

# Xavier University of Louisiana

## Research Misconduct Policy

### I. Purpose

Xavier University of Louisiana seeks excellence in the process of discovery and its dissemination. The goal of this policy is to provide a framework to resolve allegations of research misconduct as rapidly and fairly as possible and to protect the rights and integrity of all individuals involved. Public trust in the integrity and ethical behavior of faculty and staff working under externally sponsored agreements (hereinafter “ESA”) is essential to maintaining the quality of Xavier’s programs and reputation. While federal funding agencies place the responsibility on Xavier to prevent and detect misconduct under ESA, Xavier places the responsibility on each member of the University community to foster an environment that promotes intellectual honesty and integrity. Because a finding of misconduct under ESA would be counterproductive and destructive to Xavier, we are attempting to instill in the university community the highest standards possible in order to gain the public trust and the trust of our Principal Investigators. The purpose of this policy is to establish procedures at Xavier University for the confidential reporting, establishment of investigatory committees and processes, and final disposition of claims of misconduct under ESA.

### II. Definitions

The following definitions are adopted as Xavier's standards:

A. *Allegation* means a disclosure of possible misconduct through any means of communication to an Institutional Official.

B. *Compliance Committee violations* exist when the Associate Vice President for Research and Sponsored Programs determines that a Principal Investigator's project has not been cleared and approved by an appropriate compliance committee before the project begins. It also encompasses the failure of a Principal Investigator to secure a timely renewal from the Compliance Committee at the expiration of the originally approved term.

C. A *Conflict of Interest* exists when the Designated Institutional Official reasonably determines that a significant financial interest could directly and significantly affect the design, conduct, or reporting of the externally sponsored program.

D. *Evidence* means any tangible item or document tending to prove the matter asserted.

E. *Good faith*, as applied to a complainant or witness, means having a belief in the truth of one’s allegation or testimony that a reasonable person in the complainant’s or witness’s position could have based on the information known by the complainant or witness at the time. An allegation or

cooperation with a misconduct proceeding is not in good faith if made with knowing or reckless disregard for information that would negate the allegation or testimony. Good faith as applied to a misconduct committee member means cooperating with the misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping Xavier meet its responsibilities under this policy. A committee member does not act in good faith if his/her acts or omissions on the Committee are dishonest, or influenced by personal, professional, or financial conflicts of interest with those involved in the misconduct hearing.

F. *Inquiry* is defined as information-gathering and preliminary fact-finding to determine whether there is sufficient and substantive information to warrant an investigation.

G. *Investigation* is defined as a formal examination and evaluation of the relevant facts to determine whether misconduct under ESA has taken place, or if it has already been confirmed, to assess its extent and consequences to determine appropriate action.

H. *Notice* means a written communication transmitted in a manner that the conveyor has a reasonable expectation the communication will be received by the respondent. The notice may be, for example, served in person, sent by mail or its equivalent to the last known street address, facsimile number or email address of the addressee

I. *Preponderance of the evidence* means that a fact is more likely so than not.

J. *Misconduct* means:

1. Callous disregard for requirements that ensure the protection of researchers, human subjects, animal subjects or the public at large.
2. Failure to disclose financial and business interests of the researcher that might impact on his or her externally sponsored projects.
3. Failure to comply with any applicable legal requirements governing research or other activities under externally sponsored agreements.
4. Research misconduct, that is:
  - Fabrication - (1) making up data or results and recording or reporting them as accurate or (2) altering another person's research document without their permission.
  - Falsification - 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.
  - Plagiarism - the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research misconduct does not include honest error or differences of opinions.

K. *Retaliation* means an adverse action taken against a complainant, witness or committee member by Xavier in response to good faith allegations of misconduct.

L. *The Respondent* means the person against whom allegations of misconduct under ESA are made.

### **III. Policy Overview**

#### **A. Scope**

This policy provides the procedural guidelines for any misconduct that falls under externally sponsored agreements within the following four areas:

1. Conflicts of Interest,
2. Compliance Committee violations,
3. Research Misconduct, and
4. Violations of any Federal, State or Municipal statutes or regulations.

It is not intended to cover other instances of misconduct that might be reported at Xavier.

#### **B. Consequences of Misconduct**

Xavier University of Louisiana maintains a zero-tolerance for misconduct under ESA. Violations of Xavier's policies shall be considered a serious breach of the trust placed in each member of the faculty and staff and may involve disciplinary sanctions, including, but not limited to, dismissal from employment and debarment with the funder. All allegations shall be investigated thoroughly.

