

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
COVINGTON

JANE DOE,

Plaintiff,

v.

NORTHERN KENTUCKY
UNIVERSITY, *et al.*

Defendants.

Civil Action No. 2:16-cv-00028-WOB-CJS

**THE CINCINNATI ENQUIRER, A
DIVISION OF GANNETT GP
MEDIA, INC.'S *PROPOSED*
MEMORANDUM IN OPPOSITION
TO DEFENDANTS NORTHERN
KENTUCKY UNIVERSITY,
GEOFFREY S. MEARNs,
KATHLEEN ROBERTS, AND ANN
JAMES' MOTION TO ENTER GAG
ORDER AND TO SEAL (Doc. # 53);
LES KACHUREK'S MOTION TO
ENTER GAG ORDER AND TO SEAL
RECORD (Doc. # 54); AND
DEFENDANTS NORTHERN
KENTUCKY UNIVERSITY,
GEOFFREY S. MEARNs,
KATHLEEN ROBERTS, AND ANN
JAMES' MOTION TO SEAL (Doc. #
64)**

Intervenor The Cincinnati Enquirer, a division of Gannett GP Media, Inc. ("The Enquirer"), respectfully tenders its memorandum in opposition to the following motions filed by Defendants Northern Kentucky University (NKU), Geoffrey S. Mearns, Kathleen Roberts, Ann James, and Les Kachurek (collectively "Defendants"): (1) Defendants NKU, Geoffrey S. Mearns, Kathleen Roberts, and Ann James' ("NKU Defendants") *Motion to Enter Gag Order and to Seal* (Doc. #53); (2) Defendant Les

Kachurek's *Motion to Enter Gag Order and to Seal Record* (Doc. #54); and (3) the NKU Defendants' *Motion to Seal* (Doc. # 64) (collectively "Closure Motions").

BACKGROUND

As the NKU Defendants observe in their memorandum, The Enquirer began reporting on this litigation in January, shortly after the plaintiff filed this case. (NKU Defs.' Mem. (Doc. # 53) at 4.) The subject matter of the litigation—Defendant NKU's handling of an alleged student rape—is one of great public interest and concern, as NKU is a prominent local institution of higher education. To date, The Enquirer has published three articles about the suit and the allegations underlying the plaintiff's claims. (*See* Declaration of Carl Weiser, Exs. A through C.)

In reporting on this litigation, The Enquirer has obtained information from both the public filings in this Court, and from interviews with the plaintiff and her attorney. The Enquirer has also sought comment from NKU representatives, who have declined to speak in detail about the lawsuit, or the plaintiff's allegations.

On August 26, 2016, Defendants filed their Closure Motions, asking this Court to enjoin the plaintiff and her attorneys from speaking "to the press" about this case; to seal all depositions and student records filed in this case; and to permit Defendants to file any future depositions and student records under seal. (NKU Defs.' Motion (Doc. # 53) at 1 & Def. Kachurek's Motion (Doc. # 54) at 1.) Defendants assert that closure is necessary to protect their "ability to obtain a fair trial," asserting that they are

“effectively barred from rebutting or defending against the testimony the Plaintiff and the Plaintiff’s Counsel have presented in the ‘court of public opinion’ through the press.” (*Id.* Mem. (Doc. # 53) at 1.)

On September 1, the NKU Defendants filed a Motion to Seal (Doc. # 64) certain exhibits cited in their Reply to Plaintiff’s Response to Defendants’ Motion for Partial Summary Judgment (“Reply”) (Doc. # 63). The NKU Defendants assert that the exhibits they seek to seal support their contention that a November 12, 2015 letter from NKU’s attorney is an inadmissible settlement communication. (NKU Defs.’ Reply (Doc. # 63), at 4.) They claim that the Court should seal the exhibits because they are “pre-suit FRE 408 communications,” and are thus “confidential and inadmissible, except and only to the extent they are addressed in Defendants’ Reply . . .” (NKU Defs.’ Motion to Seal (Doc. # 64) at 1.)

DISCUSSION

A. An order enjoining the plaintiff and her counsel from speaking to the press would violate The Enquirer’s First Amendment right to gather news.

Prior direct restraints on protected speech activities are subject to the “closest scrutiny.” *CBS, Inc. v. Young*, 522 F.2d 234, 238 (6th Cir. 1975). The United States Court of Appeals for the Sixth Circuit has long recognized that these protected First Amendment activities includes the press’s right to gather news, which includes the

ability to interview individuals involved in civil litigation. *See id.* (citing *Branzburg v. Hayes*, 408 U.S. 665 (1972)).

Under the law of this circuit, a prior restraint on the press's right to gather news in connection with a civil proceeding "must pose a clear and present danger, or a serious or imminent threat" to "the fairness and integrity of the trial." *CBS, Inc.*, 522 F.2d at 238, 240 (citing *Wood v. Georgia*, 370 U.S. 375 (1962) and *Craig v. Harney*, 331 U.S. 367 (1947)).¹ Accordingly, any prior restraint on speech "must be narrowly drawn[,] and cannot be upheld if reasonable alternatives are available having a lesser impact on First Amendment freedoms." *CBS, Inc.*, 522 F.2d at 238 (citing *Carroll v. President & Commissioners of Princess Anne*, 393 U.S. 175, 183 (1968)).

The Sixth Circuit's decision in *CBS, Inc.* is controlling in this case. There, several news organizations petitioned the Sixth Circuit for a writ of mandamus, seeking to have a judge of the Northern District of Ohio vacate his order barring litigants, their counsel, and their relatives, from speaking to anyone about civil litigation arising out of the 1970 Kent State University campus shootings. *Id.* at 522 F.2d at 236.

The Sixth Circuit granted the petition and issued the requested writ. *Id.* at 242. In reaching its holding, the court acknowledged the "massive publicity" surrounding the

¹ The Enquirer notes that there appears to be tension between Ky. Sup. Ct. R. 3.130(3.6) "substantial likelihood" of material prejudice standard, which governs lawyer commentary on litigation, and the "clear and imminent danger" standard set out in *CBS, Inc.* *See United States v. McGregor*, 838 F. Supp. 2d 1256, 1261-62 (M.D. Ala. 2012) (observing that the Sixth, Seventh, and Ninth Circuits have adopted the "clear and present danger" standard for prior restraints on lawyer speech, while the Third and Fifth Circuits have adopted the "substantial likelihood of material prejudice standard").

Kent State shootings. *Id.* at 240. It also noted that recent articles had reported on a commemoration of the shootings, and that the articles reported that prominent politicians had attended. There was also an article reporting that victims of the shootings had turned to the public for financial contributions to fund their lawsuits. *Id.*

With respect to whether this publicity had impacted the integrity of the trial, the court observed that it took a week to impanel a jury, and that the court had to dismiss a juror for contributing funds to help fund the plaintiffs' lawsuits. Nevertheless, the court held there was no substantial evidence "to justify the conclusion that a clear and imminent danger to the fair administration of justice existed because of publicity." *Id.*

Defendants cannot meet the high "clear and imminent danger" standard established by the *CBS, Inc.* court, and they certainly have not met that burden with their submission here. To start, Defendants do not apply the correct legal standard (nor do they even cite it in their memoranda). Indeed, the term "imminent danger" does not appear anywhere, as they refer only to a risk of juror bias being "dangerously high."

As other federal courts have recognized, however, the mere invocation of "fair trial" concerns in the civil context do not raise the same concerns as those present in the criminal context. As the U.S. Court of Appeals for the Seventh Circuit explained,

[A]lthough we rightfully place a prime value on providing a system of impartial justice to settle civil disputes, we require even a greater insularity against the possibility of interference with fairness in criminal cases. Perhaps this is symbolically reflected in the Sixth Amendment's requirement of an 'impartial jury' in criminal cases whereas the Seventh Amendment guarantees only 'trial by jury' in civil cases. The point to be

made is that mere invocation of the phrase 'fair trial' does not as readily justify a restriction on speech when we are referring to civil trials.

Chi. Council of Lawyers v. Bauer, 522 F.2d 242, 257-58 (7th Cir. 1975). The Fourth Circuit has likewise recognized differences in the concerns raised by pretrial publicity between criminal and civil trials. *Hirschkop v. Snead*, 594 F.2d 356, 373 (4th Cir. 1979) (noting the "dearth of evidence that lawyers' comments taint civil trials" at the time).

In terms of evidence, Defendants offer only one article and a few online comments by a handful of online commenters. (NKU Defs.' Mem. (Doc. # 53), Exs. 1 & 2.) Neither the article, nor the handful of online posts, is probative of whether this Court could empanel an unbiased jury.

Defendants have also failed to offer argument as to why less restrictive alternatives to gagging the plaintiff and her attorneys would not address the hypothetical impact negative pretrial publicity might have on the jury pool in this case. The U.S. Supreme Court, in the criminal context, has identified several measures to address the potential impact of negative pretrial publicity before issuing a gag order. *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 563 (1976) (identifying alternatives to prior restraint to address pretrial publicity in the criminal context as change of venue, postponement of trial, voir dire, and special jury instructions). The potential effectiveness of such measures in the civil context is manifest, and thus, the need to consider and eliminate such measures as adequate alternatives to closure is critical. But

Defendants fail to offer any argument as to why such measures would not be adequate here.

Defendants' argument that they are unable to respond in the media as a ground for issuing the gag order is unavailing. Defendants concede that they are under no legal obligation to refrain from commenting on plaintiff's individual circumstances, as she has placed those facts at issue in this litigation. (NKU Defs.' Mem. (Doc. # 53) at 3.) Defendants' voluntary decision to refrain from doing so cannot act as a reason to impair The Enquirer's right to gather news.

As for the privacy needs of nonparty students, Defendants have not offered any evidence that information about these adult students is of such a sensitive nature as to implicate legitimate privacy concerns. Moreover, the Court may address legitimate concerns about maintaining the anonymity of such students with a much more limited protective order than the outright gag order requested here.

In sum, Defendants' arguments, along with their evidentiary submission, are inadequate to overcome the "heavy presumption" against the constitutional validity of a prior restraint of the sort requested by Defendants. *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971). Because Defendants have failed to meet their burden of demonstrating the need for a gag order curtailing The Enquirer's protected right to gather news about this litigation, the Court must deny their request for an order enjoining plaintiff and her counsel from speaking to the press about this case.

B. The Enquirer has a presumptive First Amendment right to access documents filed in the public record.

“[A] court’s discretion to seal its records is bounded by a long-established legal tradition of the presumptive right of the public to inspect and copy judicial documents and files.” *Rudd Equip. Co. v. John Deere Constr. & Forestry Co.*, No. 16-5055, 2016 U.S. App. LEXIS 15270, at *7 (6th Cir. July 27, 2016). The Sixth Circuit recently explained in *Rudd Equip. Co.* that “[i]n light of the important rights involved . . . only the most compelling reasons can justify non-disclosure of judicial records.” *Id.* (internal quotations and citations omitted).

Here, Defendants seek to seal all previously filed depositions and student records, and issue a blanket protective order requiring that all future depositions and student records be filed under seal. This request is again directed at the press, as Defendants wish to prevent The Enquirer and other news media organizations from reporting on the testimony elicited during the course of discovery in this lawsuit.

As with their request for a gag order, Defendants fail to meet their high burden of demonstrating a “compelling” need to deny access to depositions and student records filed in this case. For instance, they point to one article about Defendant Kachurek’s deposition testimony, but fail to explain how that one article justifies sealing Kachurek’s deposition, and every other deposition in this case. Indeed, the fact that the public already has had the opportunity to review the transcript precludes a finding that sealing the transcript will prevent whatever prejudice Defendants claim will result from

the dissemination of its content. Moreover, it is difficult (if not impossible) to believe that one article about a court deposition in a civil trial will be so widely read by potential jurors as to have a prejudicial impact on the fairness and integrity of the trial in this case.

