

Proposed resolution to move forward to the Faculty Senate from the Benefits Committee

(approved at the February 1, 2017, Benefits Committee meeting)

### Background

The Project Grant Award is one of three Faculty Development Programs available to support faculty at NKU. Funds provided by a Project Grant Award can be used in conjunction with Sabbatical Leaves and/or Summer Fellowships, or they can be used to fund other faculty-led projects that cannot be covered using funds from department budgets. According to section 11.3.3 of the Faculty Handbook, Project Grant funds are to be spent between July 1 and June 30 of the following year. This timing creates two issues. First, there is a mismatch with the timing of the Summer Fellowship Award, which begins earlier: on the first Monday after spring commencement (Faculty Handbook section 11.2.6). Second, the Project Grant timing makes it awkward to involve students in projects. One popular use of the Project Grant Award is to pay students for their participation. In order to engage students as deeply as possible, it is desirable to involve them during the summer months; however, it is difficult for students to commit to a project if funding does not become available until July 1.

In the last couple of years, the Provost has made Project Grant Award funds available at the same time that Summer Fellowships begin, which addresses both of these timing issues. Anecdotal feedback from Project Grant recipients is that this early awarding of funds works well. Still, the discrepancy between the official grant funding timeline laid out in the Faculty Handbook and the actual timeline makes it difficult for faculty members to write clear project descriptions in their applications.

### Recommendation

The Faculty Senate Benefits Committee recommends that the recent policy of making Project *Grant* funding available at the beginning of the summer be formalized by making a small change to section 11.3.3 of the Faculty Handbook, as detailed below.

Current wording (text to be removed in italics). Normally the maximum amount for a faculty project grant will be the amount of a faculty summer fellowship. Especially worthy projects, however, may be funded with additional amounts. *The period for expending grant funds is limited to July 1 of the calendar year in which the award is made through June 30 of the following calendar year.*

Proposed new wording (new text in boldface). Normally the maximum amount for a faculty project grant will be the amount of a faculty summer fellowship. Especially worthy projects, however, may be funded with additional amounts. **Grant funds will be made available on May 1 of the calendar year in which the award is made and must be spent before June 30 of the following calendar year.**

**Faculty Senate Discussion Item**  
**Graduate Programs Chair, Julie Olberding**  
**February 27, 2017**

**Exceptions and Course Age Reinstatement**

Exceptions to the rule may be granted by reinstating courses older eight years.

- The student and the graduate program director must prepare a reinstatement plan that is reviewed and approved by the vice provost for graduate education, research & outreach.
- This plan must include a special examination, portfolio presentation or other measurable demonstration of knowledge consistent with current course content.
- Once the student successfully complies with all of the elements in the reinstatement plan, the course is considered valid ~~for an additional two years.~~ *for the length of time identified in the reinstatement plan. A course may only be reinstated one time.*
- No more than 25% of the courses required for a degree may be reinstated.
- Only courses in which a grade of *B* or higher is earned can be reinstated.

Individual programs may set more stringent standards.

## MEMORANDUM

To: Faculty Senate  
From: PCC  
Re: Proposal For Biennial RPT Review Discussion Item  
Date: February 2, 2017

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At its meeting of Feb 2, 2017, PCC voted to recommend that the frequency of RPT review should generally be changed from annual to biennial. Accordingly, PCC recommends that Faculty Senate adopt the following amendments to the NKU Faculty Handbook, which would implement such a change. Also attached to this document is a statement from the Provost clarifying that tenure-track faculty members currently in their second, third, or fourth probationary year would each be provided the individual option of continuing with annual—rather than biennial—review, should these amendments be adopted.

### Current Faculty Handbook

At present, Title 2 of the NKU Faculty Handbook (on “Contracts”) requires that RPT review must be annual. Specifically, Section 2.2 of the Faculty Handbook states that “Ordinarily an initial appointment will be for one year for all ranks. If a person is appointed to the faculty during an academic year, the term of his/her contract will end at the end of that academic year.” Similarly, for reappointment of probationary tenure-track assistant professors, Section 2.3.2 of the Faculty Handbook states that “Reappointments of an assistant professor will be for one-year terms, provided, however, that the total time in probationary appointments, including university-recognized credit for prior service, does not exceed seven years.” Section 2.5 of the Faculty Handbook then clarifies that upon expiration of each one-year term, a probationary tenure-track faculty member may not be reappointed for another term except via the ordinary RPT Process. Accordingly, RPT must take place each year for a probationary tenure-track faculty member to be reappointed to a subsequent one-year term. Finally, Section 2.5 implicitly reaffirms that RPT review must be annual for probationary tenure-track faculty members by conflating “contracts” with “years.” (“If a person does not receive tenure before the end of the sixth year of probationary contracts, including university-recognized credit for prior service, the seventh contract shall be a terminal contract.”). The pertinent handbook provisions, in full, currently read as follows:

#### **2.2. INITIAL APPOINTMENT—PROBATIONARY**

Ordinarily an initial appointment will be for one year for all ranks. If a person is appointed to the faculty during an academic year, the term of his/her contract will end at the end of that academic year.

## **2.3. REAPPOINTMENT—PROBATIONARY**

### **2.3.1. INSTRUCTOR**

An instructor who is reappointed shall receive a one-year contract, which may be renewed. No person shall hold the rank of instructor for more than seven years. If an instructor does not qualify for promotion before the end of his/her sixth year in rank, including any University-recognized credit for prior service, the contract for the seventh year shall be a terminal contract (see Section 2.5, Probationary Contracts). Non-tenure-track, renewable faculty holding the rank of instructor before the adoption of this Handbook (1994) may be reappointed at this rank beyond the seven year limit.

