
1940 Statement of Principles on Academic Freedom and Tenure

with 1970 Interpretive Comments

In 1915 the Committee on Academic Freedom and Academic Tenure of the American Association of University Professors formulated a statement of principles on academic freedom and academic tenure known as the 1915 *Declaration of Principles*, which was officially endorsed by the Association at its Second Annual Meeting held in Washington, D.C., December 31, 1915, and January 1, 1916.

In 1925 the American Council on Education called a conference of representatives of a number of its constituent members, among them the American Association of University Professors, for the purpose of formulating a shorter statement of principles on academic freedom and tenure. The statement formulated at this conference, known as the 1925 *Conference Statement on Academic Freedom and Tenure*, was endorsed by the Association of American Colleges (now the Association of American Colleges and Universities) in 1925 and by the American Association of University Professors in 1926.

In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges agreed on a restatement of the principles that had been set forth in the 1925 *Conference Statement on Academic Freedom and Tenure*. This restatement is known to the profession as the 1940 *Statement of Principles on Academic Freedom and Tenure*.

Following extensive discussions on the 1940 *Statement of Principles on Academic Freedom and Tenure* with leading educational associations and with individual faculty members and administrators, a joint committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the joint committee felt the preferable approach was to formulate interpretations of the 1940 *Statement* from the experience gained in implementing and applying it for over thirty years and of adapting it to current needs.

The committee submitted to the two associations for their consideration *Interpretive Comments* that are included below as footnotes to the 1940 *Statement*.¹ These interpretations were adopted by the Council of the American Association of University Professors in April 1970 and endorsed by the Fifty-Sixth Annual Meeting as Association policy.

1. The Introduction to the Interpretive Comments notes: In the thirty years since their promulgation, the principles of the 1940 "Statement of Principles on Academic Freedom and Tenure" have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that association either alone or in conjunction with the Association of American

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole.² The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.³

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession

Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 "Statement," to formulate the most important of these refinements. Their incorporation here as Interpretive Comments is based upon the premise that the 1940 "Statement" is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 "Statement"; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian v. Board of Regents*, 385 US 589 (1967), "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

2. The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.

3. First 1970 comment: The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to professors in their utterances as citizens, in the exercise of their responsibilities to the institution and to students, and in their conduct when resigning from their institution or when undertaking government-sponsored research. Of particular relevance is the "Statement on Professional Ethics" adopted in 1966 as Association policy (AAUP, *Policy Documents and Reports*, 11th ed. [Baltimore: Johns Hopkins University Press, 2015], 145–46).

attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

Academic Freedom

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.⁴ Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.⁵
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.⁶

4. Second 1970 comment: The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.

5. Third 1970 comment: Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 "Statement," and we do not now endorse such a departure.

6. Fourth 1970 comment: This paragraph is the subject of an interpretation adopted by the sponsors of the 1940 "Statement" immediately following its endorsement:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be

Academic Tenure

After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.
2. Beginning with appointment to the rank of full-time instructor or a higher rank,⁷ the

accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph 3 of the section on Academic Freedom in the 1940 "Statement" should also be interpreted in keeping with the 1964 "Committee A Statement on Extramural Utterances," *Policy Documents and Reports*, 31, which states inter alia: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph 5 of the "Statement on Professional Ethics," *Policy Documents and Reports*, 146, also addresses the nature of the "special obligations" of the teacher:

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

7. Fifth 1970 comment: The concept of "rank of full-time instructor or a higher rank" is intended to include any person who teaches a full-time load regardless of the teacher's specific title. [For a discussion of this question, see the "Report of the Special Committee on Academic

probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years.⁸ Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.⁹

Personnel Ineligible for Tenure," *AAUP Bulletin* 52 (September 1966): 280–82.]

8. Sixth 1970 comment: In calling for an agreement "in writing" on the amount of credit given for a faculty member's prior service at other institutions, the "Statement" furthers the general policy of full understanding by the professor of the terms and conditions of the appointment. It does not necessarily follow that a professor's tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution. [For a more detailed statement on this question, see "On Crediting Prior Service Elsewhere as Part of the Probationary Period," *Policy Documents and Reports*, 167–68.]

9. Seventh 1970 comment: The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 "Statement" with respect to the termination of service of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the "Standards for Notice of Nonreappointment," endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964) (*Policy Documents and Reports*, 99). These standards are:

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

1. *Not later than March 1 of the first academic year of service*, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have.¹⁰
4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.¹¹

2. *Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.*

3. At least twelve months before the expiration of an appointment after two or more years in the institution.

Other obligations, both of institutions and of individuals, are described in the "Statement on Recruitment and Resignation of Faculty Members," *Policy Documents and Reports*, 153–54, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

10. Eighth 1970 comment: The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the "Recommended Institutional Regulations on Academic Freedom and Tenure," *Policy Documents and Reports*, 79–90, prepared by the American Association of University Professors.

11. Ninth 1970 comment: A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the "Statement on Procedural Standards in Faculty Dismissal Proceedings," *Policy Documents and Reports*, 91–93, jointly approved by the

5. Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

Endorsers

Note: Groups that changed names subsequent to endorsing the statement are listed under their current names.

Association of American Colleges and Universities.....	1941
American Association of University Professors.....	1941
American Library Association (adapted for librarians).....	1946
Association of American Law Schools.....	1946
American Political Science Association.....	1947
American Association for Higher Education and Accreditation.....	1950
American Association of Colleges for Teacher Education.....	1950
Eastern Psychological Association.....	1950
Southern Society for Philosophy and Psychology.....	1953
American Psychological Association.....	1961
American Historical Association.....	1961
Modern Language Association.....	1962
American Economic Association.....	1962
Agricultural and Applied Economic Association.....	1962
Midwest Sociological Society.....	1963
Organization of American Historians.....	1963
Society for Classical Studies.....	1963
American Council of Learned Societies.....	1963
American Sociological Association.....	1963

American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 "Statement" is silent.