Similarly, Defendants fail to demonstrate how the disclosure of Ken Bothof's deposition transcript will reveal the identities of nonparty students, or otherwise adversely impact the fairness and integrity of the trial in this case. (NKU Defs.' Mem. (Doc. # 53) at 2.) Indeed, it appears that Defendants' objected to questions designed to obtain such information, and the witness did not disclose such information.

Moreover, before denying access entirely, a court must find that sealing is the least restrictive means available to achieve the compelling government interest in preventing access to the information in question. *In re Search Warrants Issued August 29, 1994*, 889 F. Supp. 296, 301-02 (S.D. Ohio 1995) ("the right of access may be denied where the government shows (1) that a compelling governmental interest requires that the materials be kept under seal and (2) there is no less restrictive means, such as redaction, available" (citing *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984)) (internal quotations omitted)). Here, redacting any personally identifiable information in the deposition transcripts, such as names and addresses, would almost certainly address the privacy concerns raised by Defendants. But as Defendants have

offer no example of sensitive nonparty information having been revealed in a deposition transcript, it is unclear whether redaction is even necessary.

As for nonparty student records, the Court cannot issue a blanket order allowing all such records to be filed under seal without more information. Defendants complain that it would be impossible to “effectively redact” these records, which may or may not be true. (Defs.’ Mem. (Doc. # 53) at 8.) Nevertheless, Defendants ask this Court to address a hypothetical situation, rather than a specific record. And it seems highly unlikely that every document that may be deemed a “student record” would reveal sensitive or protected information necessitating an order sealing it from the public view.

Finally, with respect to the NKU Defendants’ request to seal their Motion for Partial Summary Judgment exhibits, Defendants offer no compelling justification for closure. To the contrary, the NKU Defendants have placed these communications at issue by arguing that they show that a November 12, 2015 letter is not admissible evidence under Fed. R. Evid. 408, and that one of the plaintiff’s claims fails as a result of the inadmissibility of that letter. (NKU Defs.’ Reply (Doc. # 63) at 4.)

The exhibits thus go to the merits of this lawsuit, and the public has an interest in seeing them, regardless of their admissibility as evidence. As noted by the *Rudd Equip Co.* court, “[t]he public’s focus is not only on the litigation’s result, but also on the conduct giving rise to the case.” *Id.* The November 12, 2015 letter, and the correspondence leading up to that letter, constitute the conduct plaintiff has alleged to

be wrongful in this case. Accordingly, Defendants' request to seal these exhibits must be denied.

CONCLUSION

Therefore, for the reasons set forth, The Enquirer respectfully requests that the Court **DENY** Defendants' Closure Motions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2016, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send notice of electronic filing, if applicable, to the following:

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NORTHERN KENTUCKY NKU

Intellectual Property Policy

This intellectual property policy was approved on.....and replaces all previous Intellectual Property or Patent policies and revisions. It is effective ...as approved by the Board of Regents of Northern Kentucky University.

1. Introduction

Northern Kentucky NKU (NKU) is a public institution devoted to teaching, research, service and other scholarly activities. In the course of conducting their normal scholarly activities, NKU faculty, staff, other employees and students add to the knowledge base. Some of these activities are supported by NKU from its own resources and/or by contracts or grants with outside sponsors. NKU should disseminate such knowledge for the public good. In this context, facilitating the process whereby NKU creative and scholarly works may be put to public use and/or commercial application is an important aspect of the service mission of NKU. This document defines and established the respective rights, equities and obligations of NKU and its scholars and employees to any copyrightable or patentable materials, inventions or discoveries (hereinafter referred to as intellectual property), resulting from their work. Generally speaking, ownership of patentable work is vested in the NKU. Copyrightable works are subdivided into Traditional Works of Scholarship, ownership of which remains with the Creator of the work, and NKU Works, as to which the NKU retains ownership. The revenues from intellectual property owned by NKU are distributed according to the formula set out in this policy. The income that may result from this activity should be used to assist NKU and its employees by furthering their academic roles, as required by law and NKU policy.

2. Definitions

- A. **“Invention”** shall include but is not limited to any discovery, process, composition of matter, article of manufacture, know-how, design, model, technological development, biological material, strain, variety, culture of any organism, or portion, modification, translation, or extension of these items, which is or may be patentable or which may be commercially licensable, and any mark used in connection with these items.
- B. **“Patentable Intellectual Property”** describes inventions, discoveries, and manufacturing designs that have been conceived or reduced to practice, and are novel, useful, and non-obvious, and therefore likely to be subject to protection under United States patent law. It also includes, but it not limited to, the physical embodiments of intellectual effort, such as machines, devices, apparatus, instrumentation, computer programs, and biological materials.

- C. **“Copyrightable Intellectual Property”** describes original works of authorship that have been fixed in a tangible medium of expression, including books, articles, artwork, music, dramatic works, sound recordings, software, traditional or electronic correspondence, and instructional materials (including online instructional materials), that are likely to be subject to protection under United States copyright law.
- D. **“Creator”** shall include faculty (including part-time, visiting and lecturer appointments), visiting researchers, staff, administrators, students, volunteers, any groups or combinations thereof, and any others using funds, facilities or resources of NKU as the authors, creators, or inventors of Intellectual Property.
- E. **“Traditional Works of Scholarship”** are scholarly and creative works regardless of their form, which are created by academic appointees or students, and which have not been the subject of Exceptional NKU Support or external contracts or grants. Examples of Traditional Works of Scholarship include scholarly publications, journal articles, research bulletins, monographs, books, play scripts, theatrical productions, poems, works of music and art, instructional materials, and non-patentable software.
- F. **“Exceptional NKU Support”** is financial or other support (facilities, equipment, etc.) for research and teaching activities that exceeds the norm for a faculty member or student’s research or for teaching in his or her field or department. The term does not include the use of personal office space, local telephone, library resources and personal computer equipment. The following examples define exceptional NKU support when they are applied in support of a revenue producing work. It is the responsibility of the dean or equivalent supervisor in concert with the Vice Provost of Graduate Education, Research and Outreach to evaluate situations and determine whether exceptional NKU support has occurred. Faculty members or other employees have an obligation to notify their supervisor when they believe their work will involve more than incidental use.
- i. Extended use of time and energy by the creators in creation of a work that results in a reduction in the levels of teaching, scholarship or other NKU assigned activities.
 - ii. Greater than incidental use of NKU facilities such as laboratories, studios, specialized equipment, production facilities or specializing computing resources in direct support of the work in question.
 - iii. Specifically designated NKU funds to support the work’s creation, publication, or production
 - iv. Direct assignment or commission from NKU to undertake a creative project as part of the creator’s regular appointment
 - v. Significant use of funding from gifts to NKU to support the creation of the work
 - vi. Production of the works under specific terms of a sponsored research grant or contract.
 - vii. For Online Instruction, Exceptional NKU Support includes: provision of designated technical assistance, such as audio-visual department personnel or a qualified graduate assistant, to assist development of an online course, or provision of specialized software or hardware purchased for a particular online

project, or provision of other technical services commissioned from a third party to assist with a particular online project which exceeds normal NKU support for traditional courses, or commissioned by NKU by the provision of release time or other compensation to a faculty member as an adjustment to normal assigned duties for the purpose of creating an online course, which exceeds normal NKU support for traditional courses.

G. **“NKU Works”** are materials (including Online Instructional Materials) that:

- i. have been specifically commissioned by a NKU office, and, except as expressly provided otherwise in a written agreement, include recordings (whether audio, video, audiovisual, film, or other media) of performances, presentations, talks, course materials or other educational or extracurricular activities of NKU students, faculty, staff, visitors, and/or third parties, that are made by or at the request of NKU;
- ii. have been created by NKU employees who are not academic appointees;
- iii. have been developed with Exceptional NKU Support; or
- iv. constitute Externally Funded Works.

H. **“Externally Funded Works”** are copyrightable or patentable works resulting from funds given to the NKU by external sources.

3. What is Covered

Generally speaking, ownership of patentable or potentially patentable work is vested in NKU. Copyrightable works are subdivided into Traditional Works of Scholarship, ownership of which remains with the creator of the work, and NKU Works, as to which NKU retains ownership. Trademarks, service marks, symbols, designs, slogan, and seals used to identify the services of NKU are not subject to the provisions of this Intellectual Property Policy.

A. Patentable Intellectual Property

- i. NKU owns and shall have the sole right to determine the disposition of NKU Works and Patentable Intellectual Property under this Policy, including decisions concerning patent licensing and sale. Determination of those dispositions shall take into account the interests of NKU, the public, and the Creator.
- ii. Upon becoming subject to this policy, Creators will assign all right, title, and interest in NKU Works and Patentable Intellectual Property to NKU. Creators shall disclose promptly to NKU any potentially Patentable Intellectual Property on forms made available by NKU.
- iii. NKU shall assess all disclosures submitted to it in a timely fashion, normally within 60 days, to determine whether NKU should seek patent protection for the intellectual property. NKU shall promptly notify the Creator of the intellectual property of the results of its assessment.

- iv. Distribution of revenues derived from Patentable Intellectual Property shall be distributed to all Creators in accordance with Section 6 of this policy, unless legal requirements or contractual agreements require otherwise.

B. Traditional Works of Scholarship

- i. This policy recognizes the long standing custom and understanding that faculty members own copyright to their Traditional Works of Scholarship. A member of NKU is entitled to copyright from any such Traditional Works of Scholarship. Individual work so defined is automatically exempt from the formal review procedures of this policy.
- ii. NKU retains a nonexclusive, perpetual, royalty-free license to use Traditional Works of Scholarship for noncommercial purposes.

If a Creator is unsure if a specific Traditional Work may contain Intellectual Property that would not be exempted under the terms of this Policy, they may submit an Intellectual Property Research Disclosure Form and request an expedited review to reach a determination as such. Within 30 days of receipt, a written response shall be provided stating whether or not the Traditional Work also contains Intellectual Property that is required to be disclosed under the Policy.

- iii. On-line instructional materials are considered Traditional Works of Scholarship, unless they are –
 - a) specifically commissioned by NKU from a faculty member or any other person,
 - b) created using Exceptional NKU Support, or
 - c) created by non-faculty staff within the scope of their employment, in which case they are considered NKU Works. This policy only applies to the aspects of the materials that are separable from other protected intellectual property that is incorporated into or utilized by the online materials.

C. NKU Works

- i. NKU owns and retains all rights to use and commercialize NKU Works. NKU may assign its ownership rights to NKURF so that NKURF can manage the intellectual property. Creators hereby assign all right, title, and interest in NKU Works to NKU. NKU may choose to forego or modify its ownership of a NKU Work and associated rights, through a written agreement with the Creators of the work and/or NKURF.
- ii. In the absence of contractual or legal restrictions to the contrary, and with the exceptions noted below, NKU grants Creators who are academic appointees or students' non-exclusive rights to non-commercial use and distribution of NKU Works they have authored. The rights granted Creators under this subsection shall not extend to the following NKU Works: (a) recordings of performances, presentations, talks, or other educational or extracurricular activities by or involving Creators; or (b) software authored by Creators.

D. Externally Funded Works

Externally Funded Works shall be considered NKU Works for all purposes, except that the terms of their respective sponsorship agreements or applicable laws shall take priority over this policy.

Exceptions. NKU will not hold any ownership rights in Intellectual Property to the extent that:

- i. federal or state law provides that some party other than NKU holds one or more of such rights;
- ii. the Intellectual Property related to same was produced both outside the scope of the faculty or staff member's employment or Research, and without exceptional NKU support.
- iii. the Intellectual Property related to same is a Traditional Work, unless the Traditional Work was specifically commissioned by NKU;
- iv. the Intellectual Property was produced by gratis faculty, unless the Intellectual Property was produced utilizing Exceptional NKU Support or personnel of NKU, or specifically commissioned by NKU.