### **2.3.2. ASSISTANT PROFESSOR**

Reappointments of an assistant professor will be for one-year terms, provided, however, that the total time in probationary appointments, including university-recognized credit for prior service, does not exceed seven years. If an assistant professor does not receive tenure before the end of the sixth year of probationary appointments, including university-recognized credit for prior service, the contract for the seventh year shall be a terminal contract (see Section 2.5, Probationary Contracts).

## **2.4. PART-TIME FACULTY**

The term of employment for part-time (non-tenure-track or non-tenured) faculty shall not exceed one academic year.

## **2.5. PROBATIONARY CONTRACTS**

Faculty who have probationary contracts do not have tenure. Reappointment to a probationary contract is conditioned upon successful performance and recommendation for reappointment as specified at Sections 3, Evaluation; 4, Reappointment; 5, Promotion; 6, Tenure, and 7, Appointment, Promotion and Tenure for Librarians. A person may not hold a probationary appointment for more than seven years, including university-recognized credit for prior service. If a person does not receive tenure before the end of the sixth year of probationary contracts, including university-recognized credit for prior service, the seventh contract shall be a terminal contract.

## **Proposed Amendments to Implement Biennial Review**

To implement biennial review, the one-year terms in Sections 2.2 and 2.3.2 would need to be changed to two-year terms, and the language in Section 2.5 would need to be amended to clarify that a person who does not receive tenure by their sixth year shall receive a terminal contract in her seventh year, rather than in her seventh contract. (Because non-tenure-track instructors and part-time faculty members are not subject to RPT, Sections 2.3.1 and 2.4 would not need to be amended). Thus, to implement biennial RPT review, the following amendments to the 2016 Faculty Handbook would be needed:

- (1) On Faculty Handbook Page 24, Section 2.2, the phrase “one year” is replaced by the phrase “two years,” and the phrase “at the end of that academic year” is replaced by the phrase “at the end of the following academic year.”

- (2) On Faculty Handbook Page 24, Section 2.3.2, the phrase “one-year terms” is replaced by the phrase “two-year terms,” and the phrase “shall be a terminal contract” is replaced by the phrase “shall be a one-year terminal contract.”
- (3) On Faculty Handbook Page 25, Section 2.5, the phrase “the seventh contract shall be a terminal contract” is replaced by the phrase “the contract for the seventh year shall be a one-year terminal contract.”

If these amendments were made, the language quoted above would then read as follows:

## **2.2. INITIAL APPOINTMENT—PROBATIONARY**

Ordinarily an initial appointment will be for ~~one-year~~ two years for all ranks. If a person is appointed to the faculty during an academic year, the term of his/her contract will end at the end of ~~that~~ the following academic year.

## **2.3. REAPPOINTMENT—PROBATIONARY**

### **2.3.1. INSTRUCTOR**

An instructor who is reappointed shall receive a one-year contract, which may be renewed. No person shall hold the rank of instructor for more than seven years. If an instructor does not qualify for promotion before the end of his/her sixth year in rank, including any University-recognized credit for prior service, the contract for the seventh year shall be a terminal contract (see Section 2.5, Probationary Contracts). Non-tenure-track, renewable faculty holding the rank of instructor before the adoption of this Handbook (1994) may be reappointed at this rank beyond the seven year limit.

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## ADDENDUM

### Provost's Answer To PCC Question About Transition To Biennial RPT

**From:** Sue Ott Rowlands  
**Sent:** Thursday, January 19, 2017 6:51 PM  
**To:** Kenneth Katkin <[katkink@nku.edu](mailto:katkink@nku.edu)>  
**Subject:** Re: PCC Question About Biennial RPT

Thanks, Ken. Great question. Please see my answer in ALL CAPS below. Sue

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From: Kenneth Katkin <[katkink@nku.edu](mailto:katkink@nku.edu)>  
Sent: Thursday, January 19, 2017 6:44 PM  
Subject: PCC Questions About Biennial RPT  
To: Sue Ott Rowlands <[sottrowlands@nku.edu](mailto:sottrowlands@nku.edu)>

After you left today's PCC meeting, we took up the proposal to change the frequency of RPT from annual to biennial. While I had been optimistic that we might bring that proposal to a vote today, it got derailed by a question that some members were hoping to have answered before they vote. I am forwarding this question to you, in hopes that you can address it, either at the next PCC meeting or by return email.

- (Q) For untenured faculty members already in their second, third, or fourth tenure-track years now: would such faculty members have the option to continue with annual—rather than biennial—RPT review during the next three years, if they so choose? (This option was not contemplated in the language I drafted for PCC's consideration today, but some PCC members would like it to be available).
- (A) YES, I COULD ISSUE A FORM TO ALL TENURE TRACK FACULTY ASKING THEM TO STATE THEIR PREFERENCE: 1) CONTINUE UNDER THE ANNUAL REVIEW PROCESS UP THROUGH THE 6TH YEAR TENURE REVIEW, 2) SWITCH TO THE BIENNIAL REVIEW SCHEDULE (WE WOULD NEED TO SPECIFY MANDATORY REVIEW YEARS FOR EACH FACULTY MEMBER CHOOSING THIS OPTION). THESE DECISIONS WOULD THEN BE COMMUNICATED TO CHAIRS AND DEANS AND PLACED IN THE FACULTY MEMBER'S OFFICIAL FILE.**



## MEMORANDUM

To: **Faculty Senate Discussion Item**

From: PCC

Re: **Statement of Solidarity – We Are NKU** (Proposed by Profs Kirsten Schwarz, John Alberti, Sharmanthie Fernando, Yaw Frimpong-Mansoh, Miriam Kannan, Ihab Saad, Christopher Wilkey).