The "Statement on Procedural Standards in Faculty Dismissal Proceedings" provides: "Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

The concept of "moral turpitude" identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

Southern Historical Association	1963	American Speech-Language-Hearing Association.....	1968
American Studies Association.....	1963	Association of Social and Behavioral Scientists	1968
Association of American Geographers	1963	College English Association.....	1968
Southern Economic Association	1963	National College Physical Education Association for Men.....	1969
Classical Association of the Middle West and South.....	1964	American Real Estate and Urban Economics Association.....	1969
Southwestern Social Science Association.....	1964	Council for Philosophical Studies	1969
Archaeological Institute of America	1964	History of Education Society.....	1969
Southern Management Association.....	1964	American Musicological Society.....	1969
American Theatre Association (now dissolved)	1964	American Association of Teachers of Spanish and Portuguese.....	1969
South Central Modern Language Association.....	1964	Texas Community College Teachers Association.....	1970
Southwestern Philosophical Society.....	1964	College Art Association of America.....	1970
Council of Independent Colleges.....	1965	Society of Professors of Education	1970
Mathematical Association of America.....	1965	American Anthropological Association.....	1970
Arizona-Nevada Academy of Science	1965	Association of Theological Schools	1970
American Risk and Insurance Association.....	1965	Association of Schools of Journalism and Mass Communication	1971
Academy of Management	1965	Academy of Legal Studies in Business.....	1971
American Catholic Historical Association.....	1966	Americans for the Arts	1972
American Catholic Philosophical Association	1966	New York State Mathematics Association of Two-Year Colleges.....	1972
Association for Education in Journalism and Mass Communication.....	1966	College Language Association.....	1973
Western History Association	1966	Pennsylvania Historical Association.....	1973
Mountain-Plains Philosophical Conference....	1966	American Philosophical Association.....	1974
Society of American Archivists	1966	American Classical League	1974
Southeastern Psychological Association.....	1966	American Comparative Literature Association.....	1974
Southern States Communication Association.....	1966	Rocky Mountain Modern Language Association.....	1974
American Mathematical Society.....	1967	Society of Architectural Historians.....	1975
Association for Slavic, East European, and Eurasian Studies.....	1967	American Statistical Association.....	1975
College Theology Society	1967	American Folklore Society	1975
Council on Social Work Education.....	1967	Association for Asian Studies.....	1975
American Association of Colleges of Pharmacy	1967	Linguistic Society of America	1975
American Academy of Religion	1967	African Studies Association	1975
Association for the Sociology of Religion	1967	American Institute of Biological Sciences	1975
American Society of Journalism School Administrators (now merged with the Association of Schools of Journalism and Mass Communication).....	1967	North American Conference on British Studies.....	1975
John Dewey Society	1967	Sixteenth-Century Society and Conference ...	1975
South Atlantic Modern Language Association.....	1967	Texas Association of College Teachers.....	1976
American Finance Association	1967	Association for Jewish Studies	1976
Association for Social Economics	1967	Association for Spanish and Portuguese Historical Studies	1976
Phi Beta Kappa Society	1968	Western States Communication Association....	1976
Society of Christian Ethics	1968	Texas Association of Colleges for Teacher Education.....	1977
American Association of Teachers of French	1968	Metaphysical Society of America.....	1977
Eastern Finance Association	1968	American Chemical Society	1977
American Association for Chinese Studies	1968	Texas Library Association.....	1977
American Society of Plant Biologists.....	1968	American Society for Legal History	1977
University Film and Video Association	1968	Iowa Higher Education Association	1977
American Dialect Society	1968	American Physical Therapy Association	1979

North Central Sociological Association.....	1980	Council of Teachers of Southeast	
Dante Society of America.....	1980	Asian Languages	1994
Association for Communication		American Association of Teachers of Arabic...	1994
Administration.....	1981	American Association of Teachers of	
National Communication Association.....	1981	Japanese.....	1994
American Association of Physics Teachers.....	1982	Academic Senate for California	
Middle East Studies Association	1982	Community Colleges.....	1996
National Education Association.....	1985	National Council for the Social Studies.....	1996
American Institute of Chemists	1985	Council of Academic Programs in	
American Association of Teachers		Communication Sciences and Disorders	1996
of German	1985	Association for Women in Mathematics	1997
American Association of Teachers of Italian...	1985	Philosophy of Time Society.....	1998
American Association for Applied		World Communication Association	1999
Linguistics.....	1986	The Historical Society.....	1999
American Association for Cancer Education...	1986	Association for Theatre in Higher Education..	1999
American Society of Church History.....	1986	National Association for Ethnic Studies.....	1999
Oral History Association.....	1987	Association of Ancient Historians	1999
Society for French Historical Studies	1987	American Culture Association	1999
History of Science Society.....	1987	American Conference for Irish Studies	1999
American Association of Pharmaceutical		Society for Philosophy in the	
Scientists	1988	Contemporary World.....	1999
American Association for Clinical		Eastern Communication Association.....	1999
Chemistry	1988	Association for Canadian Studies	
Council for Chemical Research	1988	in the United States.....	1999
Association for the Study of Higher		American Association for the History of	
Education.....	1988	Medicine.....	2000
American Psychological Association	1989	Missouri Association of Faculty Senates.....	2000
Association for Psychological Science.....	1989	Association for Symbolic Logic	2000
University and College Labor Education		American Society of Criminology.....	2001
Association.....	1989	American Jewish Historical Society	2001
Society for Neuroscience	1989	New England Historical Association	2001
Renaissance Society of America.....	1989	Society for the Scientific Study of Religion	2001
Society of Biblical Literature	1989	Society for German-American Studies	2001
National Science Teachers Association	1989	Society for Historians of the Gilded Age	
Medieval Academy of America	1990	and Progressive Era.....	2001
American Society of Agronomy	1990	Eastern Sociological Society	2001
Crop Science Society of America	1990	Chinese Historians in the United States.....	2001
Soil Science Society of America	1990	Community College Humanities	
International Society of Protistologists.....	1990	Association.....	2002
Society for Ethnomusicology	1990	Immigration and Ethnic History Society	2002
American Association of Physicists		Society for Early Modern Catholic Studies	2002
in Medicine	1990	Academic Senate of the California State	
Animal Behavior Society.....	1990	University	2004
Illinois Community College Faculty		Agricultural History Society	2004
Association.....	1990	National Council for Accreditation	
American Society for Theatre Research.....	1990	of Teacher Education	2005
National Council of Teachers of English.....	1991	American Council on the Teaching	
Latin American Studies Association.....	1992	of Foreign Languages.....	2005
Society for Cinema and Media Studies.....	1992	Society for the Study of Social Biology	2005
American Society for Eighteenth-Century		Society for the Study of Social Problems	2005
Studies.....	1992	Association of Black Sociologists.....	2005
Council of Colleges of Arts and Sciences.....	1992	Dictionary Society of North America	2005
American Society for Aesthetics.....	1992	Society for Buddhist-Christian Studies.....	2005
Association for the Advancement		Society for Armenian Studies.....	2006
of Baltic Studies.....	1994	Society for the Advancement of	
American Council of Teachers of Russian.....	1994	Scandinavian Study	2006

