

1 **San José State University**
2 **Academic Senate**
3 **Curriculum and Research Committee**
4 **May 1, 2017**
5 **Final Reading**

AS 1651

6 **Policy Recommendation:**
7 **Research, Scholarship, and Creative Activity: Advisor-**
8 **Student Relationship, Sponsored Projects, and Proprietary**
9 **and Confidential Information in RSCA**

10
11 **Legislative History: Rescinds S94-8**

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13 **Rationale:** There is need to update the University policy on Research, Scholarship, and
14 Creative Activity (hereafter RSCA) in compliance with the [Integrated CSU](#)
15 [Administrative Manual Section 11000](#). In addition, policies, procedures, and practices
16 on campus have undergone significant changes in the last 20 years that necessitates
17 an update to our RSCA policy.

18
19 RSCA at a university advances the frontiers of knowledge, keeps individuals energized
20 and familiar with recent developments in their fields, and provides an experiential
21 learning context for students. These activities enrich a university community, contribute
22 to knowledge and progress in the profession, and contribute to high-quality education.
23 San José State University (SJSU) endorses the principles of academic freedom in
24 RSCA and the University promotes conditions of free inquiry as outlined in SJSU
25 University Policy S99-8. As per S94-8, SJSU supports RSCA activity and the pursuit of
26 research in concert with other university duties. All RSCA undertaken by SJSU
27 personnel and students must be in compliance with all federal, state, CSU, and SJSU
28 laws, regulations, and policies (contact Office of Research for guidance on laws,
29 regulations, and policies). RSCA is defined by the discipline and may be further
30 elaborated on within departments and colleges. RSCA typically excludes individual
31 consulting or individual private business ventures.

32
33 **Whereas:** RSCA at SJSU includes a wide range of activities, funding approaches,
34 disciplines, and practices, this policy covers only three aspects of RSCA: I. The RSCA
35 Advisor - Student Relationship; II. Sponsored Projects; and III. Proprietary and
36 Confidential Information in RSCA¹.

37

¹ See Table 1 for list of other University Policies relating to RSCA.

38 **I. The RSCA Advisor- Student Relationship**

39 The involvement of students as active participants in RSCA projects provides students
40 with richly rewarding, and often unique, learning opportunities, and the University
41 encourages student involvement in RSCA. Thus, one of the criteria that may positively
42 influence the decision to undertake RSCA projects or to accept extramural support is
43 the potential to enrich quality of the student learning experience. The University thus
44 adopts the following policy governing the RSCA Advisor - Student Relationship:
45

46 **A. RSCA Advisor Role**

47 When bringing students into a RSCA project as collaborators, the advisor should
48 encourage the free pursuit of learning, should show respect for the student as an
49 individual, and act as an intellectual guide and advisor/mentor.
50

51 **B. Alignment of Commitments and Obligations**

52 Prior to bringing a student into a RSCA project, the advisor and the student
53 should discuss time constraints and commitments and establish their respective
54 responsibilities, make clear any obligations to third parties, and discuss possible
55 implications of research misconduct. In some cases, the advisor and student may
56 face conflicts when there are simultaneous academic and RSCA obligations. In
57 these cases, the RSCA advisor and/or the student should contact the department
58 chair (or associate dean if the chair is the RSCA advisor) for guidance.
59

60 Situations may arise in which an advisor allows competing
61 commitments/obligations or third-party involvement to influence his or her role as
62 a teacher, mentor, or supervisor of RSCA, to the detriment of the student's
63 educational experience. Such influence could include transmission of student's
64 RSCA results to the organization before the project has been completed; inability
65 of an advisor who is frequently absent from the research setting to give
66 appropriate advice on the conduct of student's RSCA; and pressure on students
67 to change research directions to work on projects that strengthen an external
68 organization's position. The ultimate goal is to establish a clearly defined
69 relationship between all parties and establish a quality educational experience.
70

71 **C. Financial Support**

72 The University affirms the student's right to know the source(s) of the RSCA
73 funding. Should a student choose to reject financial assistance linked to the
74 source, the student has the right to do so without adverse consequences.
75

