

**NEW COLLEGE OF FLORIDA
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4-6002 Misconduct in Research

- (1) In recent years the issue of misconduct in research has become a matter of concern to research institutions, individual scientists, sponsors of research, including the Federal government, and the general public. However, it should be noted that instances of verified misconduct in research are rare. The New College of Florida expects that all research conducted by its faculty, students, or other associates will comply with generally-accepted ethical and legal standards for research. The purpose of this policy document is to establish the procedure for reporting and investigating possible misconduct in research at the New College of Florida. The final responsibility for carrying out this policy lies with the College's President. While responsibility for determination of appropriate discipline or evaluative actions in response to a finding of misconduct remains with the appropriate President or Provost, the procedures described herein are designed to deal with the unusual occurrence of research misconduct, and do not represent a consensus that such misconduct is widespread at the College.
 - (a) Application of the Policy. This policy is applicable to all cases of alleged or apparent misconduct in research at the College. Research misconduct is defined as: fabrication or falsification of data, plagiarism, or other practices which seriously deviate from commonly accepted practices in proposing, carrying out or reporting research. Research misconduct does not include honest error or honest differences in interpretations or judgments of data.
 - (b) Appointment of the Standing Committee on Research Misconduct. The President shall appoint a Standing Committee on Research Misconduct which shall consist of six members no less than five of whom shall be faculty members from different areas within the College. The members of the Committee shall serve for terms of three years. The terms of the initial appointments shall be staggered, with two of the members appointed for one year, two for two years and two for three years. The President shall designate the Chair of the Committee.
- (2) Procedures for Reporting and Investigating Research Misconduct. The procedures for reporting and investigating research misconduct are presented below. Time limits are given for each step to insure timeliness. While all time limits are subject to extension for good cause, the applicability of time limits imposed by regulations of sponsoring agencies must be considered. For the sake of the person charged with misconduct, the College, and any agencies or sponsors involved with the research, it is important that all charges be investigated in a rapid but thorough manner.
 - (a) The Initial Inquiry. Any person who has reason to believe that an individual has engaged in an act of research misconduct at the College should report that act to the department chair or equivalent responsible administrative official with supervisory authority for the person so charged. In the usual case governed by these procedures, the responsible official will be the department chair. For administrative units in which there are no departments, or if the person charged is a department chair, the charge would typically be taken to the President. Charges against Directors or Deans should be taken to the University Provost or appropriate Vice President. If such charges are brought to any other person, they should be referred discreetly to the appropriate administrative official.
 1. The administrative official shall conduct a preliminary and informal inquiry to determine whether an investigation is warranted. As part of the preliminary informal inquiry, the administrative official shall provide the person charged and the President with a written

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- statement or summary of the allegations and invite response, unless the administrative official has a good faith belief that evidence will be destroyed or that the inquiry/investigation will otherwise be compromised by informing the person charged, in which case advice must be sought from the General Counsel. Confidentiality should be maintained to the maximum extent possible under relevant law. The ability to keep any and all matters confidential will depend on the nature of the allegations and the type of evidence. Misuse of information or records may result in discipline for misconduct and may be a violation of the Code of Ethics for state employees.
2. During the inquiry, the administrative official should consider the content and reliability of the information (e.g., degree of specificity, supporting documentation, etc.) and any prior knowledge of the individuals and events associated with the possible misconduct. The administrative official conducting the inquiry is authorized to consult with any person whose advice (s)he finds appropriate. Throughout the inquiry, the administrative official shall take reasonable steps to obtain or preserve the data necessary to make a determination in the case and to maintain the confidentiality of the person bringing charges, in order to protect him/her from possible reprisals. Whether a case can be reviewed effectively without the involvement of the person bringing charges depends upon the nature of the allegation and the evidence available. Cases that depend specifically upon the observations or statements of that person cannot proceed without his/her open involvement; other cases in which sufficient information is provided to enable initiation of an inquiry may permit the person to remain anonymous. In all cases where testimony of the person bringing charges is essential or important evidence, that person must provide a written and signed statement of charges. If reprisals are brought against the person making charges, the College shall take appropriate action in conformance with College policy and State and Federal law.
 3. If, after completing the inquiry, it is determined that no investigation is warranted, then the matter shall be dismissed. In all cases, a written report containing a statement of the evidence reviewed, summaries of relevant interviews, and conclusions will be filed in the office of the administrative official making the inquiry. If it is determined that no investigation is warranted, this report and all other documents concerning the inquiry will be kept in a sealed envelope(s) separate from the personnel file of the person charged, with access limited to the fullest extent of the law, including but not limited to Florida Statutes, Ch. 1012.91, which provides for release of evaluative employee information only upon the employee's authorization, court order, or for use by College officials in discharge of official duties. Destruction of such records will be scheduled as soon as possible under applicable record retention schedule and law. The inquiry will not be mentioned in the personnel file of the person charged. The President and the person charged will be notified that the charges have been dismissed and shall receive a copy of the report. In addition, the person making the charges will be informed that the case has been dismissed. If the person making the charges feels that the case has been dismissed prematurely, (s)he may request that the next higher administrative official review that case.
 4. If the allegations are not dismissed, the written inquiry report and all records and evidence in the case will be forwarded to the President, for transmittal to the Standing Committee on Research Misconduct. When the case is forwarded to the Standing Committee, a copy of the written report shall be given to the person charged, and the appropriate Dean/Director and Vice President/Provost, along with a notice of submission to the Standing Committee

