

## Misconduct in Research

### Background

The University Community expects all individuals involved in scientific research and scholarly activity to maintain the highest ethical standards in the conduct and reporting of those activities. Faculty, staff, and students have responsibilities for ethical conduct in research and scholarly activity not only to the University, but also to the community at large, to the academic community, and to private and public institutions sponsoring the research.

These procedures are intended to govern all research and scholarly activity, whether externally funded or not, conducted at Florida Gulf Coast University (FGCU). Nothing herein shall be construed to abridge the rights of faculty under applicable state and federal law and/or the United Faculty of Florida Collective Bargaining Agreement. Misconduct is a serious problem that undermines the integrity of research and public support for science.

### 1. Definition (42 CFR 93.103):

- (a) Research Misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research Misconduct does not include honest error or differences of opinion.
- (b) Fabrication is making up data or results and recording or reporting them.
- (c) Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
- (d) Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

### 2. Applicability:

This policy applies to individuals (other than students involved in regular classroom assignments) engaged in any form of research and scholarship, funded or otherwise, in every discipline throughout FGCU.

### **3. Administrative Responsibility:**

The Associate Vice President of Research (AVPR) will support and coordinate administration of this procedure. The AVPR may informally resolve the allegation. Alleged Research Misconduct must be reported to the AVPR, and after assessment and inquiry, may be investigated at the direction of the AVPR, if the case cannot be informally resolved. The Provost or designee is responsible for taking appropriate and final action, after there has been a finding of Research Misconduct consistent with these guidelines.

### **4. The Initial Inquiry:**

Any person who has reason to believe that a member of the FGCU Community has engaged in Research Misconduct shall report that act to an appropriate University official, usually the administrative officer to whom the person charged reports, e.g., supervisor, department head, dean, director, or AVPR. Allegations should be in writing, signed, and state the specific grounds for the allegation of Research Misconduct. Any relevant documentation supporting the allegation should be included with the complaint.

The official receiving the complaint shall immediately communicate the report to the Dean or Director of the academic unit in which the alleged misconduct occurred. If the report comes directly to AVPR, Provost, EthicsPoint, or arises in the context of a noncompliance review by IRB or IACUC, the dean or director of the college or school will be informed by the AVPR. When a dean or director receives a report of, they are responsible for immediately informing the AVPR or designee of the alleged Research Misconduct. If appropriate, and at the discretion of the AVPR all original research data or other documentation may be secured.

If the alleged Research Misconduct is associated with an application seeking federal funding or an awarded grant, the dean/director must immediately notify the AVPR. At any time after the allegation is made, the AVPR must notify the funding agency if it is ascertained that any of the following conditions exist:

- An immediate health hazard is involved;
- Federal funds or equipment needs to be immediately protected;
- Human or animal subjects of the activity need to be immediately protected; or
- The interests of the person(s) making the allegations or the interests of the individual who is the subject of the allegations, as well as co-investigators and associates, need to be immediately protected.

The AVPR will inform the person charged that an allegation has been made and ask for a written rebuttal. The AVPR may try to resolve the allegation promptly in an informal way. If informal resolution is not possible, the inquiry phase shall commence within 30 calendar days from the initial filing of the allegation.

### **5. Inquiry**

The AVPR may designate an ad hoc group to conduct an informal, fact-finding inquiry to determine whether there is reasonable cause to conduct a full investigation. Upon initiating the inquiry, the AVPR will notify the person charged in writing, that an inquiry is being conducted to determine whether there is reasonable cause to initiate an investigation. The AVPR will provide the person charged with a copy of the complaint and a written statement of the investigatory procedures. The ad hoc committee will meet as soon as practicable with the complainant to discuss the allegation.

The ad hoc committee will prepare a written report that states what evidence was reviewed, a

summary of relevant interviews and the conclusions of the inquiry for the AVPR. The AVPR will notify the complainant of the outcome of the inquiry and give them a copy of the report. The inquiry results are used to make a determination of whether the criteria are met to move to an investigation. At this stage there should not be a finding of Research Misconduct, but a finding that the allegation does or does not have substance. If the person charged with an allegation of Research Misconduct chooses to comment, the comments will be made part of the record. This written comment must be submitted to the AVPR within 10 working days after the person charged receives a copy of the inquiry report. The complainant's written comments will be included with the inquiry documents.

In the event that the inquiry results in insufficient evidence of Research Misconduct such that the allegation does not have substance, the AVPR will notify both parties, the appropriate dean and the Provost or designee in writing that the charges will not be brought and forward the records of the inquiry to those administrative offices. All parties shall maintain this record for at least three years.