76 **D. Oversight**

77 The University, and by extension the RSCA advisor, is committed to protecting
78 the educational interests of students and maintaining an open environment free
79 from undue influence of private interests. Allegations of deviations from
80 acceptable standards in this regard should be brought to the attention of the
81 college or division head and/or the AVP for Research. Such allegations will be
82 investigated, and, where appropriate, action taken by the appropriate
83 administrative officer. Any action is subject to review by the next level of
84 administration and through standard University grievance processes to the extent
85 applicable by authorized employees.

86 87 **E. Recognition**

88 Significant scholarly or artistic contributions from students must be acknowledged
89 by the RSCA advisor. Prior to bringing students into a RSCA project, the RSCA
90 advisor must discuss what is meant by significant contributions within the
91 discipline.

92 93 **II. Sponsored Projects**

94 Sponsored projects are funded activities in which there is a formal written agreement
95 (i.e., grant, contract, or cooperative agreement) and may be thought of as a transaction
96 in which there is a specified statement of work with a related, reciprocal transfer of
97 something of value. An externally-funded sponsored project is an agreement between
98 SJSU and an external sponsor; such agreements are enforceable by law and
99 performance is usually accomplished under time and fund use constraints with the
100 transfer of support revocable for cause.

101
102 The University adopts the following guidelines governing sponsored projects:

103 104 **A. Oversight of Sponsored Projects**

105 With respect to externally-funded sponsored projects, the policies in [Integrated](#)
106 [CSU Administrative Manual Section 11000](#) “serve as the fundamental system-
107 wide requirements governing the California State University’s (CSU) involvement
108 with the solicitation, acceptance and administration of awards from extramural
109 sponsors for the conduct of research and scholarly activity, and other sponsored
110 activities.” [ICSUAM Section 11001.00]. ICSUAM Section 11002.01. Section 1.5
111 defines "Recipient" of a sponsored project as the university or auxiliary, but not
112 an individual, department or other constituent unit. Section 1.8 "Sponsored
113 Program Administrator" (SPA) is defined by the Recipient as the entity that will
114 administer the grant or contract. At SJSU, it can be the University, the Research
115 Foundation (Office of Sponsored Programs) or the Tower Foundation (pre-award

116 work for Tower Foundation is performed by Corporate and Foundation
117 Relations).

118
119 In consultation with the Associate Vice President (AVP) for Research or his/her
120 designee (hereafter: the term AVP for Research includes his/her designee except
121 where specified), SPAs help the Principal Investigator (PI) address the
122 requirements governing proposal preparation and submission, award negotiation,
123 and post-award management. SPAs assist with identification of possible funding
124 opportunities, management of solicitation of internal applications for limited
125 submission opportunities, and facilitate development of current and pending
126 reports. SPAs also negotiate and execute Materials Transfer Agreements, Non-
127 Disclosure Agreements, IP and Tech transfer agreements, and all other legal
128 instruments associated with sponsored programs.

129
130 The PI, acting for and on behalf of SJSU, has primary responsibility for the
131 management of his/her sponsored project in accordance with federal, state,
132 University, and sponsor requirements. For every funded award, a single PI must
133 be designated who personally participates in the project to a significant degree.
134 In circumstances where a sponsor specifies that the PI must be the President,
135 Provost or Dean, the designated PI will serve on behalf of the President, Provost,
136 or Dean.

137

138 **B. Principal Investigator Eligibility**

139 1. Internal Eligibility

140 The PI and any co-PIs must be qualified by education, training and experience
141 in the area in which the funded RSCA or other project is being conducted.
142 Generally, faculty members at SJSU on the tenure-line having the rank of
143 Assistant, Associate or Full Professor as described in their letter of
144 appointment are eligible to be a PI on sponsored projects. A co-PI may be a
145 faculty member, student, or other University personnel.

