

Faculty response regarding UCCS Research Misconduct Policy, as reported to LAS FA Representatives

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We would like to thank Mark Malone, EPUS, and the Faculty Assembly Executive Committee for all of their work and for their commitment to protecting and promoting faculty agency at UCCS and in the CU system.

We support the motion to table the policy until fall 2016.

The following calls for revision and comments have been compiled from faculty concerns shared with FA reps.

Calls for revision:

1) We call for a revision to the policy representing the strongest possible standard of evidence within a civil context. As we understand it, this means moving from language that specifies a "preponderance of evidence" to language that specifies "clear and convincing evidence." In this there is no risk of jail time, as there might be in a criminal trial using a standard of "beyond a reasonable doubt," but the change nevertheless assures a more rigorous standard for proving guilt or wrongdoing. The specific standard of evidence is not outlined within the APS 1007 CU system document. See also APS 1007, IV.F, which details the role of the Respondent: "The campus specific procedures shall describe the rights held by the Respondent that the faculty committee on research misconduct shall preserve during any process pursuant to this Administrative Policy." To what extent does this give UCCS latitude to determine the "rights" held by the accused, e.g., burden of proof, standard of evidence, right to know one's accuser, the strongest possible safeguards to maintain confidentiality, etc.?

2) The policy should make it more difficult to prove or prosecute misconduct than to defend against it. This may involve an asymmetrical standard of evidence. In our understanding, this is both possible and in line with existing legal practice, and indeed would be the practice that corresponds to the theory of the presumption of innocence. For instance, and relatedly, earlier iterations of the policy stated that a frivolous claim or one not made in good faith itself would be considered a research misconduct offense; we ask that this be reinstated.

3) We are concerned with statements in the APS 1007 CU system document that indicate that faculty are required to report suspected misconduct and can be punished if they do not do so. (See APS 1007, II.A; see also the UCCS policy, IV.A [p. 9 and 10], and also IV.B, which indicates that everyone is obligated to "cooperate" with an investigation and can be disciplined if they do not.) Because such a revision would require the revision of a system document, we call for the process of proposing a revision to the system document to begin. APS 1007 is labeled an "Academic" policy; doesn't this leave it in the hands of the faculty, to whom Regents Law gives jurisdiction over academics?

4) There are places in the document in which crucial terms are vaguely defined, for instance the phrase "serious deviations from accepted practices" (included in the APS 1007 system document, III.B.1 [p. 3] and in the UCCS document). Revisions are needed in order to define such terms more clearly and completely.

5) We call for the policy to include language specifying that the policy can be changed only by a full faculty vote (See section V.G [p. 14]). We call for a full faculty vote in fall 2016 or when the document is ready for a vote in order to approve all revisions to the policy.

Excerpts of comments provided to reps (additions to maintain anonymity and/or clarify are in brackets):

"I found these guidelines vague and troubling too."

"But I really think the current plan does open the door for possible abuse in claims of misconduct. The main problem is that the definition of misconduct is too general and the line between acceptable and unacceptable research practices is a fuzzy one and a moving target. For example, the new guidelines mention not reporting all aspects of one's data as a form of misconduct; but this has common practice [in some fields of study]"

"'best practices' are in a sufficient state of flux that unscrupulous (or over-scrupulous) people could interpret them in ways that would be harmful and detrimental to good honest ethical researchers"

"they [UCCS] cannot violate standard legal procedures and have those decisions hold up in a court of law unless they act in a quasi-legal manner, i.e., evidence beyond a reasonable doubt, etc."

"It seems that the exhortation to keep all proceedings confidential should be stronger '.. shall attempt to maintain confidentiality' does not make a strong enough statement."

"We need a definition of 'serious research error' as one of the options of determination by the committee and deciding official"

"It [the policy] used to say that a frivolous or claim not made in good faith itself would be considered a research misconduct offense. I think this should still be the case."

"I do have several questions/concerns about how the policy is positioned, particularly in terms of protecting (or not) faculty rights. The burden of proof (the 'preponderance of evidence') is relatively low in these cases - akin to a civil trial, not the higher standard of a criminal case - and I question whether that is appropriate. I also am unclear why the presumption of innocence or guilt appears to be inconsistent - and would advocate that it be both consistent and default to a position of innocence."

"I do still have questions about the intent of the policy - beyond its explicit concern of ensuring that faculty research is conducted responsibly - and whether it reflects an appropriate balance of protecting faculty freedoms vs. guarding against research wrongdoing. I hope the Faculty Assembly may be willing to dedicate a bit of time to engage this question and discuss how and why the policy has been crafted the way it has."