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- containing a statement that no official determination of misconduct has been made. Such notice shall also be sent to the person initially making the charges. The person charged shall have the right to provide written comment on the written report. Whenever possible, the initial inquiry should be completed and the case either dismissed or forwarded to the Standing Committee within fifteen (15) working days after the charge has been received by the administrative official. The inquiry must be completed within sixty (60) calendar days of initiation unless circumstances clearly warrant a longer period. In such cases, the inquiry report shall include documentation of reasons for exceeding the sixty (60) day period.
- (b) Reporting to Funding Agency. If the researcher who has been charged with misconduct is the recipient of federal research funding, the College must comply with federal requirements regarding notification of the funding agency. Funding agencies must be immediately notified if at any stage of the investigation or inquiry any of the following conditions are found to exist: an immediate health hazard; an immediate need to protect federal funds or equipment; an immediate need to protect the interests of the person making the charges, the person(s) charged, or his/her co-investigators or associates, if any; it is probable that the alleged incident is going to be reported publicly; or if there is a reasonable indication of criminal violation. In all cases where one or more of the above conditions may exist, the appropriate Vice President/Provost, the President, and the General Counsel shall be notified immediately upon receipt of a report or allegation of misconduct. In cases which do not involve the above circumstances, federal regulations in force at the time should dictate when the funding agency is notified. In all cases, it will be the responsibility of the President to communicate with the funding agencies.
- (c) Investigation Panel. Upon receipt of the inquiry report concerning a complaint of research misconduct, the Standing Committee and the person charged shall nominate, and the appropriate Vice President/Provost shall select, within fifteen (15) working days, a panel of not fewer than three members to investigate the complaint. The panel shall include at least one faculty member, and at least one College employee in the same employee classification plan as the person charged (if (s)he is not a faculty member), and shall include persons who have knowledge of the field of research of the person charged. The panel may include members from outside the College, including experts if necessary. The panel may not include anyone with a potential conflict of interest in the case. No member of the Standing Committee shall be a panel member. The person charged shall have at least three (3) days to object to the panel's proposed membership and the appropriate Vice President/Provost may at his/her discretion alter proposed membership, with or without soliciting additional nominations, or confirm proposed membership over objection.
1. The panel shall select its own chair at the first meeting. One panel member shall be assigned by the chair to keep notes of each meeting. All panel meetings are closed meetings, open only to the panel and those invited or requested to attend by the panel.
 2. Invitation to Attend Proceedings. The person charged shall have the opportunity to provide oral testimony to the panel at least once before the investigation is completed. In addition to responding to panel questions, the person charged may submit additional statement(s) and/or written material or other exhibits to the panel. To expedite the fact-finding mission of the panel, the panel may invite the person charged to be present when oral testimony from witness(es) is taken. Whether or not (s)he is invited to be present, the person charged shall be allowed to submit questions for any witness to the panel for consideration; however, the nature and extent of the actual questioning permitted is at the discretion of the panel.

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3. **Right to Have Assistance of a Lawyer or Other Person.** The person charged shall also have the right to be accompanied by a lawyer or any other person when appearing at a proceeding of the panel. The role of such lawyer or other person is as an advisor only, and the advisor may speak to and consult with the person charged, but may not serve as advocate, question witnesses or panel members, or otherwise participate in the proceedings. If the person charged wishes to have a lawyer present, he or she shall give the panel advance notice in writing. In the event that the person charged chooses to be accompanied by a lawyer, the University may be asked to provide a lawyer to assist the panel. The College lawyer's role at a proceeding shall be subject to the same limitations noted above for the lawyer or other person accompanying the person charged.

4. **Collection and Examination of Evidence.** The panel shall collect and examine evidence to determine relevant facts. Upon request of the panel, the person charged shall submit information relevant to the allegations of misconduct, which may include, but not be limited to:
 - a. Research papers and notebooks, logs, source documents, computer printouts, and machine-readable materials, or any other records in whatever form.

 - b. A list of all current and former collaborators and co-workers.

 - c. A list of published abstracts, papers and books, and copies of abstracts, papers and books submitted for publication or under review.

