Research Misconduct Response to Faculty Concerns
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Faculty comments were received from Monique French in 3 different emails (B, C, L) and directly to RIO from faculty (A). All comments were entered into the table below and given an ID number for easy reference. The RIO classified each comment to see common themes. The following table provides the code for the table of comments.

There seem to be 3 main issues and then a myriad of smaller issues (i.e., mentioned by fewer people). I've provided a response to the broad issue below followed by individual comments for that area and then have addressed the "smaller issues" in red in the comment section or in the attached set of procedures. (This attached procedures has all the corrections made by Faculty Assembly Executive Committee in April 2016.) Track changes has been used to address some of comments below. I think there are places that faculty assembly can address wording or faculty issues and others where the APS would first need to be changed. The following table helps understand the codes used in the comment table.

CODE	DEFINITION
ATT	Attorney or Legal Counsel Issues
BP	Burden of proof; evidence
CE	Cross examination by respondent (process)
COI	Conflict of interest
Com Mem:	Committee membership
Conf:	Confidentiality
Def	Definitions
GF	Good Faith Allegations
Rec Ret	Record Retention
Rep RM	Reporting Research Misconduct
Vote PolC	Who votes on policy
Wrd	Wording; phrasing
ID Codes: L: from LAS document; A: one faculty's comments sent to Kelli directly; B: one faculty's comments sent to Monique; C: random faculty comments from Monique	

1. ***Comments Related to Definitions of Research Misconduct are vague (DEF)***

Response: The definitions for research misconduct and specific types of misconduct come directly from APS 1007 as well as federal definitions and legal dictionaries. UCCS cannot change these definitions. The APS says that we will follow federal guidelines. It does not make a distinction between federally funded research and unfunded or other funded research. I also think the "vague" definitions are this way to allow for the variances that occur in different fields. Some people have recommended specific standards from a professional organization but these change across organizations. I think the vague definitions and "best practices" or "accepted practices" languages is to allow the disciplinary differences and that disciplinary practices need to be considered. Typically, at least one discipline specific person is included in the investigation so that disciplinary practices will be considered.

Definition of research misconduct versus finding of research misconduct (comment A2 under DEF A2 and A4) and definition of "serious research error" were clarified and added to definitions.

Code	ID	Faculty Comment
Def	A1	1. p. 6- the definition of plagiarism- I think a specific definition should be used- perhaps one from an academic professional organization. This one is very vague by saying "without giving them appropriate credit." Who decides what is appropriate? What someone might consider appropriate may fail to meet academic and disciplinary standards. I think this vagueness will not be helpful to inquiry and investigative committees.
Def	A2	Following this policy, a committee could conclude that someone has indeed committed plagiarism which *is* research misconduct, but that they cannot present a "finding of research misconduct" based on the wording of the policy. That makes no sense. What is the difference between "research misconduct" and a "finding of research misconduct"? This will again not provide clear guidance for committees using this policy.
Def	A3	3. p. 23, in the Decision by the investigative committee section, point B introduces the concept of "serious research error." This has not been mentioned prior to this point and should be defined.
Def	A4	4. same section (p23; A3), point g) (2) it states "Identify whether the research misconduct was committed intentionally, knowingly, or recklessly." This repeats the same basic contradiction pointed out in 2 above. It is saying that there can in fact be research misconduct, but then that must be followed by a determination of whether or not it is intentional, knowing or reckless. Nevertheless, it clearly states here that something can be called research misconduct, prior to a determination of intentionality.
Def	A5	5. same section (p23; A3), point g) (5) should also include serious research error. If plagiarism is found, it requires correction or retraction, even if it is not labeled "research misconduct." This is in fact what was recommended and supposedly carried out in (name redacted)'s case. Again in section E p. 25-26, serious research error should be included in that list of recommendations being asked for. If plagiarism is found, but no intentionality, those recommendations are still absolutely

		necessary, or people can be found to have committed plagiarism without any consequences, mentoring, training, etc., basically no response that something needs to change....
Def	L11	"We need a definition of 'serious research error' as one of the options of determination by the committee and deciding official"
Def	L4	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, 111.B.1 [p. 3] and in the UCCS document). Revisions are needed in order to define such terms more clearly and completely.
Def	L6	"I found these guidelines vague and troubling too."
Def	L7	"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]"
Def	L8	"'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"
Def:	B2	2. Page 7. The language "accepted practices of the relevant research community is troubling." Suppose one field has been accepting a research methodology not yet an "accepted practice" in another field? Does that mean because acceptable in psychology research but not yet in business research using it constitutes research misconduct? Will this language hamper the ability of individuals to explore new research methods in their field? Who will determine what is an accepted practice in the "relevant research community"? I realize this is the policy in the CFR, but again this standard would apply to research without federal funding. Do not see why we should should apply a standard that seems more burdensome then needed for faculty members not doing research funded by grants (i.e. All publishing being done in the business school I would venture to guess). Also, if the researcher fully discloses the research method and is very transparent about the research methods, should that constitute research misconduct? I do not think so----plus, isn't this how new methods of research become generally accepted in a field?