In the above situations (E.ii., E.iii., and E.iv.) the work shall be deemed the property of the Creator and may be registered for legal protection and/or commercialized by the Creator at the Creator's expense.

- v. **Public Domain Preference.** The Creator, or Creators acting collectively when there are more than one, is free to place an invention in the public domain for non-commercial, academic dissemination purposes if that would be in the best interest of technology transfer, and if doing so is not in violation of the terms of any agreements that supported or governed the work. NKU will not assert intellectual property rights when Creators have placed their inventions in the public domain, but NKU does expect that the Intellectual Property be disclosed along with the Creator's request that they be allowed to disseminate the Intellectual property by placing it in the public domain.

4. Who is Covered

- A. For all employees of NKU in any capacity, full time or part time, this policy is a condition of employment.
- B. Persons who create intellectual property using NKU resources in whole or part, whether or not they have an employment relationship, student relationship, or other relationships with NKU.
- C. Students who independently create Intellectual Property arising out of their participation in programs of study at NKU without the use of Exceptional NKU Support, and that do not result from their employment by NKU, will retain the legal rights thereto ("Student

Intellectual Property”). Intellectual Property created by students through the use of Exceptional NKU Support or in connection with their employment by NKU is owned by the NKU.

A student, as a condition of enrollment, grants a perpetual, royalty-free license to the NKU to reproduce and publicly distribute, on a noncommercial basis, Student Intellectual Property such as copies of student project reports, theses or dissertations, including any computer software developed as part of the student project, thesis or dissertation

5. Authority

- A. **Overall responsibility.** The overall responsibility of this policy is vested in the Vice Provost for Graduate Education, Research and Outreach. This will include operations at the NKU level and management of activity of NKURF as related to NKU Works and Patentable Intellectual Property. The Vice Provost for Graduate Education, Research and Outreach, in consultation with Legal Affairs, is authorized, subject to NKU’s contract policy, to enter contracts for the development of NKU Works or Patentable Intellectual Property. NKU Works or Patentable Intellectual Property assigned to NKURF shall be managed by NKURF on behalf of NKU according to the policies outlined in this document.
- B. **Responsibilities of the NKU/NKURF.** NKU, in conjunction with NKURF, will be responsible for determining the feasibility of commercializing NKU Works or Patentable Intellectual Property. If such property is deemed to have commercial value, NKU will assign its rights to the NKURF and the NKURF will have the legal and financial responsibility to carry the commercialization forward. All costs, including protecting and promoting copyright or patent applications, will be paid by NKU or the NKURF. The NKURF, in conjunction with NKU, will be responsible for making decisions regarding the marketing and/or licensing of all NKU Works or Patentable Intellectual Property. In general, all licenses will include a nonrefundable license fee, patent or copyright expense reimbursement, royalty and minimum royalty payments, and a requirement of diligence and march-in rights where the licensee does not perform adequately.

The Creator of the Intellectual Property may request in writing that all NKU or NKURF rights in such NKU Works or Patentable Intellectual Property be reassigned to the Creator. To the extent the Intellectual Property is not subject to any restrictions, and provided that all other co- Creators, if any, of the subject NKU Works or Patentable Intellectual Property consent to the request, NKU or NKURF shall reasonably consider such a request. Any reassignment of the rights by NKU or the NKURF to the Creator shall be limited only to the substance disclosed in the original disclosure form officially on record with NKU and further subject to NKU reserving perpetual rights to use the subject Intellectual Property for any noncommercial purpose, such as research and other educational purposes, at no cost to NKU.

- C. **Responsibilities of the Creator.** In addition to the disclosure responsibilities set forth in Section B above, Creator will cooperate with NKU or its designee in its effort to evaluate and protect the commercial value of any NKU Works or Patentable Intellectual Property. This would include but not be limited to notifying the appropriate office of any third party interest in the property and assisting in the preparation of any legal documents required to protect the

NKU Works or Patentable Intellectual Property. The Creator will also work collaboratively with NKURF to determine the best course of action regarding the commercialization and marketing of the Intellectual Property. To ensure that NKU is aware of all such Intellectual Property, all those persons covered by this Policy are required to disclose to NKU any Intellectual Property, except those Traditional Works as defined in Section 2. When in doubt about whether or not Intellectual property may, in a reasonable opinion, have commercial value, the Creator should complete an Intellectual Property Research Disclosure Form and consult with the Office of Graduate Education, Research and Outreach about any commercial potential. Such disclosure shall occur either simultaneously with or prior to public disclosure.

- D. **Signatory Authority.** Unless otherwise designated in writing by the Vice Provost for Graduate Education, Research and Outreach, signature authority for subjects covered by this Policy shall rest solely in the Vice Provost for Graduate Education, Research and Outreach.
- E. **Intellectual Property Review Committee.** The Board of NKURF will serve as the Intellectual Property Review Committee. The Vice Provost for Graduate Education, Research and Outreach or designee will serve as the chairperson. The Board may consult with others as they see fit.

6. Revenue Distribution

A. **Royalties and Other Income.** All royalties and other income arising from NKU Works or Patentable Intellectual Property which has been assigned to NKURF shall be administered by the Vice Provost for Graduate Education, Research and Outreach on behalf of the NKURF in such a manner as it may be determined, provided that, unless otherwise agreed, no less than fifty percent (50%) of the total net proceeds (total income less expenses directly related to obtaining rights and royalties from such property) shall be paid or assigned to the Creator as income. The remainder is distributed as follows:

- 15 percent to GERO for supporting scholarly activities on campus
- 12.5 percent to the Creator's NKU department
- 12.5 percent to the Creator's NKU college
- 10 percent to NKURF

B. **Multiple creators.** In the case of multiple Creators, the Creators shall list what they believe to be the appropriate percentage contributions of each Creator at the time an Intellectual Property Research Disclosure Form is submitted. If the Creators cannot reach an agreement among themselves, the NKURF Board shall meet to evaluate the claims of all Creators and render a binding decision. The NKURF Board may rely on testimony from the Creator's Deans and Department Heads in so doing, but is not required to do so.

7. Dispute Resolution

Disputes arising over the application of this policy shall be brought to the attention of the Provost, who shall refer the matter to the NKURF Board. The committee will render a

determination in writing to the Provost within thirty (30) days of receiving the Creator's written appeal. The Committee's decision regarding disputes may be appealed in writing to the Provost within thirty (30) days of the Committee's decision. The decision of the Provost will be final.

8. Process of Disclosure

As a condition of employment or matriculation, all faculty, staff, other employees, and students of the NKU agree to comply with the policies of NKU. A copy of this Policy shall be available, electronically and in printed form, for all faculty, staff, other employees, and students. On request, a set of guidelines for reporting Intellectual Property will be made available to any faculty, staff, other employees, or student by the Office of Graduate Education, Research and Outreach.

- A. **Intellectual Property Research Disclosure Form.** Whenever a NKU faculty, staff, other employee, or student, operating under the scope of this Policy, creates or obtains research results that may have commercial value and do not fall within the scope of the exception of this Policy Section 3, the Creator shall notify the Vice Provost for Graduate Education, Research and Outreach in writing via an official Research Disclosure Form.
- i. If the Creator believes that the content of the Intellectual Property Research Disclosure Form falls within one of the exceptions of Section 3, the Creator shall mark the Intellectual Property Research Disclosure Form as such and request an expedited review.
 - ii. The Creator shall make available originals or copies of all documents and designs, including logs or research workbooks, as requested, that are necessary to support the value and scope of the Intellectual Property.
 - iii. Moreover, the Creator shall assist NKU or NKURF in obtaining and maintaining legal protection by disclosing essential information, signing applications and other necessary documents and assigning any rights to technology provided, however, that NKU or NKURF shall reimburse the Creator for any out-of-pocket expenses incurred by providing such assistance.
 - iv. **Written Response.** The Vice Provost for Graduate Education, Research and Outreach or designee shall provide a written communication to the Creator with notification of the date of receipt of the Intellectual Property Research Disclosure Form, and evaluate the merits of the Intellectual Property and the equities involved.

The decision shall convey one of three alternatives:

- a. **ELECTED.** If NKU or the NKURF Board finds potential commercial value in the Research Disclosure, NKU will notify the Creator that it has "ELECTED to Retain Title" and will move forward with marketing of the Research Disclosure. The Vice Provost for Graduate Education, Research and Outreach will apprise the Creator, in writing, of all marketing and development activities NKU has undertaken with respect to their Research Disclosure every six months. It is important to have a close working relationship between the creator and the GERO office. Creator's knowledge

of their research, and of companies active in related technologies, are key elements of the technical and market assessment for an invention and of the search for licensees. If the Creator is unsatisfied, they may appeal to the Intellectual Property Committee for a release of the invention as described in the Research Disclosure.

NKU has a contractual obligation to inform federal agencies of inventions within two months after they are disclosed to the Office of Graduate Education, Research and Outreach, to elect to retain title within two years, and to file a patent within one year of election.

If NKU elects to retain title, the creator will be eligible to apply for commercialization gap funds to further develop their intellectual property. Should budget considerations constrain fund availability faculty will be notified at the beginning of the academic year.

PENDING. NKU encourages full disclosure as early as possible in the development process. If the invention is not yet fully developed, the Vice Provost for Graduate Education, Research and Outreach or designee shall provide feedback and place the Research Disclosure in a "PENDING" status until further developments are disclosed. When a Research Disclosure is placed in PENDING status, the Office of Graduate Education, Research and Outreach shall work with the Creator to define what steps need to be taken to ready the Research Disclosure for re-evaluation. Once such steps are undertaken and new information is provided, the Office of Graduate Education, Research and Outreach shall re-activate the file and treat it as a new Research Disclosure.

- b. NON-ELECTED. If NKU or the NKURF Board finds there is not enough potential commercial value in the Research Disclosure to warrant further NKU investment, they will notify the Creator that the NKU has "Not Elected to Retain Title" and will either release title to the Federal Sponsor if so required, or offer to release title to the Creator upon receipt of their formal written request.

The Vice Provost for Graduate Education, Research and Outreach shall also notify the chairperson of the Creator's department and the appropriate dean or vice president:

- a) At the time of Research Disclosure that the disclosure of an Invention has been made; and
 - b) At the time of NOTICE TO CREATOR by providing a copy of such NOTICE and the decision therein conveyed.
- v. Release of Intellectual Property. If NKU or the NKURF Board elects to release some or all ownership rights to Creator, the Creator shall be free, subject to law and prior agreements, to proceed independently only with respect to the specific Invention disclosed.

- B. **Development of Technology.** Upon ELECTION of the Invention in the Intellectual Property Research Disclosure, the Office of Graduate Education, Research and Outreach shall make

every reasonable effort to develop the Intellectual Property. Costs for such development may be covered by grant (when allowable), departmental or central administration funds.

Development options include, but are not limited to:

- i. evaluating and processing the Invention through a patent application, or copyright registration filed by NKU or NKURF;
- ii. assigning the Intellectual Property to a patent management firm for evaluation and processing;
- iii. assigning or licensing* to a commercial firm; and
- iv. negotiating and recommending equity positions with company(s) willing to commercialize the Intellectual Property.

*The Creator(s) has first right of refusal to commercialize their invention.

9. Agreements

- A. Consulting: It is the responsibility of individual members of the NKU community to ensure that the terms of their consulting agreements with third parties do not conflict with this Policy or any of their other commitments to the NKU. Each individual should 1) make the nature of their obligations to the NKU clear to any third party for whom the individual expects to consult and 2) should inform such third parties that the NKU does have a formal Intellectual Property Policy, and further inform third parties that such Policy is available online at <http://xxxxx>. More specifically, the scope of any consulting services should be expressly distinguished from the scope of research commitments at the NKU, and should not utilize any NKU facilities or resources without first negotiating appropriate compensation for such use with the NKU. In the case of conflict between requested consulting and NKU research commitments, individuals should work with the Office of Research, Grants and Contracts to establish an appropriate Sponsored Research Agreement. Rights to inventions arising from a business or industry sponsored research project should be prescribed in the sponsored research agreement.

