

1 **San José State University**  
2 **Academic Senate**  
3 **Curriculum and Research Committee**  
4 **March 12, 2018**  
5 **Final Reading**

AS 1675

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

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

11 First presented during AY 2016-2017 but language about the Non-Disclosure Agreements  
12 (NDA) needed revisions and the policy was returned to the Curriculum and Research  
13 Committee for AY 2017-2018.

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15 **Rationale:** There is need to update the University policy on Research, Scholarship, and  
16 Creative Activity (hereafter RSCA) in compliance with the [Integrated CSU Administrative](#)  
17 [Manual Section 11000](#). In addition, policies, procedures, and practices on campus have  
18 undergone significant changes in the last 20 years that necessitates an update to our RSCA  
19 policy.  
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22 RSCA at a university advances the frontiers of knowledge, keeps individuals energized and  
23 familiar with recent developments in their fields, and provides an experiential learning context  
24 for students. These activities enrich a university community, contribute to knowledge and  
25 progress in the profession, and contribute to high-quality education. San José State  
26 University (SJSU) endorses the principles of academic freedom in RSCA and the University  
27 promotes conditions of free inquiry as outlined in SJSU University Policy S99-8. We re-affirm  
28 S94-8, that SJSU supports RSCA activity and the pursuit of research in concert with other  
29 university duties. All RSCA undertaken by SJSU personnel and students must be in  
30 compliance with all federal, state, CSU, and SJSU laws, regulations, and policies (contact  
31 Office of Research for guidance on laws, regulations, and policies). RSCA is defined by the  
32 discipline and may be further elaborated on within departments and colleges. RSCA typically  
33 excludes individual consulting or individual private business ventures.  
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35 **Whereas:** RSCA at SJSU includes a wide range of activities, funding approaches,  
36 disciplines, and practices, this policy covers only three aspects of RSCA: I. The  
37 RSCA Advisor - Student Relationship; II. Sponsored Projects; and III.  
38 Proprietary and Confidential Information in RSCA<sup>1</sup>.  
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40 **Whereas:** Tenure/Tenure Track (T/TT) faculty are expected to engage in RSCA as indicated  
41 by the appointment process; this policy does not preclude others from engaging  
42 in RSCA, therefore be it

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**Resolved:** That this policy recommendation be adopted to guide the above mentioned three aspects of RSCA activities.

<sup>1</sup> See Table 1 for list of other University Policies relating to RSCA.

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

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

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95 **A. RSCA Advisor Role**

96 When bringing students into a RSCA project as collaborators, the advisor should  
97 encourage the free pursuit of learning, should show respect for the student as an  
98 individual, act as an intellectual guide and advisor/mentor, and provide oversight of the  
99 student to ensure that applicable laws and university policies are followed such as IRB,  
100 animal care and welfare, and responsible conduct of research

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

103 Prior to bringing a student into a RSCA project, the advisor and the student should  
104 discuss time constraints and commitments and establish their respective  
105 responsibilities, make clear any obligations to third parties, and discuss possible  
106 implications of research misconduct. In some cases, the advisor and student may  
107 face conflicts when there are simultaneous academic and RSCA obligations for the  
108 student or competing commitments/obligations or third-party involvement that may  
109 impact the advisor's role as a teacher, mentor, or supervisor of RSCA. In these cases,  
110 the RSCA advisor and/or the student should contact the department chair (or  
111 associate dean if the chair is the RSCA advisor) for guidance. The ultimate goal is to  
112 establish a clearly defined relationship between all parties and establish a quality  
113 educational experience.

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115 **C. Financial Support**

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

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120 **D. Recognition**

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

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125 **II. Sponsored Projects**

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

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The University adopts the following guidelines governing sponsored projects:

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**A. Oversight of Sponsored Projects**

With respect to externally-funded sponsored projects, the policies in [Integrated CSU Administrative Manual Section 11000](#) “serve as the fundamental system- wide requirements governing the California State University’s (CSU) involvement with the solicitation, acceptance and administration of awards from extramural sponsors for the conduct of research and scholarly activity, and other sponsored activities.” [ICSUAM Section 11001.00]. ICSUAM Section 11002.01. Section 1.5 defines "Recipient" of a sponsored project as the university or auxiliary, but not an individual, department or other constituent unit. Section 1.8 "Sponsored Program Administrator" (SPA) is defined by the Recipient as the entity that will administer the grant or contract.