 - d. A list of reports and grant applications submitted to outside foundations and funding agencies, and copies of such reports and applications. The panel may inspect the log materials, research notebooks, and other research materials of the person charged, and may take written or oral evidence from that person and from other individuals, both within and outside the College. Copies of any written material or other exhibits presented to the panel shall be provided to the person charged, or when that is not feasible, made available to him/her for inspection. Judicial rules governing the admissibility of hearsay evidence, authentication of documents, and the like shall not govern the investigation of the panel except insofar as the panel chooses to adopt them. The panel is expected to consider matters such as relevance, competence, and reliability of evidence as necessary.

 - e. **Confidentiality.** The chair of the panel shall be the custodian of all records made or received by the panel. Access to such records will be limited to members of the panel, chair of the Standing Committee, the appropriate Vice President/Provost, the President, and the General Counsel, unless the chair of the panel is otherwise advised by the General Counsel. It is the responsibility of the chair of the panel to seek advice from the Office of the General Counsel immediately upon receipt of any request for inspection or copying. Confidentiality of all information and documents will be maintained to the fullest extent allowed by law.

 - f. **Preparation of the Panel Report.** After the investigation is completed, the panel shall prepare a report which summarizes the relevant evidence presented and its findings of fact. The report must include reference to any evidence of provision of false information

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or testimony, or suppression of relevant evidence, by any person. The panel shall submit its final report to the Standing Committee on Research Misconduct within forty-five (45) working days after it receives the case.

5. Review of Panel Report by the Standing Committee. The Standing Committee shall provide a copy of the panel report to the person charged. Upon request made within five (5) days of receipt of the Panel Report, the person charged shall be granted a meeting with the Standing Committee to present an oral response to the Panel Report. The meeting will be held no sooner than ten (10) nor later than twenty (20) days after receipt of the request. If no meeting is requested, the person charged shall be allowed fifteen (15) working days from receipt of the Panel Report to submit a written response. After its review of the panel's report and the response of the person charged, if any, the Standing Committee will accept, or reject, the panel's findings, and may remand the case to the original panel with instructions for further consideration or investigation, or nominate new panel members for re-review.
6. Report of the Standing Committee. The Standing Committee shall issue its report within fifteen (15) working days after receiving the oral or written response of the person charged (if any), or within fifteen (15) days of the expiration of the response period if none is received. The report of the Standing Committee will include a summary of its review of the panel report, and an explanation of any rejection of findings. The report shall include a description of the policies and procedures under which the investigation was conducted, how and from whom relevant information was obtained, findings, basis for any findings, and an accurate summary of the views of any person found to have engaged in misconduct. The Standing Committee will (within 120 days of initiation of the investigation) provide a copy of its report, the panel report, and the comments of the person charged to the appropriate Vice President/Provost, who will be responsible for releasing the information to the following:
 - a. The person charged.
 - b. The appropriate Dean or Director.
 - c. Any granting agencies or sponsors involved in the case, through the President.

(3) Determination of Misconduct

- (a) While it is the purpose of the Standing Committee only to investigate and determine factual matters, the Committee may use its knowledge of the case to advise on disciplinary action and other issues stemming from the investigation. Such recommendations are to be presented in an advisory capacity, and are not binding. The appropriate Vice President/Provost shall consider sanctions set forth in regulations of granting agencies in assessing appropriate College action.
- (b) The appropriate Vice President/Provost or designee will be responsible for the determination of whether the facts found constitute misconduct and what disciplinary action, if any, will be taken against the person charged or any other College employee(s) as a result of the investigation. The appropriate Vice President/Provost is responsible for implementation of the applicable procedures regarding discipline and/or evaluation, and for notifying the President of any such action. The President shall notify any granting agencies or sponsors of any such sanctions, notwithstanding

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College policy pursuant to F.S. Sec. 1012.91. (F.S. Sec. 1012.91 is the Florida statute describing limits on access to College employees' evaluative personnel records).

- (c) If any disciplinary action is taken, the burden of proof shall be on the College, and the person charged may seek review through applicable grievance, complaint, and/or litigation procedures provided by collective bargaining agreement, College or Board of Education rule, and/or applicable law or regulation.
 - (d) If the allegations of misconduct were found to have been maliciously motivated, appropriate disciplinary action may be taken against those responsible for making the allegations. If the allegations were found to have been made in good faith, regardless of whether they were substantiated, no disciplinary measures may be taken against the person who brought the charges, and warnings against retaliatory actions may be advisable.
- (4) **Coordination of Investigation with Other Institutions.** If the President has reason to believe that any person currently or formerly associated with the College is under investigation elsewhere for research misconduct, (s)he may request a report from the investigating institution as to the status of the inquiry. If a person currently or formerly associated with the College has been found to have engaged in research misconduct at another institution, the President may request the Standing Committee to form a panel to investigate whether any work done at the New College of Florida involved similar research misconduct. The panel shall operate under the procedures set out in this policy, and shall coordinate its investigation with those undertaken by any other institution.

Authority: Article IX, Sec. 7, Fla. Constitution; Fla. Board of Governors Regulation 1.001

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