FAQs

1. **If a faculty or staff member develops elaborate materials for teaching his course including electronic materials that require the university to supply substantial resources in order to produce the course (e.g. technology or multimedia support, special equipment or supplies), who owns the copyright on the classroom materials?**

When substantial university resources and supplies are allocated for course development, the university can claim ownership of the copyright. By planning ahead and developing a written agreement in advance of commencing work, an author may negotiate the terms of copyright ownership. This process starts between the author and the department head of the sponsoring unit. Agreement should be reached on who will own the copyright, which units or persons will receive income from offering the course, and how the course will be updated and revised.

2. **If a faculty member develops materials for teaching online for the University and receives assistance from the University in the form of instructional designers, computer technologists preparing learning objects, and significant help in preparing the course - who owns the copyright for the course?**

NKU owns the copyright if the materials are created with the use of substantial University resources which are specifically provided to support the production of copyrightable materials. However, the course authors can develop written agreements stipulating terms for copyright ownership, division of any net income from the course, use of materials, and plans for revisions.

In most cases, it's helpful for the faculty or staff members to create a written agreement spelling out their rights in advance of developing course materials if they will be utilizing significant university resources in designing and building course materials. These agreements allow the faculty or staff member to use the materials for educational purposes while at the same time protecting the University's investment and ability to continue to offer the course in the future.

3. **If a faculty or staff member designs a course or educational materials and is paid a stipend for developing the course or materials - who owns the copyright?**

If a faculty member is paid a stipend by the University for developing a course then NKU owns the copyright.

4. **Should I advertise the copyright on my original works?**

If a Creator holds the copyright to a work, it would be advisable to put the copyright notice on the work, which includes the copyright symbol, name of author, and year it was written, i.e., "© Pat Doe 2010". Though this is not necessary to secure copyright protection, it may deter others from copying it.

Registration of the copyright with the U.S. Copyright Office is a prerequisite to bringing suit for copyright infringement. If there is any concern that the work may be infringed, a

faculty member may want to register the copyright using the U.S. Copyright Office's online registration process <http://www.copyright.gov/eco/>.

5. What happens if substantial University resources are used to develop a course and there is no written agreement?

If substantial University resources are used to develop instructional materials and there is no written agreement, the University may claim ownership.

6. What is an invention disclosure?

The Invention Disclosure is a confidential document that fully documents your invention so that all options for commercialization may be evaluated and pursued. It is imperative that the entire document be completed and that the correct sponsor information be included on the disclosure. Failure to do so may severely hamper patenting and commercialization of the invention.

Written notice of the invention is forwarded to GERO and begins the formal process. Disclosure is made by completing the Intellectual Property Disclosure Form (available on the GERO webpage), and by including any supporting documentation with that form. The invention disclosure can be submitted electronically to the Office of Graduate Education, Research and Outreach in 405 UC.

7. What is the Bayh Dole Act and how does this govern my invention disclosure?

The U.S. Bayh-Dole Act of 1980 allows universities and other non-profit institutions to have ownership rights to discoveries resulting from federally funded research, provided certain obligations are met. These obligations include making efforts to protect (when appropriate) and commercialize the discoveries, providing attribution to the appropriate federal funding agency in all filed patent applications, submitting progress reports to the funding agency, giving preference to small businesses that demonstrate sufficient capability, and sharing any resulting revenues with the inventors. The Bayh-Dole Act is credited with stimulating interest in technology transfer activities and generating increasing research, technology commercialization, educational opportunities and economic development.

It is important to know that NKU is required to report all invention disclosures that were made using federal funds within 60 days of receipt of the disclosure. This notification is made to the sponsoring agency, and it is critical that information provided on the invention disclosure be accurate and thorough. This information is essential not only in the initial reporting requirements but will be rolled forward and reflected upon all patenting documents and activities. Failure to comply with these requirements may result in the government exercising its rights to march in (take control of the intellectual property); therefore, diligence and accuracy in reporting sponsorship should not be taken lightly.

The government sponsorship declaration that is required to appear on all patents is:

"This Invention was made with government support under (grant/contract) awarded by (Agency). The government has certain rights in this invention ".

8. When do I need to submit an Intellectual Property disclosure?

An intellectual property disclosure should be submitted before publicly presenting or publishing the details of an invention or putting the invention into use. Therefore, it is recommended that inventors disclose early so that proper action may be taken to protect the invention and its commercial value. It is best if inventors submit a disclosure between eight and 12 weeks before publication so that, if necessary, actions can be taken to protect both U.S. and foreign rights. Once publicly disclosed, an invention may not be patentable outside the United States, and disclosure may reduce, or even negate the commercial value of an invention. To be safe, inform GERO of any imminent or prior presentations that include the IP.

9. What is the information in the Intellectual Property Disclosure used for? Does the submission of an intellectual property disclosure lead to a patent application?

The intellectual property disclosure form is an internal NKU form used to provide a written record of your intellectual property. The information described herein will enable GERO to establish a record of the date of conception of the intellectual property for legal purposes. The information will be used to evaluate the technology for its commercialization potential, legally protect the intellectual property and to identify potential licensees and to comply with sponsor reporting requirement. Submission of an Intellectual Property Disclosure does not insure that a patent application will be filed. NKU reserves the right in its sole discretion to determine those inventions upon which it will seek patent protection. The NKURF Board will review all disclosures periodically and determine whether to protect the invention or not.

10. How detailed should the description of the invention be?

As detailed as possible. Without adequate information, NKURF cannot perform a complete evaluation of the intellectual property's licensing potential, nor can we obtain an accurate legal opinion as to whether it is patentable.

11. Why are the dates of conception and disclosure important?

On March 16, 2013 the U.S. patent system switched to a "first-inventor-to-file." The dates of disclosure are important because in the U.S. an inventor has one year from the date of public disclosure in which to file a patent application. Once a year from the time of disclosure has passed, the invention cannot be patented. Also, note that most foreign countries have an "absolute novelty" requirement. This means that in most foreign jurisdictions, patent rights are lost once an invention has been publicly disclosed. The university does not often file for foreign patents due to their prohibitively high costs; however, we strongly encourage inventors to submit any intellectual property disclosure to GERO well before public disclosure so that we may keep this option open for a potential licensee.

12. What is considered a public disclosure of an invention?

Almost any disclosure without an obligation of secrecy may constitute a public disclosure. Public disclosure may include, but is not limited to, journal papers, conference abstracts/presentations, publications or descriptions online, and dissertations indexed at the library, that describe the basic ideas of the invention in enough detail that someone else would be able to make and use the invention. Talking about these ideas may also constitute disclosure, as does selling or offering for sale a prototype of the invention. In the U.S., the "public disclosure" must be in writing. However, do note that slides at meetings and poster sessions are considered "publications"--as is private correspondence, advertisements, etc.

If you want to discuss your invention with others outside of NKU you should have the person (or company) sign a nondisclosure agreement, agreeing to keep your invention in confidence, before you have the discussion. These agreements are available from the Office of Graduate Education, Research and Outreach.

13. Can I still publish my findings?

Yes, findings can still be published and disclosure to the GERO office does not alter your publication timetable. However, since publishing can affect the ability to obtain a patent, especially foreign ones, it is best to submit a disclosure prior to publishing or communicating your findings in a public forum.

14. If the intellectual property is disclosed either through a publication or an oral presentation before GERO files a patent application, are the patent rights lost?

Not the U.S. rights but definitely foreign rights. In the U.S. we have one year from the date of first publication (or public disclosure) in which to file for a patent.

15. Why is the relevant support information (contract/grant) important?

Under federal law, the University is required to report to the U.S. Government, inventions created under sponsored research with the U.S. Government. Non-Government sponsors may also have intellectual property clauses and obligations attached to such sponsorship with which OTC must comply.

16. What happens if the creation of a work predates the adoption of the new IP policy, and there are no written agreements concerning the ownership rights for it?

Prior patentable Intellectual Property or any other rights to prior Intellectual Property held by faculty, staff, other employees, or students are excluded from this Policy. Prior patentable Intellectual Property should be identified by the Creator and acknowledged by NKU in writing at the time of appointment or enrollment.

17. When can I expect to a phone call/meeting after I submit an intellectual property disclosure?

You will be contacted within a week by the OTT after you have submitted a disclosure. A telephone conversation or a meeting to discuss the details of the invention will be scheduled at that time.

18. What is the process for assessing an invention disclosure?

The NKURF board will conduct an initial screening of the intellectual property disclosure, conduct patent searches (as applicable) and analyze the market to determine the competitiveness of the disclosed technology and its commercialization potential. The NKURF Board may contact the inventors during this process to discuss details of the invention and potential IP strategies. Once a patenting decision has been reached, the VPGERO will communicate the decision to the inventors. The evaluation can take between 4-6 weeks to perform.

19. How do I know if my discovery is patentable?

In order to be considered patentable an invention must meet several requirements. These requirements are that the invention be:

- a) New (also known as the Novelty requirement): The invention must not be duplicative of "prior art" (inventions). Prior art may be an offer for sale, the use of the invention, or a publication or patent. A prior art search is done to determine whether there are issued patents, published articles or other published information capturing major features of the invention in question.
- b) Useful: The subject matter of the invention must have a useful purpose and be operative. An invention that is inoperative is not considered to be a useful invention. The utility of the invention must be disclosed in the patent application.
- c) Non-obvious: An invention must not be obvious to a person having ordinary skill in the art to which the invention pertains.

20. What is prior art?

According to the United States Patent and Trademark Office prior art includes, but is not limited to, previously patented inventions in the U.S. For example, a prior art search may also reveal other publicly disclosed inventions that are now in the public domain. A prior art search should be conducted to determine if your invention has been publicly disclosed, in any form, and thus is not patentable.

21. What's my role in the screening process?

Inventors typically meet with the NKURF board to discuss the invention and clarify aspects of the disclosure. Once a decision is made, the inventor will be contacted to discuss the outcome.

22. What's my role in patenting?

Inventors and GERO staff speak with the patent attorney during the patenting process. Also, inventors will need to review drafts of documents, sign assignments and other legal documentation. GERO staff will guide the inventors during the process.

23. What's my role in marketing?

Inventors are welcome to work closely with GERO staff to market their invention. There are many aspects of marketing that inventors may choose to be involved with, ranging from helping to transfer knowledge to recommending contacts that might be interested in licensing the inventor's technology. GERO staff also invite inventor feedback on licensing terms and work closely with inventors when crafting pre-licensing agreements such as material transfer and evaluation agreements.

24. What's my role in licensing?

Licensing is a primary function of the GERO office, in collaboration with the NKURF board; inventors will be informed of progress in licensing. Inventors often are closely connected to others in their field and may be consulted on the business terms of the license.

Further, the inventor's expertise is often critically important to transfer the technology and related know-how to the licensee. The University license places only nominal obligations on the part of the inventor to assist in the transfer of the licensed technology. When more than minimal time and effort is necessary, the licensee will negotiate a separate consulting arrangement with the inventor.

25. What if an industry partner funded my research and invention?

The Office of Research, Grants and Contracts will review the terms of the contract, send a copy of the disclosure to the company, determine the company's interest, and take action based on the company's decision.

26. What effect does a license have on my ability to do research?

You can still continue research using a licensed invention, even if it is exclusively licensed. The University retains the right to use a licensed invention in its academic research and teaching.

27. How is inventorship determined?

U.S. Patent law defines an inventor as an individual who contributes to at least one patent claim. If inventors are intentionally named to a patent erroneously or are omitted, the patent can be invalidated. Only those persons who made an inventive contribution to the claimed invention may be listed as inventors.