Every member of the university community is charged with a duty to report any activity that may be considered a violation of this Xavier policy. To accomplish this, the Office of Research and Sponsored Programs has added a "Research Integrity Hotline: 504-520-7475". All reports are received anonymously, unless the reporter chooses otherwise. Retaliation for the good faith reporting of suspected misconduct under ESA is strictly prohibited.

#### **C. Applicability and Statutory Authority**

Xavier's policy is applicable to all externally sponsored agreements that are proposed, conducted or reported at Xavier. It also applies to Xavier personnel working at off-campus facilities. Faculty, staff, visiting scholars and anyone with teaching and/or research titles are governed by this policy. It also applies to any sponsored projects that are reported or claimed to have been performed at Xavier. This policy is predicated on the regulations set forth by the National Institutes of Health, 42 CFR § 93, et seq., the National Science Foundation, 45 CFR § 689, and the OMB Circular A-110, "Subpart C. Post Award Requirements and Procurement Standards."

#### **D. Five Procedural Stages**

First, in the event of allegations of misconduct under ESA, the Associate Vice President for Research and Sponsored Programs and the appropriate administrative official to whom the respondent reports (hereafter referred to as "Appropriate Administrator") will discuss the matter

to determine whether the matter can be resolved collegially. Second, if the matter cannot be resolved, an "Inquiry" will take place. Third, if the matter remains unresolved through discussion and Inquiry, the allegations become the subject of an "Investigation." Fourth, the "Formal Findings" resulting from the Investigation are written and distributed to the required parties. Ultimately, there is a "Final Disposition" of the matter. (See IV below)

## **E. Evidentiary Standards**

The following evidentiary standards apply to findings under this section:

**(1) Standard of proof** - A finding of misconduct by Xavier must be proved by a preponderance of evidence.

### **(2) Burden of Proof**

(a.) Xavier has the burden of proof for making a finding of misconduct. The destruction, absence of, or respondent's failure to provide records relevant to the allegation of misconduct is evidence of misconduct where the institution establishes by a preponderance of evidence that the respondent (1) intentionally, knowingly or recklessly had relevant records and destroyed them, (2) had the opportunity to maintain the records, but did not do so, (3) did not maintain the records in a manner consistent with the accepted practices of the academic community of his/her discipline, or (4) failed to produce them in a timely manner. In such a case, the respondent has the burden of going forward with and the burden of proving by preponderance of the evidence any and all affirmative defenses raised.

(b.) In determining whether Xavier has carried the burden of proof imposed by this part, due consideration shall be given to admissible, credible evidence of honest error or difference of opinion presented by the respondent.

(c.) 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 hearing.

Any interpretation of this part must further the policy of protecting the health and safety of the public, promoting integrity in carrying out externally sponsored projects and conserving public funds.

## **F. Compliance Assurance and Training**

- Xavier takes all reasonable measures to inform its employees who conduct work under externally sponsored agreements of the policies and procedures outlined herein. The university shall make this policy available on the web site of the Office of the Associate Vice President for Research and Sponsored Programs and in the Faculty Handbook.
- Xavier offers web-based research training through a subscription with Collaborative Institutional Training Initiative (CITI). CITI training provides research ethics education

nationally to all members of the research community. Xavier subscribes to training courses in the following areas:

- Animal Care and Use
- Human Subjects Research
- Biohazard Safety
- Responsible Conduct of Research
- Conflict of Interest

The CITI course is a protected site. New researchers (students, faculty and staff) at Xavier University are required to participate in research training through the CITI program. Below is the link for registering on CITI by creating a username and password:

Link: <https://www.citiprogram.org>

When registered and logged in, click the “new users” section and complete the information requested by Xavier University of Louisiana.

## **IV. Time Limitations**

There is a six-year statute of limitations for misconduct under ESA from the date on which Xavier receives allegations, except that the six-year limitation does not apply when:

- The Respondent continues or renews any incident of alleged misconduct under ESA through citation, publication or other use for the benefit of the Respondent;
- There was a health or safety risk to Xavier or the general public, if the alleged misconduct continues; or
- Xavier received an allegation of misconduct before the effective date of this policy.

The Inquiry must be completed within 60 days of its initiation, unless circumstances clearly warrant a longer period. The inquiry report shall state the reasons for exceeding the 60-day limit.

An Investigation must begin within 30 days after determining that an investigation is warranted. The investigation must conclude within 120 days of its beginning, including the final report. The Respondent shall have 30 days to respond to the final report.