Date: February 16, 2017

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The PCC unanimously recommends that Faculty Senate adopt the following resolution, which was presented to PCC by the NKU faculty members listed above:

*On January 27, 2017, by Executive Order 13769, the US government sought to suspend entry into the United States by nationals of seven Muslim-majority nations, and to bar entry by Syrian refugees. This Executive Order would bar entry of students, faculty members, or visiting scholars and researchers from any of the eight named countries.*

*As a public institution committed to promoting the free and open expression of diverse perspectives and opinions, Northern Kentucky University ordinarily does not—and should not—adopt particular positions on contested political issues. However, as recently noted by [President Lee Bollinger of Columbia University](#), “it is also true that the University, as an institution in the society, must step forward to object when policies and state action conflict with its fundamental values, and especially when they bespeak purposes and a mentality that are at odds with our basic mission.” [Bard College President Leon Botstein](#) has similarly called upon “[t]he presidents of our colleges and universities [to] defend the principles that have enabled institutions of higher education to flourish. These are freedom and tolerance, and openness to individuals no matter their national origin or religion.”*

*On behalf of the General Faculty of Northern Kentucky University, the Faculty Senate resolves that the travel ban contemplated by Executive Order 13769 conflicts with our university’s institutional values and is at odds with our basic mission. The [NKU Fuel The Flame \(2013-18\)](#) document, which sets forth our mission and values, identifies a key component of our mission as “preparing outstanding graduates for a global society.” To achieve this objective, we “promote a culture that fosters and celebrates . . . inclusiveness, diversity, and global awareness in all dimensions of our work.” We believe that “[d]iversity, inclusion, and equity are key components to achieving excellence.” To attain our primary goal of Student Success, we employ the following means to promote inclusive excellence and global awareness:*

- Infuse global and multicultural perspectives into the curriculum and co-curricular programs;
- Increase diversity among the students, faculty, and staff;
- Expand international educational experiences; and
- Grow international student enrollment.

The same themes of inclusion and non-discrimination are echoed in other policy documents at NKU. The [NKU Values & Ethical Responsibilities Statement \(2016\)](#), for example, reaffirms that “NKU is committed to tolerance, inclusion and respect for others, regardless of differences, [and] . . . seeks to foster positive campus change through greater diversity, equity, inclusion and accountability.” The same Statement also clarifies that “Northern Kentucky University does not discriminate based on national origin, race, color, age, gender, gender identity, gender expression, sexual orientation, religion, physical or mental disability, genetic information, pregnancy, and Uniform Service or veteran status. . . .” Similar statements appear in Section 16.11 of our [NKU FACULTY POLICIES AND PROCEDURES HANDBOOK](#); in the [NKU Harassment Avoidance Policy \(2012\)](#); and in the [NKU Affirmative Action/Equal Opportunity Policy \(PDF\)](#). On January 31, NKU President Geoffrey Mearns publicly reaffirmed our own university’s commitment to these long-held values and strategies.

Faculty bodies and administrators at many American universities have decried the travel ban for undermining the continuing commitment of American academia to remain open to the international exchange of people and ideas. Speaking on behalf of more than 600 universities, the [American Council on Education \(ACE\)](#) recently proclaimed that “[i]nternational exchange is a core value and strength of American higher education. Moreover, our nation’s welcoming stance to scholars and scientists has benefited the U.S. through goodwill and a long history of scientific and technological advances that have been essential to the economic growth our country has experienced for decades.” More pointedly, [the Association of American Universities \(AAU\)](#), on behalf of 62 leading research universities, recently “urged the Administration, as soon as possible, to make clear to the world that the United States continues to welcome the most talented individuals from all countries to study, teach, and carry out research and scholarship at our universities.”

In temporarily enjoining implementation of the travel ban, the US Court of Appeals noted that “the teaching and research missions of [public] universities are harmed by the Executive Order’s effect on their faculty and students who are nationals of the seven affected countries. These students and faculty cannot travel for research, academic collaboration, or for personal reasons, and their families abroad cannot visit. Some have been stranded outside the country, unable to return to the universities at all. The schools cannot consider attractive student candidates and cannot hire faculty from the seven affected countries, which they have done in the past. . . . [Public universities] have a mission of “global engagement” and rely on such visiting students, scholars, and faculty to advance their educational goals.”



## **RESOLUTION**

*Today, in accordance with Northern Kentucky University's core values of inclusiveness and nondiscrimination, NKU faculty [and staff] resolve to stand with all members of the NKU community, of all backgrounds, including: race, gender identity, sexual orientation, religion, immigration status, and national origin.*

*We are committed to providing all our students, faculty and staff with a safe and welcoming environment, and ensure their continued ability to thrive on our campus.*

*We condemn all acts of violence and bias against any religion, and stand in support of those of all faiths, belief systems, races, ethnicities, nationalities, political affiliations, gender expressions or sexual orientation. In so doing, we reaffirm our deep commitment to the freedom of speech of all community members, including the freedom to express political or religious opinions of all varieties. We also resolve, however, never to tolerate acts of discrimination, violence, bias, or hate against any individual member of our university community.*

## **APPENDIX**

### **Documents Cited in Draft Resolution**

#### **NKU Values & Ethical Responsibilities Statement (2016)**

##### **CORE VALUES**

The NKU community is committed to these core values:

- Excellence
- Integrity
- Inclusiveness
- Innovation
- Collegiality

As a reflection of these core values, NKU Community Members strive to behave ethically, and with integrity and common sense, at all times. University community members seek to fulfill obligations towards students, co-workers and other members of the university community with honesty and transparency, and to behave according to the highest ethical and professional standards of conduct. NKU is committed to tolerance, inclusion and respect for others, regardless of differences. All members of the NKU community strive to treat others with professional courtesy and civility, regardless of position or status, and to work cooperatively with others. University community members seek to promote equality and collaboration among faculty, staff and administrators. NKU provides equal access to programs, facilities and employment; and seeks to foster positive campus change through greater diversity, equity, inclusion and accountability.

