of misconduct are evaluated to determine whether there is specific and credible information on which to act. Just as the University protects Complainants against retaliation, the University is equally concerned about malicious or frivolous allegations made against its employees and students. The University performs a careful assessment of all allegations brought to the attention of institutional officials.

The VPR/DO and the RIO shall consider and act upon any specific and credible information which comes to his or her attention indicating that misconduct may have occurred. The RIO will ensure that the allegation assessment, inquiry, and investigation are completed in a timely, objective, thorough, and competent manner; and that reasonable precautions are taken to avoid bias and conflict of interest on the part of those involved in conducting the inquiry and investigation.

Cooperation with Inquiries and Investigations

Individuals covered under this Policy and its implementing [Procedures](#) must cooperate with the RIO and other institutional officials in the review of allegations and the conduct of inquiries and investigations. Employees have an obligation to provide relevant information to the RIO or other institutional officials on misconduct allegations. The RIO or other institutional officials may



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determine it necessary to sequester original records and materials relevant to the allegation as described in the [Procedures](#).

Requirements for Findings of Misconduct

A finding of misconduct requires that:

1. There is a reasonable basis for concluding that the allegation falls within the University's definition of misconduct; and
2. That the misconduct was committed intentionally, knowingly, or recklessly; and
3. That the allegation was proven by a preponderance of the evidence.

Evidentiary standards

The following evidentiary standards apply to findings made under this Policy:

(a) Standard of proof. An institutional finding of misconduct must be proved by a preponderance of the evidence.

(b) Burden of proof.

(1) The University has the burden of proof for making a finding of misconduct. The destruction, absence of, or respondent's failure to provide records adequately documenting the questioned activity is evidence of misconduct where the University establishes by a preponderance of the evidence that the respondent intentionally, knowingly, or recklessly had 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 that the respondent's conduct constitutes a significant departure from accepted practices of the relevant disciplinary community.

(2) The respondent has the burden of going forward with and the burden of proving by a preponderance of the evidence any and all affirmative defenses raised. In determining whether the University has carried the burden of proof imposed by this part, the finder of fact shall give due consideration to admissible, credible evidence of honest error or difference of opinion presented by the respondent.

(3) The respondent has the burden of going forward with and proving by a preponderance of the evidence any mitigating factors that are relevant to a decision to impose administrative actions following a misconduct proceeding.

Protection of Complainant, Witnesses, and Committee Members

The RIO monitors the treatment of individuals who bring allegations of misconduct and those who cooperate with inquiries or investigations. The University ensures that these individuals are not retaliated against in employment or other status at the University and the RIO reviews instances of alleged retaliation for appropriate action. Individuals should immediately report any alleged or apparent retaliation to the RIO. The University also, to the maximum extent possible, protects the privacy of those who report misconduct in good faith.



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If the Complainant requests anonymity, the University, as allowed by law, will make reasonable efforts to honor the request, consistent with a thorough, competent, objective, and fair misconduct proceeding. It is important to recognize, however, that because of the standards of due process and the University's own policies and procedures, there may be situations that cannot proceed under conditions of anonymity. Under federal regulations and its own good business practices, the University undertakes diligent efforts to protect the positions and reputations of those individuals who make allegations in good faith.

Protection of Respondent

Inquiries and investigations are conducted in a manner that ensures fair treatment to the Respondent and confidentiality to the extent possible without compromising public health and safety or thoroughly carrying out the needs of an inquiry and/or investigation. Inquiries and investigations are handled promptly and expeditiously with full attention given to the rights of all individuals involved.

Confidentiality

Institutional activities engaged pursuant to this Policy are conducted in such a way as to protect the privacy and confidentiality of Complainants, Respondents, and witnesses to the extent possible consistent with a thorough, competent, objective, and fair misconduct proceeding, and as allowed by law. The applicable laws and regulations may require the University to disclose the identity of Respondents and Complainants to federal oversight agencies pursuant to the agency's review of institutional misconduct proceedings.

Interim Administrative Actions

Throughout the misconduct proceeding, the RIO will review the situation to determine if there is any threat of harm to public health, sponsor funds, and equipment, or the integrity of research, creative activity, or scholarship processes. In the event of such a threat, the RIO will, in consultation with other institutional officials, and the pertinent agency as appropriate, take interim action to protect against any such threat. Interim action might include additional monitoring of the processes and the handling of sponsor funds and equipment, reassignment of personnel or of the responsibility for the handling of sponsor funds and equipment, additional review of activity data and results or delaying publication. The RIO shall, at any time during a misconduct proceeding, notify pertinent external agencies immediately if he/she has reason to believe that any of the following conditions exist:

- Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;
- Sponsor resources or interests are threatened;
- Project activities should be suspended;
- There is a reasonable indication of possible violations of civil or criminal law;
- Federal action is required to protect the interests of those involved in the misconduct proceeding;



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- The misconduct proceeding may be made public prematurely and federal sponsor action may be necessary to safeguard evidence and protect the rights of those involved; or
- The public should be informed.

Additional Issues

Institutional mechanisms are currently in place to address disputes centering on questions of authorship and data utilization, financial improprieties, human research subjects, and the use of animals in research. Although such cases will be addressed by the appropriate governing bodies as to compliance with relevant regulations and ethical standards, they are not precluded from additional review under the procedures governing misconduct under this Policy.

If anyone involved in an inquiry or subsequent investigation becomes aware of a possible violation of criminal or civil law, he or she shall inform the VPR/DO. If the VPR/DO agrees that reasonable indications of possible criminal conduct exist, he or she shall, within 24 hours, inform the sponsoring agency (if required) and appropriate institutional and/or law enforcement officials.

Implementing Procedures

The *Procedures Concerning Allegations of Misconduct in Research and Creative Activity*, which implement this Policy, are published on FSU's Office of Research Compliance Programs' website at <https://research1.magnet.fsu.edu/media/3623/misconduct-procedures-04-14-16.pdf>.

II. Legal Support, Justification, and Review of this Policy

Federal Research Misconduct Policy

45 CFR Part 689, National Science Foundation Research Misconduct

42 CFR Part 50, Subpart F and Part 93, Public Health Service Policies on Research Misconduct

Fla. Stat. 1004.22

These policies will be reviewed periodically and updated when changes are necessary.

/s/ Gary K. Ostrander

Vice President for Research

July 5, 2016

Approval Date