American Physiological Society	2006	Chinese Language Teachers Association	2014
National Women’s Studies Association	2006	Coordinating Council for Women	
National Coalition for History	2006	in History.....	2014
Society for Military History	2006	Ecological Society of America	2014
Society for Industrial and Applied		Institute for American Religious and	
Mathematics	2006	Philosophical Thought	2014
Association for Research on Ethnicity and		Italian American Studies Association.....	2014
Nationalism in the Americas	2006	Midwestern Psychological Association.....	2014
Society of Dance History Scholars.....	2006	Modern Greek Studies Association.....	2014
Association of Literary Scholars, Critics,		National Association of Professors	
and Writers	2006	of Hebrew.....	2014
National Council on Public History.....	2006	National Council of Less Commonly	
College Forum of the National Council of		Taught Languages	2014
Teachers of English.....	2006	Population Association of America	2014
Society for Music Theory	2006	Society for Italian Historical Studies.....	2014
Society for Historians of American		Society for Psychophysiological Research.....	2014
Foreign Relations.....	2006	Society for Romanian Studies.....	2014
Law and Society Association	2006	Society for Textual Scholarship.....	2014
Society for Applied Anthropology.....	2006	Society for the History of Children and	
American Society of Plant Taxonomists.....	2006	Youth.....	2014
Society for the History of Technology	2006	Society for the Psychological Study	
German Studies Association.....	2006	of Social Issues.....	2014
Association of College and Research		Society for the Study of the Multi-Ethnic	
Libraries	2007	Literature of the United States	2014
Czechoslovak Studies Association.....	2007	Society of Civil War Historians	2014
American Educational Studies Association	2007	Society of Mathematical Psychology	2014
Southeastern Women’s Studies Association ..	2009	Sociologists for Women in Society	2014
American Academy for Jewish Research.....	2014	Urban History Association	2014
American Association for Ukrainian		World History Association	2014
Studies.....	2014	American Educational Research	
American Association of Italian Studies	2014	Association.....	2014
American Theatre and Drama Society	2014	Labor and Working-Class History	
Central European History Society	2014	Association.....	2014
Central States Communication Association....	2014	Paleontological Society	2014

Report of the Committee on Freedom of Expression

The Committee on Freedom of Expression at the University of Chicago was appointed in July 2014 by President Robert J. Zimmer and Provost Eric D. Isaacs “in light of recent events nationwide that have tested institutional commitments to free and open discourse.” The Committee’s charge was to draft a statement “articulating the University’s overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University’s community.”

The Committee has carefully reviewed the University’s history, examined events at other institutions, and consulted a broad range of individuals both inside and outside the University. This statement reflects the long-standing and distinctive values of the University of Chicago and affirms the importance of maintaining and, indeed, celebrating those values for the future.

From its very founding, the University of Chicago has dedicated itself to the preservation and celebration of the freedom of expression as an essential element of the University’s culture. In 1902, in his address marking the University’s decennial, President William Rainey Harper declared that “the principle of complete freedom of speech on all subjects has from the beginning been regarded as fundamental in the University of Chicago” and that “this principle can neither now nor at any future time be called in question.”

Thirty years later, a student organization invited William Z. Foster, the Communist Party’s candidate for President, to lecture on campus. This triggered a storm of protest from critics both on and off campus. To those who condemned the University for allowing the event, President Robert M. Hutchins responded that “our students . . . should have freedom to discuss any problem that presents itself.” He insisted that the “cure” for ideas we oppose “lies through open discussion rather than through inhibition.” On a later occasion, Hutchins added that “free inquiry is indispensable to the good life, that universities exist for the sake of such inquiry, [and] that without it they cease to be universities.”

In 1968, at another time of great turmoil in universities, President Edward H. Levi, in his inaugural address, celebrated “those virtues which from the beginning and until now have characterized our institution.” Central to the values of the University of Chicago, Levi explained, is a profound commitment to “freedom of inquiry.” This freedom, he proclaimed, “is our inheritance.”

More recently, President Hanna Holborn Gray observed that “education should not be intended to make people comfortable, it is meant to make them think. Universities should be expected to provide the conditions within which hard thought, and therefore strong disagreement, independent judgment, and the questioning of stubborn assumptions, can flourish in an environment of the greatest freedom.”