The institution will request for an extension with the U.S. Department of Health and Human Services’ Office of Research Integrity (ORI) for an extension, if the investigation cannot be completed in 120 days from the beginning.

## **V. Procedure**

### **A. Discussion**

On receipt of an allegation of Misconduct under ESA, the Associate Vice President for Research and Sponsored Programs, and the Appropriate Administrator, shall discuss the situation. If the allegation of Misconduct involves a compliance committee, the Associate Vice President for

Research and Sponsored Programs, and the Appropriate Administrator shall also discuss the allegation with the relevant compliance committee chair, compliance officer and/or the Director of Environmental Health and Safety. The matter may be resolved on a collegial basis, through discussion, to ascertain whether there are just grounds for believing that violations have occurred. However, as required by 42 CFR § 93.108, the Associate Vice President for Research and Sponsored Programs will limit disclosure of the identity of respondents and complainants to those who need to know in order to carry out a thorough, competent, objective and fair research misconduct proceeding.

If the allegations are sufficiently credible and specific and fall within the definition of misconduct under ESA in this policy, the Associate Vice President for Research and Sponsored Programs, and the Appropriate Administrator, shall promptly notify the Respondent in writing of the alleged violation. Thereafter, an inquiry, and if necessary, an investigation shall follow.

## **B. Inquiry**

The Associate Vice President for Research and Sponsored Programs, and the Appropriate Administrator, shall initiate an inquiry to determine whether the accusations fall within the definition of misconduct under ESA and decide whether a formal investigation is warranted. The following guidelines shall be followed:

- The privacy of the Respondent and the accuser, and the confidentiality of information shall be protected to the fullest extent possible;
- The Associate Vice President for Research and Sponsored Programs shall inform the funding source that an inquiry has been initiated;
- The Respondent will be given the opportunity to respond in writing to the allegation(s).
- Xavier must promptly take steps to obtain custody of all the records and evidence needed to make a proper determination as to the charges;
- After review of the evidence and the reply of the Respondent, if provided, a final report with a recommendation as to whether a full investigation is warranted shall be sent to the Respondent;
- The report shall include any comments provided by the Respondent and shall be in sufficient detail to determine whether a full investigation is warranted;
- The Associate Vice President for Research and Sponsored Programs shall file the report with the office of the external funding agency stating:
  - The name and position of the Respondent;
  - A description of the allegations;
  - The externally funded support, including, e.g., grant numbers, grant applications, contracts, and publications listing the external support;
  - The basis for recommending that the alleged actions warrant an investigation, if any; and
  - Any comments on the report by the Respondent or complainant.
- This report will remain in the Office of Research and Sponsored Programs for seven years, regardless of the outcome.
- Any alleged or apparent retaliation against complainants, witnesses or committee members must be reported to the Associate Vice President of Research & Sponsored Programs, who shall review the matter and, as necessary, make all reasonable and

practical efforts to counter any potential or actual retaliation and protect and restore the position and reputation of the person against whom the retaliation is directed.

### **C. Investigation**

If it is determined that alleged misconduct under ESA warrants further investigation, the Associate Vice President for Research and Sponsored Programs and the Appropriate Administrator shall:

- Appoint an *ad hoc* committee composed of at least five individuals who are competent to evaluate the matters before the committee, none of whom have any unresolved personal, professional, or financial conflicts of interest with the Complainant, Respondent, or the witnesses;
- Refer the entire matter to the committee;
- Take any interim action to ensure the integrity of the work under the sponsored agreement and Xavier's legal position or public image;
- Provide written notification to the Respondent of the nature of the misconduct allegations and that a formal investigation has been initiated;
- Report to the appropriate external agency office the name and position of the Respondent, identify the grant under which the Respondent was working, the basis that warrants an investigation, and any comments on the report by the Respondent;
- Continue maintaining custody of all records and evidence necessary to the investigation, including the sequestration of scientific instruments shared by others;
- Ensure that the investigation is thorough, sufficiently documented and includes a thorough examination of the evidence;
- Ensure a fair, impartial, and unbiased investigation;
- Interview the Respondent, the complainant and any other witnesses with relevant knowledge;
- Preserve the records of the interviews in any manner feasible;
- Pursue any leads germane to the charges of misconduct until the investigation is completed.

The *ad hoc* committee shall make a determination by no less than a 2/3 vote as to the misconduct under ESA and shall issue a draft investigation report, along with a copy of the supporting evidence, which shall be given to the Respondent. Comments by the Respondent may be submitted within 30 days of the date that the Respondent receives the report to the Associate Vice President for Research and Sponsored Programs and the Appropriate Administrator.