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147 2. External Eligibility

148 Certain sponsors or funders may specify PI or co-PI eligibility criteria. Such
149 criteria may include degree(s), awards/honors, tenure, how many times the
150 individual has been a PI, faculty membership, etc. In addition to the sponsor's
151 criteria, the potential PI or co-PI must be aware of his/her own responsibilities,
152 have approval from his/her unit, and meet PI and co-PI eligibility requirements
153 as dictated by SJSU policy.

154

155 3. Exceptions

156 An administrator, faculty member in the Faculty Early Retirement Program
157 (FERP), emeritus, temporary, adjunct, visiting, volunteer faculty, University, or
158 auxiliary employee may serve as PI or co-PI with the prior authorization of the
159 AVP for Research. For academic personnel, PI and co-PI status must be
160 recommended at the department and/or college level pertaining to expertise
161 and by the Dean or designee based on the stated willingness of the potential
162 PI to comply with administrative and fiduciary requirements. Non-academic
163 personnel will use a parallel recommendation process. The petition for
164 exception is forwarded along with a Curriculum Vitae or resume to the AVP for
165 Research for final decision. The exception may provide limited approval for a
166 specific proposal or provide status for submissions for a specified period. If the
167 AVP for Research does not approve the request, the dean will be notified and
168 alternative PI solutions will be discussed.

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170 **C. Externally-Funded Proposal Submission, Review, and Approval**

171 All requests for externally-funded, sponsored projects (including but not limited to
172 letters of intent, contracts or grant proposals that might be construed as a SJSU
173 commitment to the external party) shall only be submitted to sponsoring agencies
174 with prior written approval of the president and the chief financial officer, or their
175 designees (at SJSU, the AVP for Research and AVP for Finance, respectively).
176 The designees work closely with the SPA through which external funding
177 proposals are submitted and subsequent awards are received. Other
178 responsibilities of the SPA include: negotiating and accepting awards on behalf
179 of the University and PI (it must be emphasized that all awards are given to the
180 institution and not to the PI); drafting, negotiating and executing subcontracts;
181 representing SJSU and the PI when interacting with sponsors. The Office of
182 Research, SPA, and the PI are jointly responsible for ensuring institutional
183 compliance with Federal and State regulations; sponsor policy and University
184 policy compliance; coordinating pre-award and post-award actions that require
185 either institutional or sponsor prior approval; and reporting responsibilities.
186 Individual faculty members or non-authorized staff may not negotiate, sign,
187 amend, or accept externally funded contracts and grants on behalf of SJSU or its
188 auxiliaries. As noted above, each contract or grant proposal for extramural
189 funding of RSCA, training, and public service projects, and extramural awards
190 received for such projects, must name an eligible employee of the University or
191 auxiliary to serve as a principal investigator (see Section II B. to review eligibility
192 guidelines).

193 Funding proposals to support students' RSCA activity must be sponsored by
194 an eligible PI, as the designated PI. A student may be listed as a co-PI, but
195 may not be the point of contact or PI for the project. In general, students who

196 participate in sponsored programs must conform to all rules under the RSCA
197 Student-Advisor Section 1, in addition to the policies listed in Table 1.

198

199 **D. Principal Investigator Responsibilities**

200 While there may be any number of co-PIs, there must be one individual who is
201 recognized as PI (Lead PI) and is ultimately responsible to:

- 202 ● Conduct the sponsored project and complete required reports and
203 deliverables in accordance with applicable University, SPA, and sponsor or
204 funder policies and guidelines;
- 205 ● Ensure that all required University and SPA forms and certifications are
206 completed in a timely manner;
- 207 ● Conduct the work on the project according to the research protocol or
208 statement of work that was submitted with the original proposal or as
209 subsequently modified by the sponsor or funder in agreement with the PI and
210 the University/SPA;
- 211 ● Manage the project budget so that funds are spent in accordance with
212 financial and administrative policies and ensure timely submission of
213 expenses for reimbursement;
- 214 ● Manage project personnel in compliance with federal and state laws, as
215 well as University and SPA policy;
- 216 ● Manage the retention and storage of all programmatic technical materials
217 and reports in accordance with sponsor or funder guidelines and
218 requirements.