It is important to understand that during prosecution of the patent by the patent office, the claims may need to be revised by patent counsel. Therefore, the original inventors listed on the invention disclosure may change, depending upon which claims are allowed and who actually contributed to those allowed claims. The final indication of inventorship is determined when the patent issues. Since only those claims allowed will be reflected in the patent, only those individuals who counsel has determined contributed to the claims allowed by the patent office will be considered inventors.

Inventorship is not the same as authorship. An inventor, as stated above, is someone who contributes to the conception of the invention. For example, if someone merely demonstrated that the invention actually works or carries out tests that reduced the invention to practice, without making an inventive contribution to the conception of the discovery, then he or she is not an inventor. However, this individual may be included as an author on a research paper resulting from the work, along with all the other people who may have contributed in a similar manner to the work.

28. What is the timeline for: the patent process, the marketing, process, the licensing process, and the commercialization process?

The patent process will commence after the NKURF Board has reviewed the invention disclosure and conducted the necessary research that would recommend patent protection. It is important to understand that the timeline for patent prosecution at the United States Patent and Trademark Office can vary considerably, from a few months to many years, depending on the complexity of the patent, the field of invention, and the number of amendments or responses that must be filed or considered. The inventor will be a valuable resource in the patent protection process and can expect to be contacted by GERO staff and patent counsel to discuss details of the prosecution strategy.

The commercialization process, as expected, can also vary and is dependent upon many factors, including the stage of the invention development, the ability to find a suitable licensee, and market readiness or commercial potential of the invention. In some circumstances an invention that may be strong technically and market ready, will attract no potential licensees if they have settled upon another standard or technology.

Once an invention is licensed, it may take several years to see the first commercial product. This is largely dependent up on the field of the invention, with those made in life sciences having the longest timeline (5-10 years). Other fields have a shorter time to market. GERO staff will keep you informed of commercialization progress made by licensees of your invention.

29. What is the royalty sharing policy?

According to NKU Policy royalty is distributed as follows:

- 50% of the total net proceeds (total income less expenses directly related to obtaining rights and royalties from such property) shall be paid or assigned to the inventor as income
- 15 percent to GERO for supporting scholarly activities on campus
- 12.5 percent to the Creator's university department
- 12.5 percent to the Creator's university college
- 10 percent to NKURF

Under certain circumstances the above terms of income distribution may be replaced by other terms mutually agreed upon by the inventor(s), the organizational unit, the University, and the external sponsor or a potential business partner. However, any modification in the terms described above must be approved by the Vice Provost for Research and Graduate Studies.

30. What is the importance of % contribution of individual contributors and how does it relate to royalty income?

The % contribution determines the % of revenue share of royalty revenues. The revenues generated from the commercialization of the invention will be distributed to the contributors based on % contribution. If the blanks are not filled in the contributors'

share of Net Royalty income, if any, will be divided equally among all NKU contributors to the invention.

31. How does the university benefit from technology transfer? How do the inventors benefit?

The University and the inventor both benefit from technology transfer in similar ways. Engaging in technology transfer allows inventions made at the university to be moved to the market for the public benefit. This activity contributes to economic development and improves the quality of life by making available new technologies that address a need. Engaging in technology transfer encourages collaboration within the university, between academic institutions, with sponsoring agencies and with industry creating a community of innovation. Engaging in technology transfer also rewards the inventors and the university monetarily, recognizing their contributions. Income realized from technology commercialization are utilized to encourage further research and innovation.

How Does Technology Commercialization at NKU Work?

Background

Enacted on December 12, 1980, the [Bayh-Dole Act](#) (P.L. 96-517, Patent and Trademark Act Amendments of 1980) created a uniform patent policy among the many federal agencies that fund research, enabling small businesses and non-profit organizations, including universities, to retain title to inventions made under federally-funded research programs.

Major provisions of the Act include:

- Non-profits, including universities, and small businesses may elect to retain title to innovations developed under federally-funded research programs
- Universities are encouraged to collaborate with commercial concerns to promote the utilization of inventions arising from federal funding
- Universities are expected to file patents on inventions they elect to own
- Universities are expected to give licensing preference to small businesses

Northern Kentucky University supports creativity, innovation, commercialization, and entrepreneurship as essential components of our institution. The purpose of the intellectual property policy of NKU is to provide the necessary incentives and protection to encourage the development of new knowledge and its application and transfer for public benefit. The policy was developed with the goals of: enhancing and protecting the educational, research and service missions of NKU; optimizing the incentives for research and scholarship at NKU; bringing scholarship into use for the benefit of society; and protecting the interests of NKU faculty, staff and students.

What is intellectual property (IP)?

IP is the “tangible or intangible results of research, development, teaching, or other intellectual activity.” In other words, IP is any innovation or discovery conceived or developed by faculty, staff, or students using University resources, which is broadly defined as all use of employee or student time, equipment, supplies, or facilities and clinical practice. If you think you are working on a commercializable idea, the Northern Kentucky University Research Foundation (NKURF) Board would be happy to meet with you to discuss your idea and the commercialization potential.

What is technology transfer?

In its broadest sense, technology transfer is the transfer of knowledge, ideas, discoveries and innovations to the public. There are many ways to accomplish this, including publication, student graduation and employment, participation in scientific meetings, and collaboration with industry and licensing innovations. For our purposes, technology transfer is the evaluation, protection, marketing and licensing of intellectual property to start-ups and existing companies.

What do you do if you have an idea?

Creating an invention or a commercializable idea is a significant accomplishment. NKU wants to help you protect and enhance the value of that invention or idea to benefit both the inventor(s)

and Kentucky. If you have an idea for an invention that you would like to discuss with the NKURF to brainstorm next steps for development, patenting, commercialization or copyrighting, the first step is to complete the online Intellectual Property Research Disclosure Form at <https://.xxxxxxx>.

Step 1: Submit an Intellectual Property Research Disclosure Form Report

If you have any questions about this process, contact the Office of Graduate Education, Research and Outreach

Step 2: The disclosure meeting

The Intellectual Property Review Committee, the NKURF, composed of faculty, inventors, technology commercialization professionals and legal advisors, will meet with you for an informal, confidential discussion about the details and possible applications of your discovery or invention.

Important:

- Public disclosure immediately prevents you from obtaining most foreign patent rights and may impact your ability to obtain U.S. patent rights.
- Patents filed prior to public disclosure have a much stronger position.
- Commercialization of IP is a highly competitive enterprise. It is therefore critical that creators begin the disclosure process as soon as the possibility of an invention becomes evident. Delays give other an opportunity to establish claim, which may deprive a creator of his/her rightful recognition and compensation.

What constitutes a public disclosure?

Any non-confidential disclosure, which includes many routine academic activities:

- Published papers
- Presentations
- Open thesis defenses
- Seminars
- Campus talks
- Catalogued theses
- Conference abstracts
- Funded grant applications – unless redaction is requested upon submission
- Web posts
- Non-confidential collaborations
- Posters
- Performances and exhibitions

Step 3: The decision committee

Each intellectual property disclosure is evaluated for its commercialization potential -- whether the intellectual property has the potential to fill a market need -- and identifying opportunities and challenges. The commercialization potential is based on the strength of

the IP, the IP's stage of development and the estimated time and resources needed to market it. The university's Intellectual Property Review Committee determines if the university should invest in patenting or commercializing the technology. The board members recommend whether to file for IP protection or not. The final decision is made by the board's chair, the Vice Provost for Graduate Education, Research and Outreach.

The NKURF decision committee will assess your invention based on many factors, including:

- Patentability
- Market dynamics
- Licensing potential
- Public benefit

NKURF evaluates discoveries on an as needed basis and will notify you whether or not we decide to move forward with the process of patenting your intellectual property. We strive to make decisions quickly (within 30 days) so that patenting doesn't interfere with publication.

NKURF covers this cost for the patents we accept, as well as all other costs and legal fees. Patents typically cost between \$20,000 and \$40,000.

Step 4: The equity review

The Office of the Vice Provost for Graduate Education, Research and Outreach will perform an equity review to identify funding sources that may have contractual intellectual property obligations.

Step 5: The memorandum agreement

If your intellectual property is accepted, the Creator(s) and NKURF enter into a memorandum agreement that defines the relationship between you and NKURF. You agree to assign ownership of the intellectual property to NKURF and to work in partnership with NKURF during the patenting and/or licensing process. In return, NKURF agrees to share royalty income with you. It is important to have a close working relationship between the Creator and the GERO office. Creator's knowledge of their research, and of companies active in related technologies, are key elements of the technical and market assessment for an invention and of the search for licensees.

Step 6: Patenting your invention

A patent attorney will work with you to draft a patent application, if relevant. If the intellectual property is not considered for IP protection, the researcher may continue to work on it and file a new research disclosure in the future. The first step is usually a provisional patent application. Provisional applications are abandoned within one year of filing unless they are converted to a regular U.S. application. Two or three iterations are usually required to obtain allowance of the regular patent application. The process can take 2-4 years.

Step 7: Marketing

When appropriate, our office actively markets the intellectual property identified through the evaluation using your network, our contact network and market reports to identify potential licensees

Step 8: Licensing

If an existing company expresses interest in finding out more about the invention, the Intellectual Property Review Committee starts the discussion. Once a potential licensee is identified, our office will negotiate a license agreement with mutually agreeable business terms. The license allows the companies to use the invention in exchange for a license fee and royalties to the university.

Step 9: Commercializing Your Invention

After a license agreement is executed our office ensures that the company is in compliance with the commercialization obligations and with the payment terms to the university. Any license fee and/or royalty payments received for commercializing an invention will be shared:

- 50 percent to the Creator (with multiple NKU Creators, sharing depends on the agreed percentage listed in the invention disclosure)
- 15 percent to GERO for supporting scholarly activities on campus
- 12.5 percent to the Creator's university department
- 12.5 percent to the Creator's university college
- 10 percent to NKURF

Our office also supports the creation of a start-up company by the inventor and will assist in transferring the technology to the company through favorable license terms.

Other items:

Nondisclosure Agreements

In order to protect unpublished results of your intellectual property while you are in the process of discussing a potential collaboration with an institute or a company, we make sure that such information is shared under a valid nondisclosure agreement (NDA). An NDA outlines the nature and conditions for sharing the information between the university and a third party. Information that is shared (orally, or in writing as a conference abstract or online or by email) without a valid NDA is considered public disclosure of information and is not considered confidential under an NDA. NKU researchers also have an obligation to protect a third party's confidential information as well, under a mutual NDA.

Material Transfer Agreements (MTA)

If research materials related to biological, chemical or engineering protocols are exchanged or transferred between researchers outside of NKU, an MTA should be executed. An MTA outlines the nature and conditions for sharing the research materials between NKU and a third party, which could be a company, a research institute or a university. Materials that are not unique to the university and are readily available from other commercial sources generally do not need an MTA.

The common issues with NDAs and MTAs and sponsored research agreements are restrictions on publications, free licenses, assignment of future inventions and creations under the agreement and general legal provisions. Our office works to protect your research results and your ability to publish by negotiating mutually amenable terms through these agreements with the third parties.

RESOLUTION

To: PCC
From: Prof. Ken Katkin, Chair
Date: Oct 20, 2016
Re: Revised Draft Resolution of Disapproval of NKU’s Decision To Seek Judicial Gag Order Against NKU Student

Proposed Faculty Senate Resolution (Voting Item):

The Faculty Senate of Northern Kentucky University respectfully recommends that the University 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 to be voted 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 complained 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.

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 present 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.

Non-Retaliation

[DRAFT – Not Voted, Not Adopted]

To promote a culture of compliance with applicable legal and ethical standards, NKU prohibits retaliation against community members who make good faith reports of misconduct. The [NKU Values & Ethical Responsibilities Statement](#) provides that:

No employee is permitted to engage in retaliation, retribution, adverse employment consequences or any form of harassment against an individual for a good faith report of misconduct or other ethics or compliance-related concern, or participation in an investigation of a good faith report of misconduct, ethics or compliance-related concern or retaliation.