##### **Preserve Academic Freedom and Meet Academic Responsibilities**

Academic freedom is essential to NKU's mission. University community members are expected to: Promote academic freedom, including the freedom to discuss relevant matters in the classroom, with fellow NKU community members, and with the public. Academic freedom includes the freedom to explore all avenues of scholarship, research and creative expression, to participate in the shared governance of the University, and to speak and write as a public citizen without institutional restraint.

##### **NON-DISCRIMINATION STATEMENT**

Northern Kentucky University does not discriminate based on national origin, race, color, age, gender, gender identity, gender expression, sexual orientation, religion, physical or mental disability, genetic information, pregnancy, and Uniform Service or veteran status in its education programs, activities, employment, daily operations or admissions policies, in accordance with all applicable federal, state and local laws. NKU will not tolerate retaliation against any individual who makes a good faith report of a violation.

***EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION***

Northern Kentucky University reaffirms its commitment to the principles of equal opportunity and affirmative action. In compliance with equal opportunity and affirmative action state and federal laws and as a matter of institutional policy, the University will not engage in or tolerate discrimination against individuals in any of its programs and activities on the bases of race, color, religion, gender, national origin, age, sexual orientation, disability, or veteran's status.

Further, where required by law, the University will take affirmative action in support of equal employment opportunity and to foster an intellectual and social atmosphere that reflects the broad range of human diversity.

[NKU Affirmative Action/Equal Opportunity Policy \(PDF\)](#)

**A-2.1 Affirmative Action/Equal Opportunity**

Northern Kentucky University is committed to building a diverse faculty and staff for employment and promotion to ensure the highest quality of work force and to foster an environment that embraces the broad range of human diversity.

The university is committed to equal employment opportunity, affirmative action, and eliminating discrimination. This commitment is consistent with an intellectual community that celebrates individual differences and diversity, as well as a matter of law.

Discrimination against any individual based upon protected status, which is defined as age, color, disability, gender, national origin, race, religion, sexual orientation, or veteran status, is prohibited. The university will provide equal opportunity to all employees in regard to salaries, promotions, benefits and working conditions and will monitor these areas to ensure that any differences which may exist are the result of bona fide policies and procedures and are not the result of illegal discrimination.

## NKU Harassment Avoidance Policy (2012)

### POLICY STATEMENT:

#### Definitions:

Harassment is defined as the act of or instances of harassing, tormenting, pestering, troubling repeatedly or persecuting.

Harassment conduct includes, but is not limited to:

1. Epithets, slurs, negative stereotyping, and threatening, intimidating or hostile acts relating to race, color, religion, gender, sexual orientation, national origin, age, disability or veteran status.
2. Written or graphic material circulated in the workplace by any means that creates a hostile or offensive work environment toward an individual or group of individuals because of their race, color, religion, gender, sexual orientation, national origin, age, disability or veteran status.

#### Policy Statement:

Northern Kentucky University (NKU) is committed to providing a work environment free from all forms of discrimination including harassment on the basis of race, color, religion, gender, sexual orientation, national origin, age, disability and veteran status. Such harassment is prohibited and will not be tolerated.

Threats or acts of violence against employees, students, vendors and customers will not be tolerated. Any person who threatens to commit or engages in a violent act on university property, against a university employee or at a university event or function, may be removed from the premises as quickly and safely as possible, and must remain off university premises pending the outcome of an investigation. The Office of Human Resources and University Police will be notified and will investigate any incidences as needed.



Dear Colleagues:

Three years ago, we adopted a strategic plan, Fuel The Flame, which is guiding our University to our 50th anniversary in 2018.

The paramount goal of that plan is to achieve student success by providing a supportive, student-centered educational environment that promotes academic success, global awareness, and timely graduation.

Within that goal, we committed to promoting inclusive excellence and global awareness by:

- Infusing global and multicultural perspectives into the curriculum and into co-curricular programs;
- Increasing diversity among students, faculty, and staff;
- Expanding international educational experiences; and
- Growing international student enrollment.

Since adopting the plan, we have made progress towards achieving our collective goal.

Today, notwithstanding some recent developments regarding federal immigration policy, I send this message to reaffirm our commitment to this goal and these strategies. As an inclusive university community, we will continue to support all of our students, faculty, and staff, including those people who may feel particularly anxious at this time. We will continue to follow these developments, and we will provide appropriate support and assistance.

If you need such assistance, please contact Dr. Francois LeRoy, Executive Director of the Center for Global Engagement and International Affairs, at [leroy@nku.edu](mailto:leroy@nku.edu).

Thank you for your commitment to inclusiveness, which is a core value of our University.

Sincerely,

Geoffrey S. Mearns  
President

## AAU URGES QUICK END TO ADMINISTRATION ORDER BARRING RETURNING STUDENTS AND FACULTY

Following is a statement by [Association of American Universities](#) President Mary Sue Coleman.

We recognize the importance of a strong visa process to our nation's security. However, the administration's new order barring the entry or return of individuals from certain countries is already causing damage and should end as quickly as possible. The order is stranding students who have been approved to study here and are trying to get back to campus, and threatens to disrupt the education and research of many others.

We also urge the Administration, as soon as possible, to make clear to the world that the United States continues to welcome the most talented individuals from all countries to study, teach, and carry out research and scholarship at our universities. It is vital to our economy and the national interest that we continue to attract the best students, scientists, engineers, and scholars. That is why we have worked closely with previous administrations, especially in the wake of 9/11, to ensure our visa system prevents entry by those who wish to harm us, while maintaining the inflow of talent that has contributed so much to our nation.