The words of Harper, Hutchins, Levi, and Gray capture both the spirit and the promise of the University of Chicago. Because the University is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the University, the University of Chicago fully respects and supports the freedom of all members of the University community “to discuss any problem that presents itself.”

Of course, the ideas of different members of the University community will often and quite naturally conflict. But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. In addition, the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the University. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the University’s commitment to a completely free and open discussion of ideas.

In a word, the University’s fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University’s educational mission.

As a corollary to the University’s commitment to protect and promote free expression, members of the University community must also act in conformity with the principle of free expression. Although members of the University community are free to criticize and contest the views expressed on campus, and to criticize and contest

speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, the University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.

As Robert M. Hutchins observed, without a vibrant commitment to free and open inquiry, a university ceases to be a university. The University of Chicago's long-standing commitment to this principle lies at the very core of our University's greatness. That is our inheritance, and it is our promise to the future.

Geoffrey R. Stone, Edward H. Levi Distinguished Service Professor of Law,
Chair

Marianne Bertrand, Chris P. Dialynas Distinguished Service Professor of
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David A. Strauss, Gerald Ratner Distinguished Service Professor of Law

Kenneth W. Warren, Fairfax M. Cone Distinguished Service Professor,
Department of English and the College

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NKU FACULTY POLICIES AND PROCEDURES HANDBOOK

Page 94-95

Section 16.3. ACADEMIC FREEDOM

Northern Kentucky University strongly adheres to the long-standing tradition and practice of academic freedom. In order for the University to fulfill its mission and be of service to society, the recognition of the free search for truth and its free expression is paramount. The University has an obligation to recognize and protect freedom of inquiry, teaching, and research in all facets of the academic community. The right of academic freedom will be the right of every faculty member.

The University recognizes that all faculty members are private persons and members of their respective learned professions. When they speak or write as private persons, they have the same rights and obligations as other private persons. Although faculty members are free, in public activities and statements, to identify their University affiliation, they have special obligations to be accurate, prudent, and respectful of others so that no false impression of University sponsorship or endorsement is created.

While the University will vigorously defend the concept of academic freedom, no special immunity from the law will be sought for administrators, faculty, students, or staff. The University does not, however, assume the authority of prosecutor or judge of criminal or civil misconduct that is beyond the jurisdiction of the University or that is not directly related to legitimate University interests. That is the prerogative and duty of appropriate law enforcement agencies and the courts.

If anyone at the University violates the law, that person is subject to the penalties of the law as are all other persons. In general, the University will not impose administrative sanctions for acts that violate the law beyond the civil or criminal penalties imposed by the appropriate law enforcement agency or court. However, some acts that violate the law are also acts that endanger the physical or emotional safety and well being of students, faculty, other members of the University community, or visitors, or are acts that endanger the safety of University property; persons who commit these acts may also be subject to appropriate University sanctions, consistent with due process.

The University recognizes the need for all parties charged with the responsibility of allocating University resources (money, space, personnel, equipment, library resources, etc.) to make such decisions in a fair and unbiased manner, consistent with established University priorities. Resource allocations made with punitive motivations against an academic unit or individual faculty member for positions taken in controversies within or outside the academic community will be considered unauthorized and incompatible with academic freedom. The University will not condone or support such a decision and will make every reasonable effort to correct any inequity that such a decision produces.

MEMORANDUM

To: Professional Concerns Committee
From: Ken Katkin, Chair
Date: May 3, 2016
Re: NKU Values & Ethical Responsibilities Statement, Academic Freedom Provisions

Attached please find the following documents that pertain to the Board of Regents' decision on April 27, 2016 to strike certain language from the NKU Values & Ethical Responsibilities Statement approved by Faculty Senate and Staff Congress and Recommended by the President.

- Draft PCC Recommendations I & II (Pages 1-2).
- Timeline of Events (Pages 3-4).
- NKU Values & Ethical Responsibilities Statement, provision on "Ethical Responsibilities to Preserve Academic Freedom and Meet Academic Responsibilities," as approved by Faculty Senate on Feb 29, 2016, and as amended by the Board of Regents (Page 5).
- Email from President Mearns dated April 4, 2016 (Page 6).
- Presidential Recommendation C-20, tendered to NKU Board of Regents April 20, 2016 (Page 7).
- Memorandum from University Counsel Sara L. Sidebottom to Board of Regents Audit & Compliance Committee, dated April 25, 2016 (Pages 8-9).
- Motion of Board of Regents Member and Secretary Virginia G. Fox, made on floor of Board of Regents Meeting, April 27, 2016 (Page 10).
- Letter from Board of Regents Audit & Compliance Committee Members to Faculty Regent Richard Boyce, dated May 3, 2016 (page 11-12)
- NKU Faculty Handbook Part Two, Section III (on "Academic Freedom") (Page 13).
- NKU Faculty Handbook Appendix C: Collegial Governance at NKU (pages 14-19)
- Letter from President Mearns to former Board of Regents Chair Dennis Repenning, dated September 12, 2013. This letter was included as an attachment to the April 25 Memorandum from University Counsel Sara L. Sidebottom to Board of Regents Audit & Compliance Committee (Pages 20-23).

**PROFESSIONAL CONCERNS COMMITTEE
RECOMMENDATIONS TO FACULTY SENATE**

Recommendation I:

Resolved: That Part IV of the NKU Values and Ethical Responsibilities Statement be amended to include the following language in Part IV, as the last paragraph under the section heading “Preserve Academic Freedom and Meet Academic Responsibilities”:

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. Protecting academic freedom on campus requires ensuring that a particular instance of faculty speech will be subject to discipline only where that speech violates some central principle of academic morality, as, for example, where it is found to be fraudulent (academic freedom does not protect plagiarism and deceit). Protecting academic freedom also requires ensuring that faculty status turns on a faculty member’s views only where the holding of those views clearly supports a judgment of competence or incompetence.