The inquiry is to be completed within 60 calendar days of its initiation. If circumstances clearly warrant, an inquiry may take longer. In that case, the record of inquiry should include documentation of the reasons for exceeding the 60-day period.

In the event the conduct under inquiry is associated with an application seeking federal funding or an awarded grant, the documentation should be sufficiently detailed to permit later assessment of the reasons for determining that an investigation was not warranted. As warranted, the AVPR will notify any funding agency previously notified of the inquiry that the inquiry has resulted in a recommendation that no further action will take place.

If the inquiry determines there is sufficient evidence that the allegation has substance, the AVPR will notify the appropriate dean and the Provost or designee in writing and forward all records, and evidence, to their administrative offices within 15 working days after completion of the inquiry phase.

The person charged will be given written notification of the charges, including a statement that no official determination of Research Misconduct has been made, and that an investigation will commence.

## **6. Investigation**

The investigation will include examination of all documentation, including but not limited to, relevant research data and proposals, notebooks, published and unpublished manuscripts, books and abstracts, computer printouts, correspondence, and memoranda of telephone calls. Interviews will be conducted of all individuals involved as a complainant or respondent, as well as witnesses who might have information regarding key aspects of the allegation(s). The ad hoc committee may also solicit written evidence from other individuals both inside and outside the University. Information of a confidential nature shall not be required by the ad hoc committee except in a form that preserves its confidential character, unless a waiver can be obtained from the parties protected by the promise of confidentiality. Copies of any materials obtained will be provided to the person charged. Both the University and the person charged will have the opportunity to present evidence, call witnesses and cross-examine witnesses.

A record of meeting minutes of the proceeding will be available to the person charged. The person charged may have counsel or a representative present during the proceedings, as an

advisor only. The advisor will not speak for or on behalf of the person charged at this meeting. As the Investigation phase of review is not a court of law, judicial rules governing the admissibility of evidence, authentication of documents and the like shall not govern the investigation of the ad hoc committee. If the person charged chooses to be accompanied by a lawyer, the ad hoc committee may ask the University to provide an attorney to assist the ad hoc committee.

At the conclusion of the investigation, the ad hoc committee will prepare its final report. The report will include a description of the policies and procedures under which the investigation was conducted, how and from whom relevant information was obtained, the findings, and the basis for the findings. The report will state the ad hoc committee's conclusion as to whether or not the allegation of Research Misconduct has been substantiated. If the ad hoc committee is unable to reach a conclusion regarding the validity of the allegation, the report will indicate the reason. The committee reviews the evidence under the preponderance of the evidence standard of proof, meaning that to find sufficient evidence that Research Misconduct has occurred, the evidence must show it more than likely occurred. If there is insufficient evidence to find that more than likely Research Misconduct occurred, the burden has not been met, and there will be a finding that Research Misconduct has not occurred.

The ad hoc committee will make a copy of its final report available to the person charged and allow that person 15 working days to respond to the report in writing. After receiving the response, or at the end of the 15 working days, whichever occurs first, the ad hoc committee will submit the report and, when available, the response from the person charged, to the Provost or designee. The report will be submitted no later than 120 working days from the initiation of the investigation.

The Provost or designee will review the ad hoc committee's report and the response of the person charged and either accept or reject the findings. In some cases, the case may be returned to the original ad hoc committee for further consideration or to a newly constituted ad hoc committee for re-review if the findings are not accepted.

If the respondent is found by the ad hoc committee not to have engaged in Research Misconduct, the Provost or designee will notify, in writing, all appropriate individuals and agencies, including the respondent, the dean, the complainant, and, as appropriate, any funding agency.

If the ad hoc committee finds that scientific or scholarly Research Misconduct has occurred, the Provost or designee will review the report and make a preliminary determination as to the appropriate action to be taken by the University. Copies of the ad hoc committee's report will be furnished to the respondent, his/her immediate supervisor, the AVPR, and the appropriate Dean. The complainant will be provided with those portions of the report that address their role and evidence presented in the investigation. If the Research Misconduct involved an external sponsor, the AVPR will comply with sponsor requirements for notification

#### **7. Sanctions and Discipline**

Formal action may be taken in accordance with FGCU regulations, policies, and/or the appropriate collective bargaining agreement, as applicable. Examples of such actions include, but are not limited to, removal from a research project, monitoring and reporting of future research, counseling, written reprimand, demotion, suspension, or termination.