Other countries have set the goal of surpassing the United States as the global leader in higher education, research, and innovation. Allowing them to replace this country as the prime destination for the most talented students and researchers would cause irreparable damage, and help them to achieve their goal of global leadership

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*Founded in 1900, the [Association of American Universities](#) comprises [62 distinguished institutions](#) that continually advance society through education, research, and discovery. Our universities earn the majority of competitively awarded funding for federal academic research, and are improving human life and wellbeing through research and by educating tomorrow's visionary leaders and global citizens. AAU members collectively help shape policy for higher education, science and innovation; promote best practices in undergraduate and graduate education; and strengthen the contributions of research universities to society.*



## ACE Letter to Homeland Security Secretary on Maintaining the United States as the Destination of Choice for Students, Scholars

January 31, 2017

The Honorable John F. Kelly  
Secretary of Homeland Security  
Washington, DC 20528

Dear Secretary Kelly,

I write on behalf of the undersigned higher education organizations to congratulate you on your confirmation as Secretary of the Department of Homeland Security (DHS) and to offer our assistance with challenges that the Department faces in connection with international students, faculty and scholars at U.S. institutions of higher education.

We support efforts to enhance the nation's security. We also believe that it is in our collective interest to ensure that the United States remains the destination of choice for the world's best and brightest students, faculty and scholars.

The roughly one million international students that attend U.S. colleges and universities add to this country's intellectual and cultural vibrancy, and they also yield an estimated economic impact of \$32.8 billion and support 400,000 U.S. jobs, according to recent estimates.

International students and scholars have served America well throughout our history. These individuals enrich our campuses and the country with their talents and skills. The overwhelming majority return home as ambassadors for American values, democracy and the free market.

Steps intended to protect national security may inadvertently hamper these exchanges. This would only deprive our nation of one of its best tools for global scientific and economic preeminence and extending democratic values and cultural understanding throughout the world, making us more susceptible to the distortions and myths of extremist organizations and movements.

Unfortunately, even temporary restrictions can be damaging. President Trump's executive order, "Protecting the Nation from Foreign Terrorist Entry into the United States," has created uncertainty and fear across the country and on our campuses, particularly among students, faculty and scholars from the affected countries, as well as others who worry the restrictions may expand to other countries.

We are concerned about the problematic implementation of the 90-day freeze on visas, such as cases of people with valid visas being turned away. We fear the chilling effect this will have on the ability of international students and scholars to continue to see the U.S. as a welcoming place for study and research.

The executive order contains language indicating that DHS has some flexibility in implementing it. We thank you for exercising that authority in the case of lawful permanent residents (“green card” holders). We urge you to continue to use this discretion whenever possible for students and scholars who clearly pose no threat.

We are eager to meet with you and your staff at your earliest convenience to discuss our specific concerns and to help you and the Department as you carry out your important duties.

We are confident that it is possible to create policies that secure our nation from those who wish to harm us, while also welcoming those who seek to study, conduct research and scholarship, and contribute their knowledge and talents to our nation’s higher education institutions, economy and overall security. And that will be our goal in working with you and your team on this issue.

Sincerely,  
Molly Corbett Broad  
President, American Council on Education (ACE)

## NKU FACULTY SENATE RESOLUTION ON GAG ORDER

Approved by a vote of the Faculty Senate on February 27, 2017

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**Be it resolved that the Faculty Senate of Northern Kentucky University respectfully disagrees with the University's efforts to obtain a gag order to prohibit our student Jane Doe from talking with reporters about the university's response to her campus sexual assault and recommends that the University, in the future, not seek to prohibit students from talking with the media about matters having to do with the University and its policies.**

### **BACKGROUND:**

*(Included for explanatory purposes, not voted on by Faculty Senate).*

On August 26, 2016, NKU asked a federal district court to enter a "gag order" against one of our students. During her first semester at NKU in Fall 2013, this student—known pseudonymously as "Jane Doe"—was sexually assaulted by another NKU student. She reported the incident to the university, which investigated her claim. Following a hearing that was conducted pursuant to established university policies, a three-person panel consisting of one faculty member, one staff member, and one student determined by a preponderance of the evidence that the male student had performed "nonconsensual sexual intercourse" on Jane Doe. At the panel's recommendation, the male student was suspended for one semester and ordered to stay away from Jane Doe. Jane Doe alleges that the male student did not subsequently stay away from Jane Doe, though the University denies this allegation.

Eventually, Jane Doe sued the university under Title IX of the Civil Rights Act of 1964, as amended. Jane Doe's lawsuit is currently pending in United States District Court. Before and since filing this lawsuit, both on-campus and off, Jane Doe and her attorney have talked about this lawsuit and the underlying events that led to it, and seemingly have sought to generate news coverage of the case. The case has been covered by the *Cincinnati Enquirer*, the *Northern Kentucky Tribune*, and *The Northerner*.

On August 26, 2016, in response to Jane Doe's lawsuit, NKU asked the federal district court presiding over the case "to grant a gag order prohibiting [Jane Doe] from any further communication with the press regarding the merits or allegations of this case. . . . "The University told the court that without such a gag order, news coverage of Jane Doe's statements would make it difficult to seat an unbiased jury in the case. The University also told the Court that it would be unfair to allow the plaintiff to talk about the case with reporters while the University believes that its own obligation to protect student privacy precludes it from doing so. On October 18, 2016, U.S. District Judge William O. Bertelsman denied the University's request for a gag order against Jane Doe and her attorney, and also denied the University's related motion to "seal" (i.e. keep secret) transcripts of depositions in the case. Judge Bertelsman's decision was published in a written Order on October 24, 2016.

The Faculty Senate takes no view on the legal issues in the case or on the underlying facts, except to the extent those facts are summarized above. However, the Faculty Senate is gravely concerned that the University's decision to seek a gag order against one of our students cannot be reconciled with some of the basic values of our university community.