This language was previously approved by Faculty Senate on February 29, 2016.

Recommendation II:

Resolved: That Part Two, Section III.A of the NKU Faculty Policies & Procedures Handbook and Part Two, Section III.A of the Chase College of Law Faculty Policies & Procedures Handbook both be amended to include the following language:

The academic freedom of faculty 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. Protecting academic freedom on campus requires ensuring that a particular instance of faculty speech will be subject to discipline only where that speech violates some central principle of academic morality, as, for example, where it is found to be fraudulent (academic freedom does not protect plagiarism and deceit). Protecting academic freedom also requires ensuring that faculty status turns on a faculty member's views only where the holding of those views clearly supports a judgment of competence or incompetence.

As amended, Part Two, Section III.A of the NKU Faculty Policies & Procedures Handbook and Part Two, Section III.A of the Chase College of Law Faculty Policies & Procedures Handbook will now read:

III. ACADEMIC FREEDOM

A. Northern Kentucky University strongly adheres to the long-standing tradition and practice of academic freedom. In order for the University to fulfill its mission and be of service to society, the recognition of the free search for truth and its free expression is paramount. The University has an obligation to recognize and protect freedom of inquiry, teaching, and research in all facets of the academic community. The right of academic freedom will be the right of every faculty member. The academic freedom of faculty 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. Protecting academic freedom on campus requires ensuring that a particular instance of faculty speech will be subject to discipline only where that speech violates some central principle of academic morality, as, for example, where it is found to be fraudulent (academic freedom does not protect plagiarism and deceit). Protecting academic freedom also requires ensuring that faculty status turns on a faculty member's views only where the holding of those views clearly supports a judgment of competence or incompetence.

NKU Values and Ethical Responsibilities Statement

Procedural History of Its Adoption, As Amended

- On February 29, 2016, Faculty Senate approved a recommendation for a revised NKU statement of Values and Ethical Responsibilities.
- On April 4, 2016, President Mearns informed the NKU Faculty Senate President and Faculty Regent, in writing, that he intended to recommend that the Board of Regents should adopt the Senate-approved version of this statement at its next meeting. In his April 4 letter, the President stated that he had a few substantive concerns about the Senate document that he hoped to revisit with Senate at some point in the future. Subsequently, the Senate President and the Faculty Regent informed President Mearns that Faculty Senate would look forward to learning what his substantive concerns were, and working with him to resolve them.
- Present Mearns never communicated any substantive concerns to Faculty Senate.
- On April 20, 2016, President Mearns formally recommended that the Board of Regents approve the Senate proposal for a revised NKU Values and Ethical Responsibilities Statement. (Presidential Recommendation: C-20).
- On April 26, the day before the Board of Regents meeting, University Counsel University Counsel Sara Sidebottom met with the Audit & Compliance Committee of the Board of Regents. The Faculty Regent is not a Member of the Audit & Compliance Committee.
- In connection with her April 26 meeting with the Audit Committee, University Counsel presented a memo dated April 25, 2016, entitled “NKU Values and Ethical Responsibilities.” This Memorandum urged the Regents not to adopt Presidential Recommendation C-20 for two reasons:
 - The revised NKU statement of Values and Ethical Responsibilities was presented to the Regents as a recommendation of Faculty Senate approved by the President, rather than via the Compliance Officer’s new notice-and-comment review procedures. (The Memorandum failed to note that not a single one of the twenty President Recommendations on the Regents’ April 27 Agenda reached

the Regents via the administration's new notice-and-comment review procedures, nor that the Values and Ethical Responsibilities was merely one of seven items placed on the April 27 Agenda pursuant to a recommendation of the Faculty Senate endorsed by the President. Nor did Counsel's Memorandum acknowledge that recommendations of the Faculty Senate are not subject to the notice-and-comment review procedures).

- Four sentences on Freedom of Speech and Academic Freedom included in the statement of Values and Ethical Responsibilities might restrain the administration from imposing "appropriate employer discipline" as a means of retaliating against faculty and staff members for expressing views on matters having to do with NKU and its policies.
- On April 26, 2016 at dinner the night before the Board of Regents meeting, the Faculty Regent first learned that a motion to amend the Senate proposal to eliminate some "freedom of speech" and "academic freedom" provisions would be introduced at the meeting of the Board of Regents.
- On April 27, 2016, Regent Virginia G. Fox, Secretary of the Board of Regents, moved to strike the last paragraph under the section heading "Preserve Academic Freedom and Meet Academic Responsibilities" from the Senate proposal for a revised NKU statement of Values and Ethical Responsibilities. The Regents voted in favor of the President's motion, with only the Faculty Regent dissenting. The Regents then adopted the amended version of the Senate's proposal.
- On April 29, 2016, Faculty Senate President Michael Baranowski, Faculty Regent Richard Boyce, and PCC Chair Ken Katkin met with President Mearns and Provost Ott-Rowlands to discuss the Regents' action.
- On May 3, 2016, the three Regents who are members of the Audit & Compliance Committee wrote to Faculty Regent Richard Boyce to propose new language that might replace the language on academic freedom stricken by the Regents from the proposed NKU statement of Values and Ethical Responsibilities.

NKU Values and Ethical Responsibilities Statement

Approved by the Faculty Senate at the February 29, 2016 Meeting

NKU Values and Ethical Responsibilities

IV. Ethical Responsibilities

Preserve Academic Freedom and Meet Academic Responsibilities

Academic freedom is essential to NKU's mission. University community members are expected to:

- Encourage students in the free pursuit of learning;
- Demonstrate respect for the student as an individual, make every effort to foster honest academic conduct, and assure that the evaluation of student work reflects that work's true merit;
- Respect the confidential nature of the relationship between professor and student;
- Avoid exploitation of students for private advantage and acknowledge significant assistance from them;
- Promote academic freedom, including the freedom to discuss relevant matters in the classroom, with fellow NKU community members, and with the public. Academic freedom includes the freedom to explore all avenues of scholarship, research and creative expression, to participate in the shared governance of the University, and to speak and write as a public citizen without institutional restraint;
- Accept his/her share of responsibilities for the governance of the university;
- Where appropriate, assist the university in meeting its public engagement mission;
- Accurately evaluate the professionalism of other members of the university community when writing letters of recommendation or otherwise providing input regarding the manner in which individuals carry out responsibilities expected of or entrusted to them.