2. Comments Related to Standards for burden of proof (BP).

Response: The federal guidelines are for preponderance of evidence. The APS says we will follow the federal guidelines. We would need a change in the APS to change this. Additionally, using dual standards based on the source of funding is not a workable process.

Code	ID	Faculty Comment
BP	B1	1. Given the serious consequences of this process, preponderance of the evidence does not seem to be a sufficient. Instead, clear and convincing evidence should be the standard. That is somewhere between preponderance of the evidence and beyond a reasonable doubt used in criminal cases. I realize that the funding agencies require preponderance of the evidence, but I do not see why the two need to be tied together unless a position is funded by the research dollars. Perhaps in those cases the lower burden of proof can be used the the higher standard in all other cases.
BP	B8b	8. Why shouldn't the rules of evidence be applied??? These have been developed over centuries by the legal system to ensure the fairness of the process and the integrity and reliability of evidence?? As academics and scientists, why would we substitute the judgment of the Chair of the Investigative Committee for the consensus of centuries of legal experts on rules adopted to ensure reliable evidence???? This seems to skew the process against the accused.
BP	L13	"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."
BP	L15	"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."
BP	L1a	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.
BP	L1b	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.?
BP	L2a	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.

BP	L9	"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."
BP	R0	The level of proof required is defined by the particular type of civil action. You can require proof of the main cause of action by clear and convincing evidence and affirmative defense by preponderance. Not common, but can be done. My bigger concern is not burden of proof. Its inability to have an attorney represent you in proceedings, the presumption that if you don't have records that you committed research misconduct especially without a record retention policy in place or at least communicated to faculty, not using evidentiary standards based on rules of evidence, etc. The burden of proof issue is minor compared to these other issues.
BP	R1	1. The "preponderance of the evidence" standard is a real problem - it is not at all clear why this is being used except to protect the power of University administrators over and above faculty. I would not be satisfied with any guilty judgement based on the potential of a 51/49 split (or anything close to it.
BP	R3	A research conduct allegation is a very serious thing. Under this policy, preponderance of evidence means that if it's 49% likely the accused is not guilty and 51% likely they are guilty, then their career could be over. We deserve much more protection than this.
BP	R4	Would any faculty want their career at risk on odds slightly better than a flip of a coin? This standard must be beyond a reasonable doubt.

3. Comments Related to Faculty recourse to legal counsel (ATT)

Response: In the inquiry phase, I believe that the goal is to not make a judgment about whether or not there is research misconduct but rather whether this is sufficient cause to continue with an investigation. I think this is the stage to gather information from both complainants and respondent. The respondent (i.e., person whom an allegation of misconduct has been made) has a right to have their own attorney present but not speak for them (but during inquiry the attorney may give advice to faculty). We use this same practice for student academic misconduct. Faculty are allowed to have legal advisors, although it is self paid. This is similar to other university processes (e.g., P & T, grievances). The policy mostly states that CMRSCA, RIO and DO get legal counsel to provide interpretation of policies and legal definitions during these process. We've added that witnesses, complainants, and respondents can have the same access to University Counsel for interpretation and information about rules and procedures. All named parties may seek advice from campus legal counsel on interpretation of rules and policies of the university. But if a person wants individualized legal advice they must seek their own legal counsel.

Our current procedures do not mention legal counsel or attorneys. I took this from Boulder's processes. The respondent does get to respond to reports that summarize evidence so they do have a chance to refute any evidence by complainant or witness.

Code	ID	Faculty Comment
ATT	B7c	The second paragraph on page 17: why shouldn't the individual being accused be able to have an attorney advocate for their position? Since an inquiry only I understand not being able to cross-examine, but they should certainly be able to have an advocate argue their position.
ATT	B8a	8. Page 22, Investigative process. If the accused is to be given due process of law, it is absolutely necessary that they have a right to cross-examine witnesses. They should have the right to challenge the truth of the statements being made, issues of bias that the witness may have against the accused (i.e. are they upset because they have a better office, did they have personal conflict that may color their view of the facts, etc), issues of what they actually witnessed, the accuracy of their memory, is this first hand knowledge or hearsay? Again, the professional reputation and livelihood of the accused is at stake and he/she is entitled to a fair opportunity to question the evidence.
ATT	B9	9. Page 23. I am assuming that in a case being raised that legal counsel for the university will be present advising the committee. Likewise, the accused should have the full benefit of legal counsel including the ability of the attorney to speak on the accused's behalf. Due process requires nothing less. Again, this seems to be skewed in favor of the university without giving the accused the full benefit of tools to defend themselves against what may be baseless allegations. Given the stakes, the accused should be given the benefit of full legal representation, including the ability to advocate for their client.
ATT	R2	2. Faculty counsel is not even mentioned in the proposed policy. Thus, we would not be allowed to have counsel in any proceedings, yet any accusers would have university counsel advising them at every step. I think we deserve a better, fairer

		policy than this. Legal advisors are allowed. Only committee, RIO and DO get benefit to use university legal counsel. The faculty could propose that the campus pays for outside legal counsel for respondents, complainants, and witnesses. I do not know the will to provide this.
ATT	R5	Also, I searched the document and the University Counsel has a large role to play on the side of administration. There needs to be an equal role for the faculty counsel.