### **Freedom of Speech**

As amended by the Board of Regents in May 2016 following a long and inclusive vetting process, the [NKU Values & Ethical Responsibilities Statement](#) identifies the promotion of freedom of speech as one of our core ethical values. It provides:

University community members are expected to . . . [p]romote academic freedom, including the freedom to discuss relevant matters in the classroom, with fellow NKU community members, and with the public. . . . The freedom of speech of community members includes the freedom to express their views on matters having to do with their institution and its policies. This freedom should be accorded – and rights to it protected – because grounds for thinking an institutional policy desirable or undesirable must be heard and assessed if the community is to have confidence that its policies are appropriate.

In filing its request for this gag order, the university has sought to prevent Jane Doe from expressing her views on matters having to do with NKU and its policies. *The Faculty Senate has grave concern that this action contravenes our ethical obligation to promote the individual freedom of NKU community members to discuss such relevant matters, both with fellow NKU community members and with the public.*

Relatedly, the NKU [Code of Student Rights and Responsibilities](#) also recognizes NKU's obligation to ensure that our students enjoy the freedom of speech, both on and off campus. As approved by the NKU Board of Regents on November 21, 2012, the Code's Preamble provides:

The Code of Student Rights and Responsibilities is designed to ensure that Northern Kentucky University students shall enjoy intellectual freedom, fair and legal treatment, *the freedom of speech both on and off campus*, freedom of press, the right of peaceable assembly, the right to petition for redress of grievances, the right to a fair hearing of charges made against one, and the right to responsible participation in the university community. Rights imply responsibilities; therefore members of the University community must show both initiative and restraint. The Code is designed neither to be exhaustive nor to encompass all possible relationships between students and the institution. This document is endorsed by the Student Government Association, Faculty Senate, Staff Congress and University Administration, and approved by the Northern Kentucky University Board of Regents. The Code is not rigid or unchangeable. As the relationship between students and the University continues to grow, it may be necessary to modify the Code.

The Faculty Senate believes that the university's decision to seek a judicial gag order is intended improperly to interfere with the right of an NKU student, Jane Doe, to enjoy "the freedom of speech both on and off campus."

## Transparency and Accountability

NKU's Mission Statement identifies transparency and accountability as key components of "institutional excellence," which is another of our community's core values. Like the [NKU Values & Ethical Responsibilities Statement](#), *the University's Mission Statement is the product of a long and inclusive vetting process that involved every campus constituency*. The Mission Statement is included within the university publication entitled "[Fuel The Flame](#)," **which further elaborates on the University's aspirations and values. One of NKU's goals and values is "Institutional Excellence."** In [Fuel The Flame](#), "Institutional Excellence" is defined as follows:

Institutional excellence lays the foundation for student success. Our ability to achieve our vision rests with faculty who are passionate about **student-centered learning** and staff and administrators who are dedicated to providing outstanding service and leadership. In order to sustain and nurture this valuable resource, we will take aggressive steps to secure our financial future, improve effectiveness across all dimensions of our work, and **hold ourselves accountable to the public and others who invest in our future**.

The Faculty Senate questions whether the university's effort to suppress public discussion of our response to a campus sexual assault properly holds ourselves accountable to the public and others who invest in our future. Moreover, the Faculty Senate also questions whether the effort to silence Jane Doe reflects the passion for student-centered learning that is extolled in our Mission Statement.

## **Faculty Senate Gag Order Resolution: Q&A**

### **Q: What is going on?**

**A:** In Fall 2013, a female first-year student known pseudonymously as Jane Doe reported having been sexually assaulted by a fellow NKU student. Following an investigation and a hearing conducted pursuant to established university policies, a three-person panel consisting of one faculty member, one staff member, and one student determined by a preponderance of the evidence that the male student had performed “nonconsensual sexual intercourse” on Jane Doe. Dissatisfied with NKU’s subsequent follow-up to this finding, in January 2016 Jane Doe sued the university.

Jane Doe’s lawsuit, which remains pending, has been covered in the local press. On August 26, 2016, NKU asked the court “to grant a gag order prohibiting [Jane Doe] from any further communication with the press regarding the merits or allegations of this case. . . .” “On October 18, 2016, U.S. District Judge William O. Bertelsman denied the University’s request for a gag order. The PCC believes that the University’s decision to seek a gag order against Jane Doe cannot be reconciled with some of the basic values of our university community.

### **Q: Does the Faculty Senate have jurisdiction to take up this issue?**

**A:** Yes, the Faculty Senate Constitution authorizes us “to discuss all matters relating to the well being of the University” and to “evaluate university . . . practices and recommend such improvements as seem warranted.” In his remarks to PCC on Oct 20, 2016, President Mearns acknowledged the Senate’s right to comment on this matter, either through a formal resolution or through candid conversations.

### **Q: Why should the Senate care about this issue?**

**A:** The Statement on Collegial Governance at NKU (set forth in Appendix C of the NKU Faculty Handbook) provides that “[a]ll colleagues in the system, regardless of their respective roles as faculty or administrators, have an obligation to honor and support the decisions reached through the collegial process.” The Faculty Senate thus has a responsibility to honor and support decisions that have been reached through the collegial process, and to insist that administrators do so, as well. On Oct 20, 2016, President Mearns told the PCC that he respects the role of the faculty in upholding the values and guiding principles of the university.