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220 **E. Principal Investigator Performance, Compliance, and Review**

221 Satisfactory progress and review of sponsored programs are determined by the
222 sponsor or funding agency on a project-by-project basis. Any issues or concerns
223 with the performance or regulatory compliance of a PI regarding adherence to
224 University and SPA policies and procedures initially will be addressed with the PI
225 by the SPA in consultation with the AVP for Research. If the PI is non-responsive
226 or if the response does not result in adherence to applicable policies and
227 procedures, the AVP for Research will involve the dean or University official to
228 resolve the circumstances including possible reassignment of PI responsibilities
229 to accomplish compliance.

230

231 **III. Proprietary and Confidential Information in RSCA**

232 In general, while it is the policy of SJSU that RSCA should be accomplished openly and
233 without prohibitions on the publication and dissemination of the results of academic and
234 RSCA activities, in certain circumstances issues related to confidentiality or proprietary

235 RSCA may take precedence. Proprietary RSCA refers to information or materials that
236 cannot be made public or disseminated without the approval of the entity that owns the
237 proprietary rights to that information or materials. SJSU recognizes that some
238 publishable work can best be accomplished if a University investigator(s) has access to
239 a sponsor's proprietary information or materials. Confidential research is any research
240 that may need be kept non-public, but is not necessarily proprietary (e.g., medical or
241 academic records). Specific situations are governed by complementary policies.
242 Classified research is covered by SJSU University Policy F69-12. Student theses are
243 governed by SJSU University Policy S14-10. RSCA involving human subjects are
244 governed by SJSU University Policies S08-7 and F08-1. RSCA dissemination related to
245 Intellectual Property and Conflict of Interest is governed by SJSU University Policies
246 S96-11, F98-3, and S99-11. The pursuit of RSCA upholds the principles of Academic
247 Freedom and Professional Responsibility as outlined in SJSU University Policy S99-8.
248

249 **A. Confidentiality in RSCA Projects**

250 Information gathered and/or generated in RSCA projects may need to be
251 considered as confidential. This information may include, but is not limited to,
252 personal information regarding other RSCA team members, industry partners,
253 and funders, as well as intellectual property, marketing plans, and financial and
254 operational information. Every member of a RSCA team must take all reasonable
255 precautions to ensure that access to this information is restricted to authorized
256 individuals as determined by the PI of the team. RSCA team members may travel
257 with confidential information to a location on campus or outside the campus, but
258 team members must receive permission to do so from the PI. PI's should inform
259 students on the requirements of confidentiality and to mentor students as to the
260 appropriate uses and contexts for sharing RSCA information. When contacted by
261 the media regarding a RSCA project, only designated media spokespersons are
262 authorized to communicate with media sources.
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264 **B. Non-Disclosure Agreements in RSCA Projects**

265 A Non-Disclosure Agreement (NDA) is a legally binding agreement that typically:

- 266 • Defines and describes information, knowledge, or materials to be shared
- 267 between or among the parties; and
- 268 • Restricts the usage and disclosure of the shared information, knowledge, or
- 269 materials.

270
271 A Non-Disclosure Agreement (NDA) may be proposed when the University is
272 considering entering into a business relationship with a company or individual
273 and where there is a need to understand or evaluate each other's technology,

274 research or processes, some of which might be proprietary or otherwise sensitive
275 or confidential in nature.

276
277 While NDAs are common in private industry, they may be inappropriate in the
278 University context, because of conflicts with the California Public Records Act,
279 the McKee Transparency Act (which applies to all SJSU auxiliary organizations)
280 or other laws; because they can inhibit RSCA members' and the University's
281 ability to use information. As such, no NDA can be entered into that permanently
282 bars dissemination and/or publication of RSCA information.

283
284 Students generally should not be asked to sign an NDA (e.g., as part of class
285 projects or academic courses). In exceptional cases where faculty members
286 believe it is necessary for students to enter into an NDA, they must obtain
287 approval from an appropriate administrator.

