



MEMORANDUM

To: Sue Ott Rowlands, Provost and Vice President for Academic Affairs
From: Matthew Zacate, Faculty Senate President
Re: Changes to section 16.9 of the Faculty Handbook (Policy on Consensual Relationships) as recommended by the Faculty Senate at its meeting of January 28, 2019
Date: January 31, ~~2018~~
2019 MZ

Starting last spring and continuing into the fall semester, upper level administrators, department chairs, and faculty members expressed a strong desire that section 16.9 of the Faculty Handbook, which addresses consensual relationships, be updated to provide clearer guidance on what constitutes appropriate faculty behavior. Motivations for this ranged from protecting students to protecting the university to protecting NKU employees, including faculty members. As such, I asked the Professional Concerns Committee (PCC) to study the issue and draft a new policy for consideration by the Faculty Senate.

My understanding is that the PCC reviewed consensual relationship policies from a number of universities. These policies ranged from banning outright all relationships to permitting, or at least not banning, any relationship. It was deemed that the former is not practicable by virtue of difficulties of building in mechanisms to make sensible exceptions and the latter does not provide adequate protection for members of the NKU community. As a result, the PCC drafted a new consensual relationships policy by maintaining a focus on these factors: protecting members of the NKU community, satisfying legal requirements, being compatible with Title IX requirements, and maintaining academic integrity. Here is some additional explanation taken from a memo from John Farrar, the PCC chair.

Opinion on consensual relationships vary across a wide spectrum, and the proposed policy represents a pragmatic compromise. There were several concerns that led PCC members to this compromise. First was the protection of individuals in the consensual relationship, particularly those with less power. Second, PCC members sought to protect the academic integrity of the University and faculty from real or perceived conflicts of interest. These policy changes try to balance the need for protection of the individual with less power with the reality that these are consensual relationships between adults. While a policy containing an outright ban on relationships between faculty and students benefits from simplicity, it was also judged to be unrealistic and unenforceable. Most PCC members recognize the potential problems with faculty-student consensual relationships, and the policy strongly discourages them.



As a result, PCC compromised on a policy which mandates reporting of relationships and the preparation of a mitigation plan. While the reporting of relationships does place an additional burden on the faculty member and the university, the benefit of bringing these relationships into the light outweighs the burden. Any real or potential conflicts of interest can be handled by the mitigation plan while allowing the university to protect the individual with less power.

It is my understanding, after talking to Joan Gates, Vice President for Legal Affairs and General Counsel, and Ande Durojaiye in his capacity as Interim Title IX Director, that the proposed policy is compatible with applicable laws and Title IX regulations, though, this should not be taken to mean that they necessarily endorse the policy.

The policy drafted by the PCC was first presented to the senate at its meeting of December 14, 2018, with the request that senators share it with colleagues in the departments and colleges they represent and solicit their feedback. The policy was discussed again at the January 28, 2019 meeting of the Faculty Senate. In the course of the discussion, a motion was made to insert two words. This motion passed, and the policy, with the wording change, was approved.

This memo concludes with the Faculty Senate's recommendation for a new Policy on Consensual Relationships (including the wording change made during the senate meeting). The recommendation is that the following text replace the existing handbook language, including a change in section title. John Farrar and I are available to meet with you if you have any questions about the proposed policy.

If I'm not mistaken, there is interest in development of a university-wide policy on consensual relationships. Faculty members involved in the drafting of the policy below were mindful of creating a policy that would be compatible with a university-wide policy, and I believe that they have succeeded in doing so. In fact, it is my hope that the policy below can serve as the model for a university-wide policy, for example, by simply using the word employee in place of faculty member.

[[Begin proposed consensual relationships policy]]

16.9 POLICY ON CONSENSUAL RELATIONSHIPS

16.9.1 GENERAL

Consensual relationships are romantic relationships and/or sexual interactions agreed to by the involved parties (even if it is a single interaction). Northern Kentucky University (NKU) is committed to maintaining a working and academic environment that fosters intellectual, professional, and personal growth free



from conflict of interest, favoritism, and exploitation. This environment is put at risk when members of the University community engage in consenting relationships that involve persons of unequal power. Consensual relationships may create actual and perceived conflicts of interest that include real or perceived favoritism or exploitation. A power differential is defined as the difference between two individuals in a relationship in terms of status, authority, or influence, particularly in, but not limited to, the university community. This policy specifically addresses consenting relationships involving faculty members with students, staff, other faculty members, supervisors, or administrators. For example, these relationships would include a student in the faculty member's class, a student in the faculty member's research group, or a staff member in the faculty member's department. A power differential could include supervision; evaluation such as for promotion or tenure or raises; authority over the other; or favoritism toward the other.