**Q: What “decisions made through the collegial process” are we talking about?**

**A:** In the PCC’s view, the University’s decision to seek a gag order against a student contravenes provisions of: (1) The [NKU Values & Ethical Responsibilities Statement](#), (2) the NKU [Code of Student Rights and Responsibilities](#), and (3) the University’s Mission Statement set forth in the publication entitled “[Fuel The Flame](#).” **All three of these documents memorialize decisions that were reached by the faculty and the administration through the collegial process.**

**Q: Do those documents really say that the university should not seek a gag order against a student?**

**A:** The above-mentioned documents identify NKU’s ethical and institutional values as follows:

- **Freedom of Speech:** The [NKU Values & Ethical Responsibilities Statement](#) states that university community members must promote the freedom to express one’s views on matters having to do with our institution and its policies, both with fellow NKU community members and with the public. The NKU [Code of Student Rights and Responsibilities](#) likewise recognizes NKU’s obligation to ensure that our students enjoy the freedom of speech, both on and off campus.
- **Transparency and Accountability:** NKU’s Mission Statement identifies transparency and accountability as key components of “institutional excellence,” which is another of our community’s core values. The [Fuel The Flame](#) document promises that in order to achieve institutional excellence, “we will take aggressive steps to . . . **hold ourselves accountable to the public and others who invest in our future.**”

**After due deliberation, the PCC concluded that the university’s decision to seek a gag order was inconsistent with the statements of principle set forth in these documents.**

**Q: Isn’t a gag order needed to preserve the integrity of the judicial process in this case?**

**A:** United States District Judge William Bertelsman ruled that a gag order is not needed to preserve the integrity of the judicial process in this case. Instead, Judge Bertelsman noted that “[t]he Court draws its jurors from twenty counties having a collective population of over 300,000. If a panel of forty jurors is called, in the Court’s experience, fewer than ten would have encountered any publicity concerning this case.”

**Q: Isn't a gag order needed to protect the university against an adverse money judgment in the case?**

**A:** NKU's insurance policy will cover the cost of any adverse money judgment in this case. But even if it wouldn't: in ruling that a gag order is not needed to preserve the integrity of the judicial process in this case, Judge Bertelsman found that the court was capable of ensuring that the outcome of the case would not be affected by media coverage.

**Q: Isn't a gag order needed to protect the federal privacy rights of other students?**

**A:** Judge Bertelsman ruled that a gag order is not needed to protect the federal privacy rights of other students. In fact, a university official also invoked the need to protect the federal privacy rights of our students when he refused to answer questions posed to him in a deposition. Judge Bertelsman ruled that that the claim of need was exaggerated and the refusal to answer was improper. He therefore ordered the university to pay the student's lawyer for time spent dealing with this claim.

**Q: Does this mean that the names of NKU students (including innocent bystanders) will be published in the press in connection with reports of a campus sexual assault?**

**A:** While denying the gag order, Judge Bertelsman reaffirmed that NKU's records that might be pertinent to the litigation "may be redacted to remove student's name and other identifying information." He also directed the parties to reach an agreement that will govern (and generally prohibit) disclosure of such information. Meanwhile, although this litigation has received some media attention, no NKU students involved in the underlying incident or its investigation have been identified in any of the press coverage—even though no gag order has ever been imposed.

**Q: Isn't a gag order needed to protect the reputation of the university?**

**A:** Holding ourselves accountable and transparent to the public is one of our core values. The university should protect its reputation by responding to public criticism, not by seeking to censor or suppress it.

**Q: The Faculty Senate does not know the facts of this case. How can we comment on it?**

A: Judge Bertelsman does know the facts of the case relevant to the university's request for a gag order. He found that those facts do not justify a gag order. In light of NKU's stated ethical values, it is difficult to imagine any set of facts that could fall short of meeting the legal standard for a gag order, but nonetheless justify suppressing a student's right to speak publicly about the university's response to her campus sexual assault under our own standards.

**Q: The Faculty Senate is not a body of lawyers. How can we second-guess legal judgments that have been made by the university's lawyers?**

A: The proposed Faculty Senate Resolution takes no view on any legal issues in the case. It simply expresses Senate's concern that the University's decision to seek a gag order against one of our students cannot be reconciled with some of the basic values of our university community. The Faculty Senate is fully competent to interpret the NKU policy documents that set forth our own community's basic values.

**Q: But what if our ethical values conflict with the university's legal responsibilities?**

A: Judge Bertelsman has ruled that NKU did not have any legal responsibility to seek a gag order against Jane Doe, or any legal right to obtain one.

**Q: Is Jane Doe still a student at NKU?**

A: Yes.

**Q: Judge Bertelsman has already denied NKU's request for a gag order. He has also ordered NKU to pay some of the plaintiff's legal bills. Media coverage of NKU's request for a gag order has been uniformly negative. NKU has achieved no benefit from seeking a gag order. The University has probably learned its lesson. What does Faculty Senate hope to gain by adopting this resolution?**

**A:** The Faculty Senate is the official representative body of the General Faculty of Northern Kentucky University. By issuing this resolution, the Faculty Senate hopes:

- to formally express the sense of the faculty that the university committed a serious wrong by seeking to prevent a student from speaking publicly about the university's response to her campus sexual assault;
- to fulfill the faculty's responsibility to promote and interpret the values set forth in the NKU Values & Ethical Responsibilities Statement and other campus policy documents promulgated through shared governance processes;
- to fulfill the special role of the faculty in protecting and promoting freedom of speech (and academic freedom) on campus, which includes an obligation to speak out against censorship;
- to defend students' rights;
- to avoid communicating through silence that the faculty condones the University's efforts to censor a student;
- to reduce the chances that the university will seek to censor the speech of students or faculty members in the future.

## DOCUMENTS APPENDIX

The full text of the [NKU Values & Ethical Responsibilities Statement](#) is online at:

<<http://policy.nku.edu/content/dam/policy/docs/a-through-z-policy-finder/ValuesandEthicalResponsibilities.pdf>>.

The full text of the NKU [Code of Student Rights and Responsibilities](#) is online at:

<<http://scra.nku.edu/Infostudents/Infostudents.html>>.

The full text of the “[Fuel the Flame](#)” document is online at:

<<http://fueltheflame.nku.edu/goals.html>>.

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The full-text of NKU’s “**Motion To Enter Gag Order**,” which was filed in United States District Court on Aug 26, 2016 is online at:

<<http://www.nkytribune.com/wp-content/uploads/2016/08/08-26-16-Doc.-53-Motion-to-Enter-Gag-Order-and-to-Seal.pdf>>.