288
289 Any NDA which purports to apply to SJSU or any department or unit thereof (or
290 to commit or bind SJSU) can only be signed by an authorized SJSU
291 administrator. Any SJSU faculty or staff member who signs without authorization
292 could face individual legal liability for non-compliance with the NDA. The
293 University may not pressure a RSCA team member into participating in a project
294 that requires an NDA or in which consultation with that individual has not been
295 conducted. NDAs which are related to individual private business or consulting
296 are not subject to SJSU authorization. However, if these partnerships develop
297 into a RSCA activity, a conflict of interest declaration must be made and
298 managed by an authorized SJSU administrator, and a new NDA may be
299 required. A conflict of interest declaration is also required if the RSCA member is
300 participating both in an individual consulting and a sponsored RSCA project with
301 the same entity.

302
303 Any questions regarding proprietary research, confidential research, or the use of
304 NDAs should be referred to the Office of Research.

305 **C. Relationships with External Entities**

306 The following statements establish the basis, under this general policy, on which
307 SJSU will enter into contractual agreements with external entities dealing with
308 RSCA. External entities may operate within a proprietary environment while the
309 University functions on the principle of free inquiry and open expression. To
310 serve the common interests of both the University and the external entities,
311 reasonable and workable guidelines for collaborative work must first be
312 established.

313 1. SJSU enters into no contractual agreement that restrains it from disclosing
314 the existence of the agreement, the broad nature of the work, and the identity
315 of the sponsor.

316 2. As noted earlier, SJSU will not enter into any Non-Disclosure Agreement
317 (NDA) agreement that permanently bars investigator(s) from publishing or
318 otherwise disclosing the findings publicly. However, the AVP for Research, on
319 behalf of the institution and with the concurrence of the investigator(s), may
320 negotiate in advance to delay publication and/or presentation for a maximum
321 of 180 days to allow sponsors to give input on whether their proprietary
322 information may be revealed, or whether they will exercise their rights under
323 patent clauses in agreements with the institution. The AVP for Research on
324 behalf of the institution with the concurrence of the investigator(s) may agree
325 to an additional delay of up to 180 days.

326 3. Exceptions to Section III.C.2 may be granted by the AVP for Research who
327 may rely on the recommendation of an ad hoc committee. The AVP for
328 Research will make an annual report to the President specifying exceptions
329 granted under this provision.

330 4. This section on “Relationships with External Entities” does not apply to
331 individual, private, consulting projects. These would be projects that are not
332 sponsored projects or do not use university resources or SJSU students.

333
334 Table 1: Other University Policies Relating to Research, Scholarship, and Creative
335 Activities

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Roles and responsibilities	
S99-8	Academic Freedom and Professional Responsibility
S99-11	Conflict of Interests Policy for Principal Investigators
S05-13	Reporting of Organized Research and Training Units
F69-12	Prohibition of Classified Research; Academic Freedom

F12-5	Responding to Allegations of Research Misconduct
S15-7	Retention, Tenure and Promotion for Regular Faculty Employees: Procedures
S15-8	Retention, Tenure and Promotion for Regular Faculty Employees: Criteria and Standards
Intellectual property	
F98-3	Intellectual/Creative Property
S96-11	Fair Use of Copyrighted Materials; Intellectual Property
Treatment of research subjects	
S14-6	Policy and Assurance for Humane Care and Use of Animals at SJSU
S08-7 , F08-1	Policy for Protection of Human Research Subjects

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Approved (C&R): April 24, 2017
Vote: 13-0-0
Present: Anagnos, Buzanski, Chang, Cargill, Chung, Grindstaff, Heil, Matoush, Medrano, Mathur, Rodan, Stacks, Trulio

Curricular Impact: None anticipated.

Financial Impact: There is potential for University personnel to expand their grant and funding opportunities.

Workload Impact: The Office of Research may have increased workload as University personnel contact them for guidance in conducting RSCA, proprietary research and confidential research.