In consultation with the Associate Vice President (AVP) for Research or his/her designee (hereafter: the term AVP for Research includes his/her designee except where specified), SPAs help the Principal Investigator (PI) address the requirements governing proposal preparation and submission, award negotiation, and post-award management. SPAs assist with identification of possible funding opportunities, management of solicitation of internal applications for limited submission opportunities, and facilitate development of current and pending reports. A SPA negotiates and executes Materials Transfer Agreements, RSCA-related Non-Disclosure Agreements (NDAs), intellectual property (IP), Tech Transfer agreements, and all other legal instruments associated with sponsored programs.

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

**B. Principal Investigator Eligibility**

**1. Internal Eligibility**

Any award is to the University and the University is thus responsible for ensuring fiscal and other criteria are met. Not only must the PI and any Co-PIs be qualified by education, training and experience in the area in which the funded RSCA or other project is being conducted, additional responsibilities to the institution are required as a PI and Co-PI.

Faculty members at SJSU on the tenure-line having the rank of Assistant, Associate or Full Professor as described in their letter of appointment are eligible to be a PI on sponsored projects. Additionally, Faculty Early Retirement Program (FERP), emeriti, temporary (lecturers), adjunct, visiting, and volunteer faculty, as well as University or auxiliary employees, may serve as PI upon approval. For academic personnel in these groups, the relevant department and/or college will make a recommendation regarding their expertise. The Dean or designee will make a recommendation regarding the stated willingness of the potential PI to comply

182 with administrative and fiduciary requirements. Non-academic personnel will use a  
183 parallel recommendation process. The recommendations are forwarded along with  
184 a Curriculum Vitae or resume to the AVP for Research for final decision. This  
185 approval may provide limited eligibility for a specific proposal or provide status for  
186 submissions for a specified period. If the AVP for Research does not approve the  
187 request, the dean or unit head will be notified and alternative PI solutions will be  
188 discussed.

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190 A Co-PI may be a faculty member, student, or other University personnel.

## 191 2. External Eligibility

192 Certain sponsors or funders may specify PI or co-PI eligibility criteria.

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

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195 All requests for externally-funded, sponsored projects (including but not limited to  
196 letters of intent, contracts or grant proposals that might be construed as a SJSU  
197 commitment to the external party) shall only be submitted to sponsoring agencies with  
198 prior written approval of the president and the chief financial officer, or their designees  
199 (at SJSU, the AVP for Research and AVP for Finance, respectively).  
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202 The designees work closely with the SPA through which external funding proposals  
203 are submitted and subsequent awards are received. Other responsibilities of the SPA  
204 include: negotiating and accepting awards on behalf of the University and PI (it must  
205 be emphasized that all awards are given to the institution and not to the PI); drafting,  
206 negotiating and executing subcontracts; representing SJSU and the PI when  
207 interacting with sponsors. The Office of Research, SPA, and the PI are jointly  
208 responsible for ensuring institutional compliance with Federal and State regulations;  
209 sponsor policy and University policy compliance; coordinating pre-award and post-  
210 award actions that require either institutional or sponsor prior approval; and reporting  
211 responsibilities.  
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213 Individual faculty members or non-authorized staff may not negotiate, sign, amend, or  
214 accept externally funded contracts and grants on behalf of SJSU or its auxiliaries. As  
215 noted above, each contract or grant proposal for extramural funding of RSCA,  
216 training, and public service projects, and extramural awards received for such  
217 projects, must name an eligible employee of the University or auxiliary to serve as a  
218 principal investigator (see Section II B. to review eligibility guidelines).