Faculty members are prohibited from knowingly entering consensual relationships in which a conflict of interest would exist because it would involve a pre-existing power differential. Non-consensual relationships are covered by the sexual misconduct policy.

16.9.2 PREEXISTING RELATIONSHIPS

This policy is not intended to apply to faculty spouses or domestic partners, as those terms are defined by NKU Human Resources, whose relationship precedes the creation of a power imbalance. Faculty members in preexisting relationships that undergo a change in status that might create a conflict of interest, e.g., one begins taking classes, are required to report the change and the potential conflict of interest to their supervisor. The supervisor and faculty member will work together to mitigate or remove the conflict of interest. In addition, the Provost, after consultation with the relevant Chair, Director, or Dean, may permit exceptions to this policy in appropriate circumstances.

16.9.3 RELATIONSHIPS INVOLVING STUDENTS

Faculty relationships with students are particularly problematic as the potential for real or perceived conflicts of interest is greater. These problems may remain whether or not the student is graded or supervised by the faculty member. For this reason, faculty relationships with students are strongly discouraged even if a conflict of interest is unlikely. Efforts by faculty to initiate relationships with their students, by whatever method, including dating apps, are prohibited.

16.9.4 RELATIONSHIPS WITH OTHER NKU EMPLOYEES

All NKU employees, including faculty members, are expected to avoid situations that present a conflict of interest, and consensual relationships in which an unmitigated conflict of interest exists are prohibited.



Faculty relationships with other NKU employees present a conflict of interest when there exists an NKU power differential.

16.9.5 REPORTING REQUIREMENTS

The faculty member, regardless of university status or role, is responsible for reporting any relationship with an individual affiliated with NKU in writing to their direct supervisor within two weeks of the initiation of the relationship, even if a single interaction, or the realization of a potential conflict of interest. It is expected that the supervisor will consult with appropriate members of the administration including the Title IX office and Human Resources to understand the potential conflicts of interest. The supervisor and the faculty member will work together to mitigate or remove the power differential and conflict of interest, if possible. This may include removing the faculty member from a committee and assigning a replacement, assigning another faculty member to supervise the student, or assigning another faculty member to handle that student's grades. This reporting obligation continues even after the relationship has ended. For instance, a faculty member must report a previous consensual relationship with one of the students in their class. In every circumstance, the effect on the student should be minimized. If it is not possible to mitigate the conflict of interest, continuation of the relationship is a violation of this policy.

The University prohibits retaliation of any kind against individuals who report consensual relationships in good faith. An NKU faculty member becoming aware of a consensual relationship involving another faculty member may report that relationship to their supervisor without retaliation. However, faculty members are not required to report in these circumstances unless they suspect the relationship is covered by mandatory Title IX or ethics policy reporting. The faculty member involved in the relationship has the obligation to report the relationship.

16.9.6 MITIGATION OF CONFLICTS OF INTEREST

The supervisor, in collaboration with the parties to the consensual relationship, the appropriate dean, HR, and the Title IX office, will produce a written mitigation plan within 10 business days of the report of the relationship.

The mitigation plan will:

- a. Provide an alternate means for managing, supervising, teaching, evaluating, and or advising the party with less power in the relationship.
- b. Give priority to the interest of the one with less power.
- c. Be in writing and signed by any NKU employee who is part of the consensual relationship.
- d. If an NKU student is a party to the relationship, the student will be notified of the mitigation plan and provided a copy.



- e. If the parties cannot agree to a mitigation plan, resolution will be handled through the Provost's office.

If it is not possible to mitigate the conflicts of interest, continuation of the relationship is a violation of this policy.

16.9.7 PENALTIES FOR VIOLATION OF THIS POLICY

Faculty members in violation of this policy will be subject to the disciplinary procedures and penalties outlined in this Handbook. Violations may include, but are not limited to, failure to timely report the relationship, unwillingness to work with the supervisor to mitigate conflicts of interest, or evaluation of the work of their partner in a consensual relationship.

16.9.8 SAFE HARBOR

It is critical that the University receive notification of consensual relationships under this policy so as to prevent conflicts of interest, favoritism, and exploitation. Unreported consensual relationships pose a significant risk to the University community. Accordingly, if a faculty member immediately notifies their supervisor in writing of the development of a consensual relationship allowed by this policy and cooperates to mitigate the effects of the consensual relationship, then a conduct/discipline investigation will not be pursued. An unreported consensual relationship will be considered a violation of this policy.

This safe harbor provision does not apply to potential violations of the sexual misconduct policy.

[[End proposed consensual relationships policy]]