Miscellaneous Comments

Code	ID	Faculty Comment
COI	B5	5. Page 13, Paragraph E. Statement is that individuals are expected to reveal actual or potential conflicts of interest, what happens if they do not? Perhaps everyone involved in the process should be required to complete a statement regarding their relationship with the accused and answer a series of questions regarding their relationship or prior dealings with the accused. I do not know how to protect against people not telling the truth. Objectivity and neutrality are emphasized throughout the procedures. The respondent and complaint can ask that persons with potential conflicts not be members of the investigation/inquiry committees, but the determination and resolution of actual/perceived conflicts lies with the panel.
Com Mem	B6	6. Page 16, Paragraph C.1. Why should appointment be based on academic rank? This provision may limit the most qualified people from being selected. I am not sure what "level of experience with the type of misconduct allegations" means??? Should this perhaps be the area of research or methodologies used? Rank was included because we do not want to put people who are pre-tenured making decisions about tenured faculty where there may be a perceived influence on later decisions about tenure. In general the research misconduct committee has always tried to have tenured faculty who are senior. I added in the procedure document something about methodologies. However, faculty committee members in the past have been selected based on knowledge (e.g,, retaliation and employment law, disciplinary experts even if outside of UCCS, understanding of disciplinary standards, etc.
Conf	L10	"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." In practice, we have started using signed confidentiality statements. This is listed on page 10. What else would you recommend?
GF	L12	"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."
GF	L2B	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. We have added language that complaints not made in good faith be determined by CMRSCA and provided in report to RIO/DO for referral to academic supervisor. It is not recommended to add to definition of RM provided in APS.
Rec Ret	B3	3. Page 8, First Paragraph. Is there a university policy on how long records must be maintained and what records must be maintained? If someone did a paper 10 years ago, the paper has been published and there is no intention to use the data or conduct research in an area again so they discard the records it is really fair to impose a presumption of research

		misconduct??? ABSOLUTELY NO, especially in the absence of a policy or law requiring maintenance of those records. This is an extremely unfair provision. If this is maintained, there needs to be a policy on research record retention and prior research needs to be grandfathered. The University has a records retention policy document that does explain how long records must be maintained. However, in this situation we are concerned with destruction of records after a respondent has been notified of a RM allegation. We have clarified this intent in the document.
Rec Ret	B4	4. Relating to the prior comment {about record retention}, is there a statute of limitations. In civil and criminal actions statute of limitations require that charges be levied or a civil suit filed within a certain time period. The purpose is the unfairness caused to the accused due to fading memories, loss of evidence, etc. Given the stakes at issue for one's career, seems that would be appropriate here in the absence of allegations of fraud or intentional acts. See note on record retention. There is not a statute of limitation on allegation but evidence may not be sufficient to make a finding or to have an inquiry/investigation. The committee would need to determine.
Rep RM	L3	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? This is a system APS definition. It is trying to state that all people are responsible for high integrity on campus and if you have good cause for reporting misconduct you should do so. But this would require a change at system level as mentioned in the comment.
Vote PolC	L5	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. Would this require a change in the Faculty Assembly by-laws which says regular committees's bylaws are approved by representative assembly? Why would this committee be different? Should the proposed document be separated into by laws for cmrsca versus procedures/definitions/policy for campus?
Wrd	B7a	7. Page 16, Paragraph C.1, Paragraph 3. The initial inquiry is met to be analogous to a grand jury investigation of probable cause. May make sense to say this is a non-adversarial proceeding, but saying it does not make it so. It will be an adversarial proceeding because the stakes are very high. Let's not pretend that it is not. We are using the legal definition of 'non-adversarial.' I've added a footnote to define this. Legal counsel recommends we keep this language.
Wrd	B7b	The first sentence, last clause, on the top of page 17 does not make sense. Do not think additional research misconduct would arise during the investigation. I think this is intended to refer to discovery of prior potential misconduct. Does this refer to the sentence on page 17 right before section 3. Protection of evidence? Can be reworded. This sentence is trying to state that other potential misconduct may be discovered beyond the initial allegation(s) during the inquiry phase and that the respondent needs to be told about these. Have reworded (page 19 of new document).