More specifically regarding students, Section VII.I of the NKU [Code of Student Rights and Responsibilities](#) recites that “[r]etaliation against an individual for raising an allegation of sexual or gender-based harassment, for cooperating in an investigation of a complaint, or for opposing discriminatory practices is prohibited.”

The Faculty Senate cannot know whether the University’s motive for seeking to gag our student Jane Doe is to retaliate against her for raising an allegation of sexual or gender-based harassment. The Faculty Senate does note, however, that if Jane Doe had not raised her allegation of sexual or gender-based harassment or made a good faith report of misconduct or other ethics or compliance-related concern, then the University would not have had occasion to seek the present gag order.

Conclusion (for voting):

Senate Executive Committee Proposal: The Faculty Senate of Northern Kentucky University respectfully recommends that the University not seek to prohibit students from talking with the media about matters having to do with the university and its policies.

OR

Original PCC Proposal: For the foregoing reasons, be it resolved that the Faculty Senate of Northern Kentucky University disapproves and disavows 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.

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

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

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 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>>.

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/>>.

The Cincinnati/Kentucky Enquirer:

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

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/>>.

MEMORANDUM

To: PCC
From: Prof. Ken Katkin, Chair
Re: Non-Attendance Reporting Policy, Q&A
Date: Oct 13, 2016

At the PCC Meeting on Sept 15, 2016, a number of questions were raised about the processes and procedures for reporting student non-attendance during the first week of classes, particularly for online classes. At that meeting, the Provost asked PCC Members to put their questions in writing, so that a compilation of questions and answers could be distributed to PCC Members and other interested parties. A number of questions were subsequently submitted.

The Provost has now provided written answers to those questions, which are compiled in this Memorandum. In addition, the Provost also provided three University documents related to the non-attendance policy, which also are contained within this Memorandum. These documents are:

- (1) The policy document in which NKU adopted the current non-attendance reporting policy;
- (2) An email sent by the Registrar to faculty and staff, setting forth instructions about how to comply with the policy; and
- (3) The formal text of the non-attendance reporting policy, as set forth in the current University Catalog.

In the third document, the Provost highlighted a section of the text of the formal non-attendance reporting policy as it appears in the University Catalog. The Provost asked that it be reiterated to faculty that the highlighted text provides a small amount of flexibility to faculty members.

The Provost will presently ask the AAPC to review non-attendance reporting policy. We now have over two years of experience with the policy and we should review it and assess its effectiveness. In addition, the Provost reported that the administration is already working on how to provide notification to faculty once a student has dropped or withdrawn from a course.

Questions Received from PCC Members, Followed By Answers:

(Q1) What constitutes online attendance or participation during first week of classes? Is the policy that students have to log on (which would count as attendance) or complete assignments (which counts as participation)? If attendance alone (i.e., logging in once) counts, does this have to be during the first week, or can it be before the first week?

Financial Aid response: If a school disburses Title IV federal financial aid but the student does not **begin** attendance, the school must return funds disbursed as soon as possible but no later than 30 days after the date that the school becomes aware that the student had not **begun** attendance. NKU makes the determination of whether a student **began/commenced** attending classes through the reporting of non-attendance (Non-attendance Policy). Moreover, USED provides guidance on academic attendance and attendance at an academically related activity, as follows:

- the student's attendance is academic or academically related, and
- the student's attendance at the activity.

Academically related activities include but are not limited to the following:

- physically attending a class where there is an opportunity for direct interaction between the instructor and students;
- submitting an academic requirement;
- taking an exam, completing an interactive tutorial, or participating in computer-assisted instruction;
- attending a study group that is assigned by the school;
- participating in an online discussion about academic matter; and
- initiating contact with a faculty member to ask a question about the academic subject studied in the course.

Academically related activities **do not** include activities where a student may be present but not academically engaged such as:

- living in institutional housing;
- participating in the school's meal plan,
- logging into an online class without active participation,
- participating in academic counseling or advisement.

Recommendation: Given the Financial Aid requirements, simply logging on does not constitute attendance. Therefore, an online instructor must include in **the first week of class** an activity that requires some sort of participation. Logging in before the beginning of the semester does not count.

(Q2) When do faculty members report student non-attendance?

Registrar's response: Question #2 is examining the mechanism and the timing for reporting student non-attendance by instructors.

- a. Attached is the specific email currently sent to instructors of full-term classes that provides guidance and info.
- b. Also attached is the catalog description, which includes the word "may" and thus, allows for some interpretation. We could develop more recommendations and examples to share with faculty, to provide guidance – i.e. with emphasis on the timing during the 1st week of classes.
- c. The suggestion of using Blackboard or some other enhancement to highlight a newly enrolled student to an instructor can be explored.

Recommendation: The email contains information on how to report, but no guidance on the nuances of the policy. In the future, the email should be more specific, especially because adjuncts may not have been briefed on the policy. The policy itself is not clear enough. A revision is recommended that includes details from the financial aid perspective. I agree with the Registrar that examples would be helpful. Also, the LMS should be able to flag those who have not had "participation" during a specified period of time set by the instructor to constitute the "first class meeting."

Non-Attendance Policy

Effective Fall 2014

Institutional participation in Title IV federal financial aid programs requires a policy that monitors whether a student has been attending class. A student begins earning Title IV aid as of the first day of his or her attendance.

NKU Policy

Removal from a Course – University Initiated

1. A student who, without previous arrangement with the instructor or department, fails to attend the first class meeting of a given term may be dropped from the course. An instructor may drop a student for non-attendance only during the regular drop/add period of the term as defined by the academic calendar. Non-attendance does not release students from the responsibility to officially drop any course for which they have enrolled and choose not to complete.
2. A student may also be dropped from a course as a result of his or her disruptive classroom behavior. See the Code of Student Rights and Responsibilities:
<http://deanofstudents.nku.edu/policies/student-rights.html>

Implementation

The following language will appear in the 2014-15 NKU Undergraduate Catalog and all communications related to implementation of this policy:

“NKU students are expected to attend the first day of each course for which they are enrolled.

For classes meeting more than once per week: If a student does not attend the first class meeting and has not contacted the instructor in advance to declare this absence, the instructor may drop the student for non-attendance. If the student also misses the second class meeting and still has not contacted the instructor about the absences beforehand, the instructor is compelled to drop this student for non-attendance.

For classes meeting only once per week: If the student misses the first class meeting and has not contacted the instructor about this absence beforehand, the instructor is compelled to drop this student for non-attendance.”

For online classes: If the student does not log onto Blackboard and access course materials or contact the instructor during the first week of classes, the instructor is compelled to drop this student for non-participation (i.e., non-attendance).

Rationale for Policy

The non-attendance policy to drop students during the drop/add period of a given term provides the following benefits:

- Maximizes efficiencies of instructional resources, making unused class seats available to other students during the open registration period.
- Enforces the importance of first-day class attendance as a factor in student success.
- Drops the student from the course during the 100% tuition adjustment period.
- Helps facilitate accurate financial aid reporting.
- Cleans up institutional no-shows prior to the university's census date (IPEDS).

From: Registrar
To: NKU Faculty

Welcome to the Fall 2016 semester! Below is a friendly reminder of NKU's non-attendance reporting policy.

Please keep in mind that non-attendance reporting supports federal requirements in administering federal financial aid and state requirements for reporting enrollments. Your participation is greatly appreciated and we are available to assist you with this process! Below are instructions to assist you with non-attendance reporting:

- The faculty window for reporting Non-Attendance will open at 6:00 a.m. on Monday August 22, 2016 and will close at 6:00 p.m. on Monday, August 29th for Fall 2016 full session classes.
- Go to myNKU to report student Attendance/Non-Attendance.
- Students who are attending should be marked "AT" and students who are not attending should be marked "DA."
- Faculty will receive a summary email daily showing students whom they dropped from classes. Please note: Students who are dropped from one co-requisite class will also be dropped from the other co-requisite class.
- A program will be run 3 times a day to drop students who were reported as "not attending". The target times for these programs are: 6:00 a.m., noon and 5:00 p.m.
- Students who add late: Please be aware of students who add your class late and may not be registered on the 1st class day.
- There will be a delay in processing drops for international students. The Office of International Student and Scholar Services will review all international students reported for Non-Attendance and determine if they should be dropped. If you have questions or concerns, please contact Adam Widanski in the Office of International Student and Scholar Services at widanskia@nku.edu.

Helpful information:

- A follow up flag has been set with this email to automatically remind you a few days before the window closes.
- A tutorial is available at the following link <http://mynkuhelp.nku.edu/tabbased/stuadm.html#fac>.
- The Non-Attendance policy can be found here <http://registrar.nku.edu/Registration/nonattendance.html>

Please do not hesitate to contact our office if you have any questions or concerns. We are committed to supporting the academic mission of NKU!

Sincerely,
Office of the University Registrar, Northern Kentucky University
Phone: (859) 572-5556
registrar@nku.edu

University Catalog 2016-17

Class Attendance

Classroom participation is essential to the educational process. When requirements of attendance are delineated in the syllabus, the instructor may lower a student's final grade because of absences. Students are responsible for material disseminated in class and online and are not released from this responsibility because they cease to attend. It is the student's responsibility to be aware of the calendar deadline for officially withdrawing from a course. If a student does not officially withdraw prior to this deadline and fails to successfully complete the required coursework, a failing grade will be recorded.

Non-Attendance Policy

Beginning fall 2014, NKU students are expected to attend the first scheduled class session of each course for which they are enrolled. If a student does not attend the first day of class, the instructor may drop the student for non-attendance. Students who know they will be absent must contact their instructor(s) prior to the first class meeting to explain their absence and request to remain enrolled in the course.

ESTABLISHING, REVIEWING, AND DISCONTINUING ACADEMIC CENTERS & INSTITUTES

POLICY NUMBER: RESERVED FOR FUTURE USE

POLICY TYPE: HYBRID - ACADEMIC/ADMIN

RESPONSIBLE OFFICIAL TITLE: VICE PROVOST FOR GRADUATE EDUCATION, RESEARCH, AND OUTREACH

RESPONSIBLE OFFICE: OFFICE OF THE VICE PROVOST FOR GRADUATE EDUCATION, RESEARCH, AND OUTREACH

EFFECTIVE DATE: UPON PRESIDENTIAL APPROVAL

NEXT REVIEW DATE: PRESIDENTIAL APPROVAL DATE PLUS FOUR YEARS

SUPERSEDES POLICY DATED: N/A

REQUIRES LEGAL/COMPLIANCE REVIEW:

(PER SECTION V. OF THE APPROVED POLICY REQUEST FORM) YES NO

REQUIRES I.T. POLICY COUNCIL REVIEW:

(PER SECTION V. OF THE APPROVED POLICY REQUEST FORM) YES NO

REQUIRES PROFESSIONAL CONCERNS COMMITTEE REVIEW:

(PER SECTION V. OF THE APPROVED POLICY REQUEST FORM) YES NO

REQUIRES HUMAN RESOURCES REVIEW:

(PER SECTION V. OF THE APPROVED POLICY REQUEST FORM) YES NO

REQUIRES BOARD OF REGENTS APPROVAL:

(PER SECTION V. OF THE APPROVED POLICY REQUEST FORM) YES NO

I. POLICY STATEMENT

Academic centers and institutes at Northern Kentucky University (NKU) are administrative units that are established to strengthen and enrich the University's core mission of teaching, research, and public service. Centers and institutes foster the interdisciplinary collaboration that provides enhanced opportunities for faculty, staff, and students and heightens the University's impact regionally and statewide. Centers and institutes are partnerships that maximize the capacities of NKU as a whole and reduce duplication within it. The University recognizes that academic centers/institutes require a commitment of resources (including faculty, staff and space). Therefore guidelines need to be explicit regarding the criteria for establishing centers and institutes, an understanding of the expectations regarding outcomes, the need for annual reports and periodic reviews, and mechanisms for discontinuing academic centers and institutes

II. ENTITIES AFFECTED

Describe the positions, units, departments, groups of people, or other constituencies to which the policy applies or has a material effect.