[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. Protecting academic freedom on campus requires ensuring that a particular instance of faculty speech will be subject to discipline only where that speech violates some central principle of academic morality, as, for example, where it is found to be fraudulent (academic freedom does not protect plagiarism and deceit). Protecting academic freedom also requires ensuring that faculty status turns on a faculty member's views only where the holding of those views clearly supports a judgment of competence or incompetence.]

***Italics* = language approved by Faculty Senate, but struck by Board of Regents on April 27, 2016 on the motion of Regent Virginia G. Fox.**

From: **Geoffrey Mearns** <mearns@nku.edu>
Date: Mon, Apr 4, 2016 at 12:52 PM
Subject: RE: Senate Approved Version of Values and Ethics Statement
To: Michael Baranowski <baranowskim@nku.edu>, David Bauer <bauerd2@nku.edu>
Cc: Grace Hiles <hilesg1@nku.edu>, Kathryn Herschede <herschede@nku.edu>, Sue Hodges Moore <moores4@nku.edu>, Sue Ott Rowlands <sottrowlands@nku.edu>, Sara Sidebottom <sidebottoms@nku.edu>, Richard Boyce <boycer@nku.edu>, Arnie Slaughter <slaughtera@nku.edu>

Michael and David:

I have reviewed the proposed changes approved by the Faculty Senate and the Staff Congress.

I have a few substantive concerns with the version that was approved.

Moreover, this version has not been posted for comment by all faculty and all staff. That omission is inconsistent with the current policy review process.

Nevertheless, I intend to recommend that the Board of Regents approve this version at its next meeting.

With respect to the substantive concerns, we may be able to revisit the issue at some point in the future.

With respect to the process concern, I am prepared to make an exception in this case, because I do not want to prolong the debate over the policy. I am grateful to all who have participated in the process, and I think that it's better to proceed to the Board now.

I also think, though, that we need to resolve our different perspectives on how the process should work in the future. I respect the role of the Faculty Senate as the elected representatives of the faculty as a whole. But I also respect the perspectives of all faculty members. And the input of more people, as opposed to fewer, will improve the final product and increase support for that result, as well.

I am confident that we can resolve these issues working together.

Thank you.

Geoff

Geoffrey S. Mearns
President
Northern Kentucky University
Nunn Drive
800 Lucas Administrative Center
Highland Heights, KY 41099
Phone: 859-572-5123
Fax: 859-572-6696

Please note that all e-mails directed to President Geoffrey Mearns are subject to open records laws and may become public information.

April 20, 2016

RECOMMENDATION:

That the Board of Regents approve the proposed NKU Values and Ethical Responsibilities Statement.


BACKGROUND:

In March 2014, the Board of Regents approved the then existing Ethical Principles and Code of Conduct to add one item, an annual acknowledgement.

Since that time, there has been substantial discussion and debate among faculty and staff about the substance of the Code.

Faculty Senate and Staff Congress have now approved the following Values and Ethical Responsibilities Statement. The President is forwarding their document to you for your review, consideration, and approval.

MEMORANDUM

TO: Audit and Compliance Committee
FROM: Sara L. Sidebottom 
RE: NKU Values & Ethical Responsibilities
DATE: April 25, 2016

History

- The policy was originally designated as Administrative Regulation Ar-I-1.0-1, Statement of Administrative Ethics and was approved on July 19, 1981.
- The Board of Regents revised the regulation in July of 2005.
- Due to the investigation into Scott Eaton, President Mearns outlined the recommendations of the outside auditors in a letter to the Board of Regents dated September 12, 2013. This letter was also forwarded to the university community. The requirement for an annual acknowledgment resulted in a re-examination of the policy.
- In March 2014, the Board of Regents revised the policy to add the provision requiring the annual acknowledgment for all faculty, staff and administrators in response to the recommendations by outside auditors.

Process

- In March of 2015, work began on a draft of a revised policy with the Staff Congress Policy Committee. The offer was made to the President of Faculty Senate for joint meetings who indicated that he was unavailable to meet.
- The compliance officer continued to meet with the Staff Congress Policy Committee from March 2015 through August 2015. Staff Congress reviewed the policy in September, 2015 and had no suggested revisions.
- A draft of the revised policy was then referred to the Professional Concerns Committee (PCC) of the Faculty Senate. The compliance officer attended PCC meetings and kept in contact via email with the Chair of the PCC.
- In December, several members of Staff Congress, the President of Faculty Senate, and the Chair of the PCC met. The compliance officer was advised that the Faculty Senate did not intend to follow the policy review process. The intent was to forward the Faculty Senate version of the policy to the President with the directive to forward the policy to the Board of Regents

Concerns

- The proposed policy applies to the entire university – faculty, staff, administrators and student employees. As such, it should be submitted for review in compliance with the “Policy Creation, Revision and Communication” policy approved by the Board of Regents on 9/10/2014.
- The 14 day comment period allows everyone affected by the policy the opportunity to review and offer suggestions, criticism or support.
- Allowing all members of the NKU community to have their voices heard regarding university policy creation and revision increases transparency, promotes ethical behavior and allows for shared governance among all NKU stakeholders.
- One reason the Policy Creation Revision and Communication policy was put into place was to solicit broad feedback from the campus, increase efficiency, and maintain consistency.