219 Funding proposals to support students' RSCA activity must be sponsored by an  
220 eligible PI, as the designated PI. A student may be listed as a co-PI, but may not  
221 be the point of contact or PI for the project. In general, students who participate in  
222 sponsored programs must conform to all rules under the RSCA Student-Advisor  
223 Section 1, in addition to the policies listed in Table 1.  
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### 225 **D. Principal Investigator Responsibilities**

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

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

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

247 Satisfactory progress and review of sponsored programs are determined by the  
248 sponsor or funding agency on a project-by-project basis. Any issues or concerns with  
249 the performance or regulatory compliance of a PI regarding adherence to University  
250 and SPA policies and procedures initially will be addressed with the PI by the SPA in  
251 consultation with the AVP for Research. If the PI is non-responsive or if the response  
252 does not result in adherence to applicable policies and procedures, the AVP for  
253 Research will involve the dean or University official to resolve the circumstances  
254 including possible reassignment of PI responsibilities to accomplish compliance.  
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256 **III. Proprietary and Confidential Information in RSCA**

257 In general, while it is the policy of SJSU that RSCA should be accomplished openly and  
258 without prohibitions on the publication and dissemination of the results of academic and  
259 RSCA activities, in certain circumstances issues related to confidentiality or proprietary  
260 RSCA may take precedence. Proprietary RSCA refers to information or materials that cannot  
261 be made public or disseminated without the approval of the entity that owns the proprietary  
262 rights to that information or materials. SJSU recognizes that some publishable work can best  
263 be accomplished if a University investigator(s) has access to a sponsor's proprietary  
264 information or materials. Confidential research is any research that may need be kept non-  
265 public, but is not necessarily proprietary (e.g., medical or academic records). Specific  
266 situations are governed by complementary policies.

267 Classified research is covered by SJSU University Policy F69-12. Student theses are  
268 governed by SJSU University Policy S14-10. RSCA involving human subjects are governed  
269 by SJSU University Policy F17-1. RSCA dissemination related to Intellectual Property and  
270 Conflict of Interest is governed by SJSU University Policies S96-11, F98-3, and S99-11. The  
271 pursuit of RSCA upholds the principles of Academic Freedom and Professional  
272 Responsibility as outlined in SJSU University Policy S99-8.

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276 **A. Confidentiality in RSCA Projects**

277 Information gathered and/or generated in RSCA projects may need to be considered  
278 as confidential. This information may include, but is not limited to, personal information  
279 regarding other RSCA team members, industry partners, and funders, as well as  
280 intellectual property, marketing plans, and financial and operational information. Every  
281 member of a RSCA team must take all reasonable precautions to ensure that access  
282 to this information is restricted to authorized individuals as determined by the PI of the  
283 team. RSCA team members may travel with confidential information to a location on  
284 campus or outside the campus, but team members must receive permission to do so  
285 from the PI. PI's should inform students on the requirements of confidentiality and  
286 mentor students as to the appropriate uses and contexts for sharing RSCA information.  
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288 **B. RSCA-related Non-Disclosure Agreements**

289 The University's mission, the intellectual engagement, and professional growth of the  
290 faculty and students should be the principal consideration whenever an NDA is  
291 considered for a particular RSCA project.  
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293 A RSCA-Related Non-Disclosure Agreement (NDA) is a legally binding agreement that  
294 typically:

- 295 • Defines and describes information, knowledge, or materials to be shared  
296 between or among the parties; and
- 297 • Restricts the use and disclosure of the shared information, knowledge, or  
298 materials.
- 299 • Any RSCA-Related NDA which purports to apply to SJSU or any department or  
300 unit thereof (or to commit or bind SJSU) can only be signed by the AVP for  
301 Research.
- 302 • *Serves as the starting point to facilitate discussions between entities and may*  
303 *be time limited. It should not be interpreted as a final agreement.*  
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305 A RSCA-Related NDA may be proposed when the University is considering entering  
306 into a relationship with a company or individual, and/or where there is a need to  
307 understand or evaluate each other's technology, research or processes, some of which  
308 might be proprietary or otherwise sensitive or confidential in nature. The duration of the  
309 RSCA-Related NDA will be negotiated by the RSCA member, the AVP for Research  
310 and the outside party.  
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312  
313 While NDAs are common in private industry, they may be less appropriate in the  
314 University context because they can inhibit RSCA members' and the University's ability  
315 to use information. RSCA-related NDAs must be viewed in conjunction with the  
316 California Public Records Act, the McKee Transparency Act<sup>2</sup> (which applies to all SJSU  
317 auxiliary organizations and limits some disclosures) or other laws.  
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319 Participation in a RSCA project with a NDA requires both prior consultation between the  
320 PI and the RSCA team member and the RSCA team member's free and un-coerced  
321 consent.  
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323 In general, students should not be asked to sign a RSCA-related NDA (e.g., as part of  
324 class projects or academic courses). In exceptional cases where faculty members

325 believe it is necessary for students to enter into an NDA, they must obtain approval  
326 from the college dean and the AVP for Research.