Academic Affairs, including the Provost's Office, college deans, department chairs, center directors and staff; Administration & Finance; Advancement; Human Resources; Legal Affairs; Student Affairs

III. AUTHORITY

If applicable, please provide citations to any sources of authority for the policy. Examples include state or federal laws, Governing regulations, Board of Regents minutes, or an external accreditation agency.

[Click here to enter text.](#)

IV. DEFINITIONS

Define any terms within the policy that would help in the understanding or interpretation of the policy.

For the purposes of classification within NKU, the term institute may also refer to a unit with a broader scope of activity than a center and may indicate a unit that contains smaller centers as separate units within its administrative structure. It is expected that most institutes would involve faculty from multiple departments and schools/colleges. Centers and institutes endeavor to cross disciplinary and departmental lines in order to advance knowledge in new directions or provide services to new constituencies. Although centers and institutes do not have primary jurisdiction over academic curricula, they may offer courses in cooperation with academic units.

This policy excludes those Centers or Institutes that are physically located at NKU, but not funded by NKU.

A center or institute will identify its primary focus within the university mission: research, instruction or outreach.

- A research center or institute has research as its primary mission. Although classified as a research center, such a unit may also provide instruction, training, technical assistance, or public service programs. Although such units do not have jurisdiction over academic curricula, they may offer courses in cooperation with academic units.
- An outreach center or institute has public service or technical assistance as its primary mission. Research, instruction, and training activities may also be conducted as secondary components of the mission. Although such units do not have jurisdiction over academic curricula, they may offer courses in cooperation with academic units.
- An instructional center or institute has training or instruction as its primary mission. These units may also conduct research and public service activities. Although instructional centers and institutes do not have primary jurisdiction over academic curricula, they may offer courses in cooperation with academic units.

VII. PROCEDURES

*Describe the **MINIMUM ACTIONS** required to fulfill the policy's requirements. This section should **NOT INCLUDE** internal protocols, guidelines, optional or purely desirable actions.*

1. Center Oversight

At Northern Kentucky University, academic centers and institutes operate within the Division of Academic Affairs and are situated either as a college center/institute or as a center/institute reporting to the Provost or his/her designee. College level centers and institutes will report to the dean of the college or to a department chair within the department. In some instances, transdisciplinary centers/institutes may report to more than one dean or provost designee by virtue of a Stakeholders Committee. In these instances, a 'lead dean' will be appointed by the Provost to convene the Stakeholders Committee. The committee will provide oversight for the transdisciplinary center/institute and will advise the director on programmatic direction.

College-based centers and institutes (as well as those existing within the Office of the Provost) will have a director and an advisory board. Center and institute directors are responsible for the day-to-day programmatic, fiscal, and personnel decisions associated with the center and institute mission and core personnel. The center or institute director will coordinate programmatic activities, seek external funding where appropriate, convene periodic advisory board meetings, respond to assessment and administrative program review processes, and ensure the viability of the center or institute in meeting its objectives. The advisory board has advisory responsibilities to the center or institute and makes recommendations to the director on programmatic direction. The advisory board does not have the authority to make hiring offers to directors or other staff or to access, use, or otherwise control funds associated with the centers and institutes. Centers and institutes will address aspects of their management, such as the appointing and staggering terms of board members, through bylaws, Memoranda of Understanding (MOUs), or other governing documents.

Not later than the fourth year following the initial appointment, and not less frequently than every five years thereafter, each center or institute will undergo a program review, which will include elements of director performance. The Vice Provost for Graduate Education, Research and Outreach will maintain the schedule of center reviews, will initiate the program review, and will meet with the director and his/her supervisor(s) to discuss the outcome of the review. The director is then responsible for implementing the agreed-upon recommendations.

Final authority for the establishment of a center or institute rests with the NKU Board of Regents, upon recommendation of the President.

2. Establishment of a New Academic Center or Institute

The establishment of a new academic center or institute requires careful deliberation that includes a justification of need and the potential for making meaningful contribution. The center or institute should not duplicate activities already being performed elsewhere at NKU and should have a focus that is broader than the work of any one individual. Establishing a new center or institute is a two-phase process consisting of a pre-proposal and a full proposal.

To request authorization to establish a new center or institute, a pre-proposal must be submitted to the Vice Provost for Graduate Education, Research and Outreach. The pre-proposal should include the following information:

- Proposed name and type of center or institute (research, instructional, outreach)
- Relevance of the proposed center or institute to the mission of NKU, specifically how it will further the university's strategic plan
- Mission and goals of the proposed unit and an explanation of how the new unit will be uniquely positioned to meet these objectives
- Description of how the proposed unit might interact with and complement other centers, institutes, and units at NKU and within the commonwealth, and proposed relationships with other relevant units and potential partners
- List of the people and units involved (including the name of the proposed director, if known)
- Organizational structure, including the proposed composition of the advisory board
- Estimated funding needed to initiate and sustain the proposed center or institute for five years and potential sources of funding during that period
- Estimated space, facilities, and equipment needs and plans for meeting these needs
- Proposed timeline for establishing the center or institute

The pre-proposal must include a letter of endorsement from the responsible leader(s) of the proposed administrative location of the center or institute (e.g., dean for a college-level center, department chair and dean for a department-level center, vice provost or vice president for a university-level center).

The Provost, in consultation with the Vice Provost, will review the pre-proposal and communicate a decision regarding permission to submit a formal proposal to the faculty/staff wishing to plan and the leadership of the unit(s) where the new center or institute would be established. An expected timeline for completion of the full proposal will be determined at this time. The planning period will have a maximum duration of two years. If a full proposal is not presented within two years, a new pre-proposal must be submitted. Should the pre-proposal be denied, the Vice Provost will provide a written response detailing reasons for the lack of support.

When planning is complete, the faculty/staff proposing the new academic center or institute will submit a formal proposal to the Vice Provost for Graduate Education, Research and Outreach. The minimum required documentation for the proposal to establish includes:

- A name for the proposed center or institute that appropriately reflects the unit's mission and scope, and is not similar to the name of an existing unit
- The name and contact information for the tenured faculty member(s) who will provide leadership to the center/institute, and a brief description of qualifications
- A list of all participating or affiliated faculty who have confirmed their interest and commitment to actively participate in the establishment of the new center or institute. Rank, department affiliation, expected contribution, and contact information for each participating faculty member must be included in the full proposal.
- Description of the organizational structure, including reporting lines; staffing; description of the membership and function of advisory boards; and an organizational chart showing both the unit's relationship to existing campus units and the internal organization of the unit. Confirmation that all impacted units are familiar with the plan and supportive of the proposal, in the form of letters of support, must be included.
- A mission statement that clearly describes the purpose for establishing the center or institute. An explanation as to how the mission is unique and distinct from other units already established on campus should be included.
- Goals for the new center or institute. What does the center/institute expect to accomplish? The outcomes should be clear and their impact should be measurable. Clearly justify how the center/institute will enhance NKU's reputation.
- The anticipated benefit of the unit's work to the research, instructional, or outreach programs at NKU, and, if inter-institutional arrangements are involved, the anticipated benefit to the participating institutions.
- Description of space, facilities, and equipment needs for the next five years and how those needs will be met.
- A description of how the center will involve and support undergraduate and/or graduate students.
- A five-year budget detailing personnel and non-personnel costs and sources of revenue. Are the necessary funds available? If funds are not already available explain and justify the source of additional funds that will be required to operate the proposed center or institute. Clearly delineate the resources that will be necessary for the sustainability of the center/institute and plans for obtaining them.
- A description of how the achievement of the unit's mission, goals, and objectives will be measured, documented, and assessed.

The Provost, in consultation with the Vice Provost, will assess the request, focusing on the degree to which the proposed center will contribute to the University's mission, objectives and strategic plan; the

proposed budget; and the degree to which sufficient funding can be secured to support the proposed center. The Provost will determine whether to (1) approve the request to establish and forward it to the President for approval or (2) deny the request and communicate that decision to those submitting the proposal. If the Provost recommends that the center or institute be established and the President approves the Provost's recommendation, the President will forward the recommendation to the Board of Regents for final approval.

3. Academic Center or Institute Governance

Once final approval has been granted for the establishment of a new academic center or institute, a charter must be created and approved by the Vice Provost for Graduate Education, Research and Outreach. The official charter will be kept on file in the Vice Provost's office, which will also maintain the schedule for periodic reviews.

4. Termination or Realignment of Academic Centers or Institutes

A center or institute may be discontinued for a variety of reasons, including: financial viability; lack of fit with departmental, college, or institutional missions or objectives; insufficient contributions in terms of mission-driven activity; lack of faculty support.

Any center/institute that has not been reviewed within five years will be automatically discontinued.

The administrative officer to whom the center or institute reports, in collaboration with the center director, will develop a plan for phasing out the unit to allow for orderly termination or transfer of contractual obligations and an effort to find alternative employment for full-time staff. The phase-out period may not be for more than one year after the end of the academic year in which final approval is given to discontinue the center or institute.

The director will provide written notice of intent to terminate or realign an academic center or institute, with copies to appropriate deans and department chairs, to the Vice Provost.

VIII. REPORTING REQUIREMENTS

Describe any required reports related to the policy. Include the position title of the official or name of the department responsible for furnishing the report, and the internal and external bodies to which the report must be provided.

Each center or institute must submit an annual report (based on a template provided) that documents accomplishments and productivity, including funding obtained during the year and a current budget. As well, an updated list of the participating faculty, staff, and advisory board members must be provided, along with an annually updated charter. The report should be submitted to the Vice Provost with copies to the appropriate dean(s), department chair(s), and the Provost. Annual reports are due no later than June 1 each year.

Active centers and institutes will undergo periodic reviews to ensure ongoing alignment with departmental, college and/or institutional missions and resources, success in accomplishing stated objectives, and sound fiscal status and practices. A center or institute must undergo a major evaluation or review at least once every five (5) years. A major review may occur sooner at the discretion of the Provost. Additional or more frequent major evaluations may be necessary if mandated by the center's charter, bylaws, or funding agency.