- Proper policy administration and processes are a component to our accreditation as referenced in the Section titled Institutional Mission, Governance and Effectiveness, Section 3.2 Governance and Administration. Section 3.2.2 states, "The legal authority and operating control of the institution are clearly defined for the following areas within the institution's governance structure: 3.2.2.3 institutional policy". Also, Section 3.2.7 advises, "The institution has a clearly defined and published organizational structure that delineates responsibility for the administration of policies". Not only is it required that we have a policy process, it is vital that we follow it and be able to provide evidence that we follow our process.
- The expanded definition of Academic Freedom includes additional protections and limitations not enumerated in the Faculty Handbook (pg 92). Clearly the policy review process would have allowed opportunity for comment, suggestion or criticism as well as compliance and legal review.
The ongoing debate regarding public employees' First Amendment protection and appropriate employer discipline underscores the rationale for open, transparent conversations provided in the policy review process.

MOTION OF NKU BOARD OF REGENTS SECRETARY & MEMBER VIRGINIA G. FOX

Motion made by Regent Fox on floor of NKU Board of Regents Meeting, April 27, 2016. The motion passed, over the sole dissenting vote of Faculty Regent Richard Boyce.

Mr. Chairman, I move that we accept item C-20, the Values and Ethical Responsibilities Statement with the following modification and conditions:

- (1) Direct the administration to work with the Faculty Senate, Staff Congress, and Student Government Association to develop a revised "Policy Creation, Revision, and Communication" policy to recognize the role of the Faculty Senate, Staff Congress, and when appropriate, the Student Government Association; and
- (2) Strike the last paragraph under the section heading "Preserve Academic Freedom and Meet Academic Responsibilities; and
- (3) Evaluate possible revisions to this policy, including issues and consistency of statements related to freedom of speech and academic freedom.

Memorandum

To: Professor Richard Boyce

From: Nathan Smith, Chair, Board of Regents

Rich Boehne, Vice Chair, Board of Regents

Virginia Fox, Secretary, Board of Regents

Re: Values and Ethical Responsibilities Statement

Date: May 3, 2016

The Audit and Compliance Committee of the Board of Regents met on Tuesday, April 26. At this meeting, Regent Fox asked for a discussion of the proposed Values and Ethical Responsibilities Statement, because both the General Counsel and the Compliance Officer were in attendance and had expressed concerns with the proposed statement. The Board was scheduled to vote on the President's recommendation the following day at the Board meeting.

We discussed the proposed statement with the General Counsel and the Compliance Officer, who shared several concerns with the statement as drafted. The General Counsel and the Compliance Officer had previously shared these concerns with President Mearns, but he had nevertheless urged the Board to approve his recommendation.

During the conversation, though, it was clear that we were inclined either to defer any action on the matter until the concerns were satisfactorily resolved or to propose an edited statement, which included deleting one paragraph and directing the administration to amend the "Policy on Policies" to better reflect the role of the Faculty Senate, Staff Congress, and Student Government Association. After considerable discussion, we decided to pursue the latter option, and we asked President Mearns and

Katie to draft a proposed motion to reflect our preferred approach. As you know, we then shared this draft motion with you and the other Regents at dinner on Tuesday night.

The potential inconsistency between the proposed Values and Ethical Responsibilities Statement and the Faculty handbook could be resolved with the following edits:

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. ~~Protecting the academic freedom on campus requires ensuring that a particular instance of faculty speech will be subject to discipline only where that speech violates some central principle of academic morality, as, for example, where it is found to be fraudulent (academic freedom does not protect plagiarism and deceit). Protecting academic freedom also requires ensuring that faculty status turns on a faculty member's views only where the holding of those views clearly supports a judgment of competence or incompetence. The faculty protection for Academic Freedom is described in Section III, Items A-D, in the Faculty Policies and Procedures Handbook, which is incorporated herein by reference.~~

We trust that this memo will dispel the misperception that some faculty may have. We also hope that this memo provides clear guidance as to how we can bring closure to this process.

CC: Geoffrey S. Mearns, President

Professor Michael Baranowski, President, Faculty Senate

FACULTY POLICIES AND PROCEDURES HANDBOOK

PART TWO: FACULTY AND UNIVERSITY POLICIES

III. ACADEMIC FREEDOM

- A. Northern Kentucky University strongly adheres to the long-standing tradition and practice of academic freedom. In order for the University to fulfill its mission and be of service to society, the recognition of the free search for truth and its free expression is paramount. The University has an obligation to recognize and protect freedom of inquiry, teaching, and research in all facets of the academic community. The right of academic freedom will be the right of every faculty member.
- B. The University recognizes that all faculty members are private persons and members of their respective learned professions. When they speak or write as private persons, they have the same rights and obligations as other private persons. Although faculty members are free, in public activities and statements, to identify their University affiliation, they have special obligations to be accurate, prudent, and respectful of others so that no false impression of University sponsorship or endorsement is created.
- C. While the University will vigorously defend the concept of academic freedom, no special immunity from the law will be sought for administrators, faculty, students, or staff. The University does not, however, assume the authority of prosecutor or judge of criminal or civil misconduct that is beyond the jurisdiction of the University or that is not directly related to legitimate University interests. That is the prerogative and duty of appropriate law enforcement agencies and the courts.

If anyone at the University violates the law, that person is subject to the penalties of the law as are all other persons. In general, the University will not impose administrative sanctions for acts that violate the law beyond the civil or criminal penalties imposed by the appropriate law enforcement agency or court. However, some acts that violate the law are also acts that endanger the physical or emotional safety and well-being of students, faculty, other members of the University community, or visitors, or are acts that endanger the safety of University property; persons who commit these acts may also be subject to appropriate University sanctions, consistent with due process.