### **D. Formal Findings**

The Associate Vice President for Research and Sponsored Programs, and the Appropriate Administrator, will prepare a written Final Investigation Report that:

- *Allegations* - Describes the nature of the allegations;

- *External support* - Describes and documents the external support, including, for example, any grant numbers, grant applications, contracts, and publications listing external support;
- *Institutional charge* - Describes the specific allegations of misconduct under ESA for consideration in the investigation;
- *Policies and Procedures* - If not already done, provides the appropriate external agency office with the inquiry report and includes the institutional policies and procedures under which the investigation was conducted;
- *Records and evidence* - Identifies and summarizes the records and evidence reviewed, and any evidence taken into custody but not reviewed;
- *Statement of findings* - For each separate allegation of misconduct under ESA identified during the investigation, provides a finding as to whether the misconduct actually occurred, and if so:
  - Identifies the nature of the misconduct as conflict of interest, compliance committee violations, research misconduct and/or the violation of any federal, State or municipal statutes or regulations relating to grants;
  - Summarizes the facts and the analysis which support the conclusion and considers the merits of any reasonable explanation by the Respondent;
  - Identifies the external support;
  - Identifies whether any publications need correction or retraction;
  - Identifies the person(s) responsible for the misconduct; and
  - Lists any current support or known applications or proposals for support that the Respondent has pending with external agencies.
- *Comments* - Includes and considers any comments made by the Respondent and complainant on the draft investigation report;
- *Maintaining and providing records* - Maintains and provides to the appropriate external agency's office, upon request, all relevant records and records of the institution's proceeding, including results of all interviews and the transcripts or recordings of such interviews.

If evidence of misconduct has been found by the committee, the committee shall recommend to the Appropriate Administrator fitting disciplinary actions

## **E. Final Disposition and Action**

Following preparation of the Final Investigative Report, the Associate Vice President for Research and Sponsored Programs, and the Appropriate Administrator, shall take the following actions:

- If Xavier's policy has NOT been violated, they shall take all appropriate action to exonerate the Respondent and restore the Respondent's reputation;
- If Xavier's policy has been violated, they shall send a charge letter to the Respondent stating the committee's findings and the Appropriate Administrator shall initiate suitable disciplinary procedures;
- If Xavier's policy has been violated, they shall take all appropriate actions to make sure that Xavier meets all of its obligations to all parties affected by the violation.

All records of the proceedings shall be retained by the Associate Vice President for Research and Sponsored Programs for a period of 7 years.

## **VI. Notification to External Sources/Agencies**

A. The Associate Vice President for Research and Sponsored Programs and the Appropriate Administrator, on or before the time a formal Investigation takes place, shall take steps to notify all relevant funding agencies, of the progress of the formal investigation, and, in compliance with federal laws, keep them informed:

1. About the seriousness of the apparent misconduct;
2. Whether the activity should be immediately suspended;
3. Whether public health or safety is at risk;
4. Whether Federal action may be needed for protection of those affected by the misconduct;
5. Whether the scientific community or the public should be informed;
6. And, whether there is a potential criminal or civil violation, in which case, notification must be made within 24 hours of obtaining the information.

B. The Associate Vice President for Research and Sponsored Programs must provide the appropriate external agency with the Investigative Report, whether or not Xavier accepts the investigation's findings, and provide a description of Xavier's administrative actions, if any, against the Respondent. In addition, the appropriate external agency must be notified if Xavier decides to dismiss the investigation at any stage of the investigation, except for closing the case.

Generally, all inquiries and investigations will be carried through to completion and all significant issues will be pursued diligently. The Associate Vice President for Research and Sponsored Programs will notify ORI in advance if there are plans to close a case at the inquiry, investigation, or appeal stage on the basis that respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason, except: (1) closing of a case at the inquiry stage on the basis that an investigation is not warranted; or (2) a finding of no misconduct at the investigation stage, which will be reported to ORI.

## **VII. Appeals**

The Respondent shall have the right of appeal to the President of the University in regard to procedural issues only. The appeal must be requested, in writing, within 30 days of the receipt of the *Ad Hoc* Committee adjudication and shall be completed within 30 days of its filing. The President may affirm or overturn the decision of the Committee, or remand the decision for further proceedings. The President's decision shall be final and the Respondent shall have no further right of appeal. The President shall promptly notify the Associate Vice President for Research and Sponsored Programs and the Appropriate Administrator of his/her decision and the reasons for this decision.