The purpose of the self-evaluation is to collect data related to the center's goals and objectives, with specific attention to purpose for establishing the center and the accountability plan. Continuation of the center must be justified in order for the center to continue to operate. The self-study should be organized as follows:

- Mission, goals, and objectives, and their relationship to those of the university.
- Degree to which the center's mission, goals, and activities are unique or duplicated elsewhere on campus.
- Key accomplishments (related to goals and objectives) in the past five years in research, instruction, and/or public service and engagement (publications, external funding, outreach services, university/community partnerships, etc.).
 1. External funding data should include – proposals and awards including sponsor, amount requested, and amount funded, PIs and co-PIs and time period
 2. Include full citations of scholarly work
- How and to what extent the center promotes transdisciplinary work
- The ways in which the center/institute has enhanced the scholarly reputation of NKU. This should include a listing of conferences/workshops hosted, keynote addresses and invited presentations, public service, etc.
- Client feedback as appropriate to the mission of the center or institute
- Organizational structure; number and types of personnel; list of affiliated faculty, their position and roles
- Undergraduate and graduate student involved in center/institute projects including their source of support
- Summary budget data for past five years, including amount and sources of funding, changes in funding over the years, number and types of grants and contracts, and administrative costs (see attached sample template)
- Responsible fiscal oversight as determined by the financial audit and professional evaluation that demonstrate that the center or institute is being managed properly
- Vision for the future of the center or institute for the next five years, including program improvement plans. Include a bulleted list of any issues/challenges affecting the center/institutes ability to achieve its objectives in the coming years.
- List of potential external reviewers

The external reviewers report will include an overview of the strengths and weaknesses of the center/institute and will address the following:

- Degree to which the mission of the program is realistic, feasible, and capable of meeting the needs of the university and wider community
- Extent to which the center's mission, goals, and activities are unique or duplicated elsewhere on campus or within NKU
- Degree of success in achieving mission and reaching desired outcomes; adequacy of programs and initiatives in fulfilling research, instruction, and/or public service missions and meeting the needs of constituents and stakeholders
- Quality of the student experience and success in career placement (if applicable).
- Effectiveness of leadership, organizational structure, and administrative resources.
- Quality of institutional relationships
- Adequacy of funding and facilities
- Feasibility of the program's plans for the future
- Recommendations for improving academic and administrative effectiveness

The steps in the review process are provided below:

- The Vice Provost for Graduate Education, Research and Outreach (VPGERO) provides the dean(s) with a list of centers and institutes under his/her area of responsibility that are scheduled for review in the upcoming year. The VPGERO also provides general guidelines for the review process and the required format for the report.
- The VPGERO discusses goals and expected outcomes of the review process with each dean(s).
- Each center/institute is notified of the upcoming review, reporting requirements, and a deadline for report submission.
- The center/institute submits a draft of the report by the specified deadline to the dean(s) and VPGERO for comment before generating a final report. (Note: requests for more information or revision to the report may occur at any step of the review process.)
- The center/institute submits the final report by the specified deadline to the dean(s) and VPGERO.
- VPGERO will select at least three persons (internal or external) with expertise in the field presented by the center under review to review the report and deliver recommendations to the VPGERO.
- The dean(s), VPGERO and Provost discuss the report and consider what steps should follow the review. These alternatives can include:
 - Continuance without Conditions. A recommendation to continue the center/institute without conditions. The next review would be scheduled in five years.
 - Continuance with Recommended Changes or Actions. A recommendation to continue the center/institute with specific provisions (e.g., specified follow-up actions, abbreviated review period, reorganization, consultant visit, etc.).
 - Discontinuance. A recommendation to discontinue the center/institute.
- The Provost, in consultation with the President, makes the final decision and communicates it to the VPGERO, the dean(s), chair(s) and director.

IX. EXCEPTIONS

Describe when exceptions are allowed, the process by which exceptions are granted, and the title of the university official authorized to grant the exception.

In rare instances and on a case-by-case basis, a non-academic center or institute may be created in a division outside of Academic Affairs as defined by the NKU Organizational chart. Such units require the approval of the President. For more information, please contact the Senior Vice President for Administration and Finance.

XII. REFERENCES AND RELATED MATERIALS

REVISION HISTORY

Indicate any revisions to this policy using the table below. Include the type of revision and the month & year the revision was approved

REVISION TYPE	MONTH/YEAR APPROVED
New Policy	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	

Choose an item.

POLICY NAME

APPROVALS

HUMAN RESOURCES REVIEW

SENIOR DIRECTOR, HUMAN RESOURCES

Signature

Date

Lori Southwood

LEGAL & COMPLIANCE CONCURRENT REVIEW

COMPLIANCE OFFICER

Contact Division of Administration & Finance

9/22/2016

Dawn Bell-Gardiner

VICE PRESIDENT FOR LEGAL AFFAIRS/GENERAL COUNSEL, OR ASSOCIATE GENERAL COUNSEL

Contact Division of Administration & Finance

9/22/2016

Printed Name

AAC REVIEW

PROVOST AND EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

Signature

Date

Printed Name

PRE-COMMENT PERIOD EXECUTIVE TEAM REVIEW

PROVOST AND EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

Signature

Date

Printed Name

COMMENT PERIOD

POLICY COORDINATOR

Signature

Date

Justin Duncan

PROFESSIONAL CONCERNS COMMITTEE REVIEW

CHAIR, PROFESSIONAL CONCERNS COMMITTEE

Signature

Date

Ken Katkin

FACULTY SENATE

CHAIR, FACULTY SENATE

Signature

Date

Ken Katkin

FINAL EXECUTIVE TEAM REVIEW

1. ACADEMIC & HYBRID POLICIES

PROVOST AND EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

Signature

Date

Sue Ott Rowlands

2. ALL POLICIES

SENIOR VICE PRESIDENT, ADMINISTRATION & FINANCE

Signature

Date

Sue Hodges Moore

PRESIDENTIAL APPROVAL

PRESIDENT

Signature

Date

PRESIDENT

Geoffrey S. Mearns

BOARD OF REGENTS APPROVAL

BOARD OF REGENTS (IF FORWARDED BY PRESIDENT)

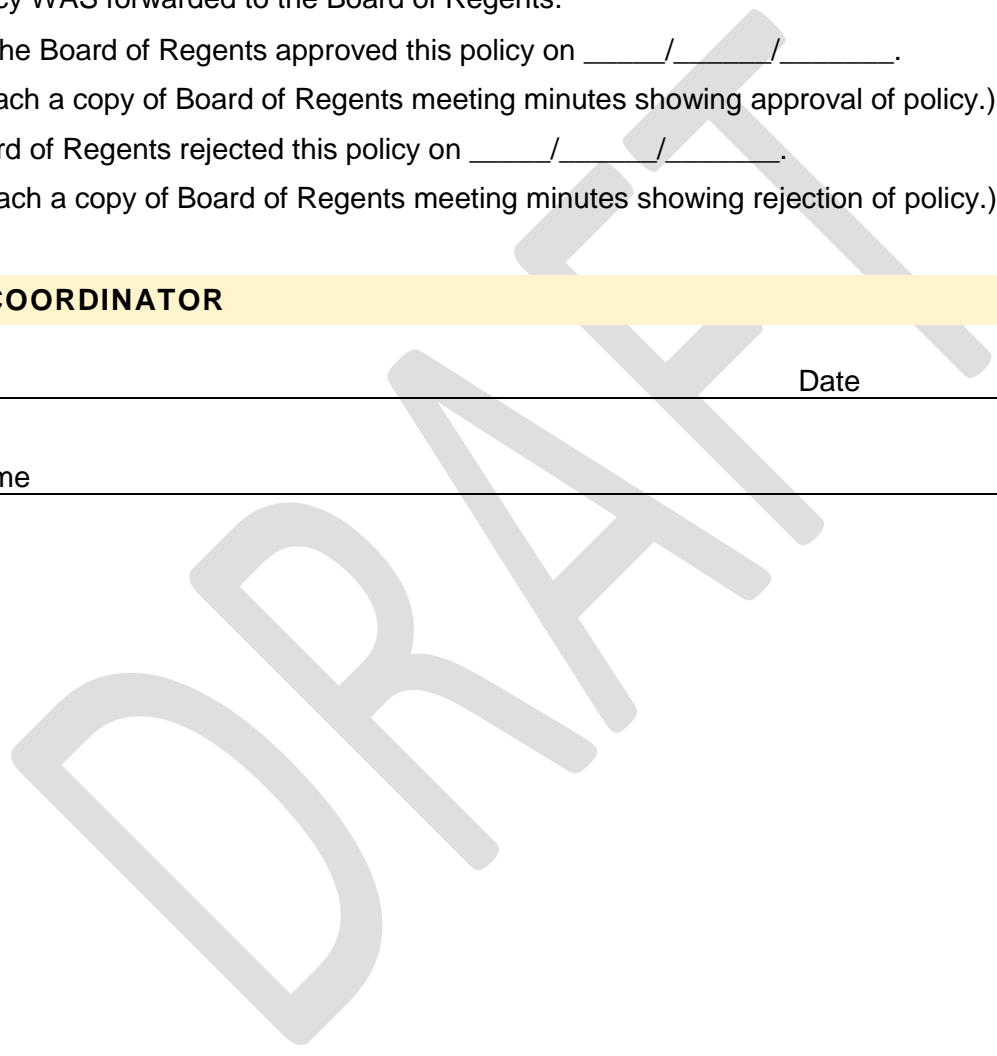
- This policy WAS NOT forwarded to the Board of Regents.
- This policy WAS forwarded to the Board of Regents.
 - The Board of Regents approved this policy on ____/____/____.
(Attach a copy of Board of Regents meeting minutes showing approval of policy.)
 - The Board of Regents rejected this policy on ____/____/____.
(Attach a copy of Board of Regents meeting minutes showing rejection of policy.)

POLICY COORDINATOR

Signature

Date

Printed Name



Proposed Amendment to the NKU Faculty Handbook

Rationale: Language revised to clarify tenure relinquished at the end of the PRP

Current language reads:

10.3.3. APPLICATION

Eligible faculty who are interested in participating in the PRP may apply by forwarding to his or her department chair and dean a written request for consideration. The application must state clearly the proposed initial year of participation and the number of years of participation requested. Applicants may propose any of the following dates as the initial date for entry into the PRP: August 15 (academic Year), or July 1(fiscal year).

Applications must be accompanied by a signed letter stating that the faculty member agrees to relinquish tenure upon the effective date of participation in the PRP.

The deadline for filing applications for the PRP with the department chair, dean and program administrator is January 1 unless notice of a revised date is given.

Proposed language:

10.3.3. APPLICATION

An eligible faculty member who is ~~who are~~ interested in participating in the PRP may apply by forwarding to his or her department chair and dean a written request for consideration. The application must state clearly the proposed initial year of participation and the number of years of participation requested. Applicants may propose ~~any~~ either of the following dates as the initial date for entry into the PRP: August 15 (academic Year), or July 1(fiscal year).

Applications must be accompanied by a signed letter stating ~~that~~ when the faculty member agrees to relinquish tenure. A faculty member may elect to relinquish tenure either upon the effective date of participation in the PRP or at the end of the PRP participation period. During the PRP participation period, a faculty member who retains tenure shall be eligible to serve on Reappointment, Promotion, and Tenure Committees.

The deadline for filing applications for the PRP with the department chair, dean and program administrator is January 15 unless notice of a revised date is given.

Tenure status will not have an impact on the rules that govern drawdown of retirement funds saved in TIAA-CREF accounts.

ADDENDUM

From: Kenneth Katkin <katkink@nku.edu>

Sent: Thursday, October 6, 2016 10:10 PM

Subject: Question About Impact of Tenure Status on TIAA-CREF Drawdown During Phased Retirement

To: Emily Sumner <sumnere1@nku.edu>

Cc: Matthew Zacate <zacatem1@nku.edu>, Michael Baranowski <baranowskim@nku.edu>, Sue Ott Rowlands <sottrowlands@nku.edu>

Ms. Sumner----

In cooperation with the Provost, the Professional Concerns Committee of the Faculty Senate is looking into some possible proposed changes to the Phased Retirement Program for faculty members. One change being proposed would be to allow a faculty member undergoing phased retirement the choice of either relinquishing or retaining their status as tenured faculty members during the phase. Although both the Provost and the Professional Concerns Committee tentatively would like to support this proposal, concerns have been raised that tenure status might have an impact on the rules that govern drawdown of retirement funds saved in TIAA-CREF accounts. Is this true? Is this something we need to be aware of, or to take account of? Any advice would be appreciated.

Best,

--Ken Katkin, PCC Chair (2016-17)

From: Lori Southwood

Sent: Thursday, October 13, 2016 10:05 AM

To: Kenneth Katkin <katkink@nku.edu>; Sue Ott Rowlands <sottrowlands@nku.edu>

Cc: Emily Sumner <sumnere1@nku.edu>

Subject: RE: Question About Impact of Tenure Status on TIAA-CREF Drawdown During Phased Retirement

Ken—

Tenure status will not have an impact on the rules that govern drawdown of retirement funds saved in TIAA-CREF accounts.

Lori