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328 NDAs related to an individual's private business or consulting are not subject to SJSU  
329 authorization. However, if these individual partnerships develop into a SJSU RSCA  
330 activity, a conflict of interest declaration must be disclosed by the individual and  
331 managed with the AVP for Research, recognizing a new NDA may be required. (For  
332 additional information see the SJSU Conflict of Interest Policy S99-11.)

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334 Any questions regarding proprietary research, confidential research, or the use of  
335 RSCA-related NDAs should be referred to the Office of Research.

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### 337 **C. Relationships with External Entities**

338 The following statements establish the basis, under this general policy, on which  
339 SJSU will enter into contractual agreements with external entities dealing with RSCA-  
340 related NDA. External entities may operate within a proprietary environment while the  
341 University functions on the principle of free inquiry and open expression. To serve the  
342 common interests of both the University and the external entities, reasonable and  
343 workable guidelines for collaborative work must first be established.

344 1. Generally, SJSU enters into no contractual agreement that restrains it from  
345 disclosing the existence of the agreement, the broad nature of the work, or the  
346 identity of the sponsor.

347 2. Normally, SJSU will not enter into any RSCA-Related NDA that permanently bars  
348 investigator(s) from publishing or otherwise disclosing the findings publicly.  
349 However, the AVP for Research, on behalf of the institution and with the  
350 concurrence of the investigator(s), may negotiate in advance to delay publication  
351 and/or presentation to allow sponsors to give input on whether their proprietary  
352 information may be revealed, or whether they will exercise their intellectual  
353 property rights in agreements with the institution.

354 3. Exceptions to Section III.C may be granted by the AVP for Research who may  
355 rely on the recommendation of an ad hoc committee. The AVP for Research will  
356 make an annual report to the President specifying exceptions granted under this  
357 provision.

358 4. This section on "Relationships with External Entities" does not apply to  
359 individual, private, consulting projects. These would be projects that are not  
360 sponsored projects or do not use university resources or SJSU students.

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363 <sup>2</sup> McKee Transparency Act 2011.Senate Bill 8. Section 72696.5 (deals with trade  
364 secrets not being subject to disclosure and shall be redacted from auxiliary  
365 organization records before disclosure).

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

<b>Roles and responsibilities</b>	
<a href="#">S99-8</a>	Academic Freedom and Professional Responsibility
<a href="#">S99-11</a>	Conflict of Interests Policy for Principal Investigators
<a href="#">S05-13</a>	Reporting of Organized Research and Training Units
<a href="#">F69-12</a>	Prohibition of Classified Research; Academic Freedom
<a href="#">F12-5</a>	Responding to Allegations of Research Misconduct

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<a href="#">S15-7</a>	Retention, Tenure and Promotion for Regular Faculty Employees: Procedures
<a href="#">S15-8</a>	Retention, Tenure and Promotion for Regular Faculty Employees: Criteria and Standards
<b>Intellectual property</b>	
<a href="#">F98-3</a>	Intellectual/Creative Property
<a href="#">S96-11</a>	Fair Use of Copyrighted Materials; Intellectual Property
<b>Treatment of research subjects</b>	
<a href="#">S14-6</a>	Policy and Assurance for Humane Care and Use of Animals at SJSU
<a href="#">F17-1</a>	Policy for Protection of Human Research Subjects

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373 **Approved (C&R):** 3-5-2018  
 374 **Vote:** 12-0-0  
 375 **Present:** Anagnos, Bacich, Buzanski, Cargill, Chung, De Guzman, Heil,  
 376 Jensen, Stacks, Rodan, Trulio, Schultz-Krohn  
 377 **Absent:** Matoush  
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379 **Curricular Impact:** None anticipated.  
 380 **Workload Impact:** There is potential for University personnel to expand their grant  
 381 and funding opportunities  
 382 **Financial Impact:** The Office of Research may have increased workload as  
 383 University personnel contact them for guidance in conducting RSCA, proprietary  
 384 research and confidential research.