The full-text of Judge Bertelsman’s Order **denying** NKU’s “**Motion To Enter Gag Order**,” which was published on Oct 24, 2016 is online at:

< <https://www.scribd.com/document/328764045/Enq-NKU-2016-10-24-Memorandum-Opinion-and-Order>>.

The plaintiff’s original complaint that initiated the underlying Title IX lawsuit—and NKU’s response—both are available online at:

<<http://www.nkytribune.com/wp-content/uploads/2016/02/Doe-NKU-Complaint.pdf>>.

<<http://www.nkytribune.com/wp-content/uploads/2016/02/NKU-Doe-Response.pdf>>.

Judge Bertelsman’s Order to NKU to turn over documents about sexual assaults (dated Oct 27, 2016):

< <http://www.nkytribune.com/wp-content/uploads/2016/10/10-27-16-Doc.-112-Order.pdf>>.

Judge Bertelsman’s Order dismissing some of Jane Doe’s claims (dated Nov 3, 2016) is available online at:

<http://www.nkytribune.com/wp-content/uploads/2016/11/D.E.-115-Order-Granting-Motion-for-Partial-Dismissal-00754828xA9D25.pdf>

The following news articles report on NKU's request for a gag order, which was filed in United States District Court on Aug 26, 2016:

***The Northerner:***

<<http://www.thenortherner.com/news/2016/08/26/nku-seeks-gag-order-sexual-assault-lawsuit/>>.  
<<http://www.thenortherner.com/feature-on-homepage/2016/10/19/judge-denies-gag-order-sexual-assault-lawsuit/>>.

***The Cincinnati/Kentucky Enquirer:***

<<http://www.cincinnati.com/story/news/your-watchdog/2016/08/26/nku-asks-gag-order-sex-assault-lawsuit/89425004/>>.

<<http://www.cincinnati.com/story/news/your-watchdog/2016/10/24/nku-gag-order-sexual-assault-lawsuit-denied-lawyers-sanctioned/92694368/>>

***Northern Kentucky Tribune:***

<<http://www.nkytribune.com/2016/08/northern-kentucky-university-files-motion-for-gag-order-in-doe-rape-case-cites-possible-juror-bias/>>.

<<http://www.nkytribune.com/2016/10/judge-sanctions-nku-awards-fees-for-issues-related-to-bothoffs-deposition-in-jane-doe-case/>>.

<<http://www.nkytribune.com/2016/10/judges-order-in-doe-vs-nku-court-tells-university-to-turn-over-all-documents-about-sexual-assaults-on-campus/>>.

<<http://www.nkytribune.com/2016/11/bertlesman-rules-for-dismissal-of-jane-does-suit-relative-to-current-nku-officials-as-individuals/>>.



# **NKU FACULTY SENATE RESOLUTION ON PROPOSED CONCEALED-CARRY LAW**

**Approved by a vote of the Faculty Senate on February 27, 2017**

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## **BACKGROUND**

In Kentucky, currently no permit is needed to purchase a firearm, and no person is required to register a firearm. Moreover, open carriage of firearms already is lawful except in restricted areas. Public universities, including NKU, currently qualify as areas in which carriage of firearms may be restricted.

In its current session, the Kentucky Legislature is considering two proposals that would increase carriage of deadly weapons in public places. These proposals would impact NKU directly. In particular, Section 2 of H.B. 249 would amend existing KRS § 237.115(b) to provide that:

A publicly funded college, university, or postsecondary education facility shall not restrict the carrying or possession of a deadly weapon on any property owned or controlled by the institution by a person who holds a valid concealed deadly weapon license. . .

At the same time, Section 1 of S.B. 7 would amend KRS § 527.020(2) to eliminate the current system of concealed-carry licensure, and instead would authorize every lawful owner of firearms to engage in concealed carriage of those firearms. In essence, this proposal would deem every lawful gun-owner to be a person who holds a valid concealed deadly weapon license.

Against the background of Kentucky's existing law, the two current legislative proposals together would authorize almost anyone who has not been convicted of a serious crime to carry firearms—either openly or concealed—on our campus. Our university would be stripped of its existing legal authority to promulgate and enforce its own policy on deadly weapons. Neither our campus police nor anyone else would know who might be carrying firearms on campus.

## **RESOLUTION**

For the following reasons, *the General Faculty of Northern Kentucky University urges the Kentucky legislature to refrain from stripping public universities in Kentucky of our existing legal authority to establish and enforce our own campus firearms policies*, as Section 2 of H.B. 249 would do.

(1) **NKU is our workplace.** Under the two proposed bills, all private-sector workplaces (including private universities) would remain free to set their own firearms policies. In addition, many public-sector workplaces (including police stations, sheriff's offices, detention facilities, prisons, jails, courthouses, local government offices, K-12 schools and pre-schools, airports, and the Kentucky Capitol building) would remain free to set their own firearms policies. As with other public and private employers, the governing authorities of Northern Kentucky University are best situated to set an appropriate firearms policy for our workplace.

(2) **Concealed carry on campus is not needed to protect our campus from armed criminals.** NKU has its own campus police force which is capable of protecting our campus from crime. NKU has not experienced any problem with violent crime, and indeed has been recognized for its exemplary safety. The proposed measure is not needed to prevent crime.

(3) **Concealed carry on campus may threaten our financial viability.** At NKU, we have an obligation to keep our students safe. Moreover, parents pay increasing attention to “safe campus” factors when deciding where to send their children to college. We are concerned that parents would question the safety of a campus with unregulated firearms carriage, and would choose to send their children elsewhere. Any corresponding impact on student enrollment numbers would reduce our operating budget and impair our ability to carry out our basic educational mission.