- D. The University recognizes the need for all parties charged with the responsibility of allocating University resources (money, space, personnel, equipment, library resources, etc.) to make such decisions in a fair and unbiased manner, consistent with established University priorities. Resource allocations made with punitive motivations against an academic unit or individual faculty member for positions taken in controversies within or outside the academic community will be considered unauthorized and incompatible with academic freedom. The University will not condone or support such a decision and will make every reasonable effort to correct any inequity that such a decision produces.

APPENDIX C
COLLEGIAL GOVERNANCE AT NKU

The Faculty and Administrators of Northern Kentucky University endorse the “Statement on Government of Colleges and Universities” jointly formulated by the American Association of University Professors, Association of Governing Boards of Universities and Colleges and the American Council of Education (as adopted by the AAUP on October 29, 1966 and revised in April 1990) as the most appropriate general statement on University Governance. The remainder of the position paper specifically addresses the role of faculty and faculty bodies in university governance, consistent with the aforementioned “Statement on Government of College and Universities.”

The Faculty and Administrators of Northern Kentucky University believe in a collegial system of university governance, based on a concept of authority and responsibility shared among colleagues, some who have primary duties as faculty and some who have primary duties as administrators. A collegial system has, as its fundamental principle, the concept of good faith consultation among these colleagues prior to decision making as stipulated below.

Under the collegial system, decision-making authority is delegated or assigned to the collegial group most expert in or responsible for the particular area in which the decision is made. However, the Board of Regents and Council on Postsecondary Education are statutorily responsible for the governance of the University, and this document does not abridge this responsibility or authority. All colleagues in the system, regardless of their respective roles as faculty or administrators, have an obligation to honor and support the decisions reached through the collegial process. If good faith consultation among colleagues exists, if decision-making authority is delegated appropriately, and if all participants are committed to the decisions made through the collegial system, non-productive adversarial relationships among groups are minimized, and university goals and objectives are more easily achieved.

A. CHARACTERISTICS OF A COLLEGIAL SYSTEM OF GOVERNANCE:

1. “Colleague” is defined as a university employee of faculty rank or of professional or administrative classification.
2. Leadership, reason, persuasion, and cooperation are the hallmarks of the collegial system.
3. All colleagues have the opportunity to participate, directly or through elected representatives, in the collegial process.

4. Good faith consultation and mutual respect among colleagues are fundamental principles of the collegial system. All university decisions are preceded by dialogue among relevant constituencies, followed by appropriate rationale.
5. Academic freedom is an essential element of collegial governance.
6. When a decision is reached by the person responsible for making the decision, and that person has considered all recommendations made pursuant to the document, that decision is reached through the collegial process.
7. Colleagues are bound by the decisions relating to or affecting matters which are reached through collegial processes. Colleagues, therefore, ought to avoid using external political processes (e.g., legislature, CPE, governing board) to frustrate the decisions reached through the collegial process.
8. All colleagues are bound equally by the results of the system and seek to implement those decisions. Of course, a colleague is free to seek to change policy within the collegial system. Leaders of the faculty (e.g., president, provost, senate president, deans, chairs.) have a particular responsibility to implement the decisions of the system. To facilitate consensus on [the policy] policies and procedures, the procedures outlined in section B1 through B4 below shall be followed.

B. THE ROLE OF FACULTY BODIES IN THE COLLEGIAL SYSTEM:

“Faculty bodies” are defined as the collective members with faculty rank of an academic unit (such as) Department and College faculties, the Senate and its committees, and department and college faculty committees. As participants in the collegial system of university governance, all faculty bodies are obligated to make decisions and/or recommendations for the good of the university. Generally speaking, faculty bodies have primary responsibility for recommendations in matters directly related to academics, including curricula subject matter and methods of instruction, research, faculty status, and those aspects of student life which directly relate to the educational process.

1. Academic matters:

Faculty bodies have primary responsibility for recommendations in the following matters, and their recommendations should be implemented except for compelling reasons.

Reasons for non-implementation of faculty recommendations should be clearly stated in

writing, except where giving reasons in writing would contradict the faculty handbook, other pertinent university governance documents, or state or federal regulations. In cases where written notification is prohibited, reasons for non-implementation of recommendations should still be communicated in another manner to the appropriate faculty bodies. Implementation or notification should occur in a timely fashion.

Examples:

- Admissions requirements
- Graduation requirements
- Graduation of students
- Program Curricula

- Approval of academic degree programs
- Policies regarding grading and student grievances associated with academic work
- Academic personnel policies
- Academic personnel decisions
- Dismissal of tenured faculty
- Policies (personnel policies) which result in dismissal of tenured faculty
- Faculty and academic grievances
- Approval of agreements with external organizations which directly affect academic matters
- Structure of faculty and collegial academic governance bodies
- Appointment and reappointment of academic officers
- Academic planning
- Issues related to academic freedom

-University policy statements related to the matters listed above

2. Activities fundamentally affecting academic programs:

Good faith consultation with faculty bodies is routine in the following matters. Faculty opinion in these matters should be strongly considered.

Examples:

- Selection of the President and Executive Officers
- Structure and organization of academic units (departments, divisions, colleges, and schools)
- Institutional Budget Priorities
- Building priorities and design of academic facilities
- Policies regarding academic administrators (e.g. job descriptions, performance reviews)
- Selection of academic administrative staff at the Director level and above
- Decisions regarding organization of academic administration
- Goals and objectives of major fund raising efforts as they may affect academic matters
- Foundation money for academic affairs
- General policies regarding intercollegiate athletics, to the extent that they involve academic concerns
- Policies concerning agreements with businesses and other entities which may affect academic matters
- University policy documents related to these matters

3. Activities which may affect academic programs:

Good faith consultation generally occurs in the following matters which are the primary responsibility of the administration, to the extent that they affect academic matters.

Examples:

- Structure of support services
- Scholarship policies
- Student non-academic discipline (policy and implementation)
- Long range planning not affecting academic matters
- Selection of major non-academic administrators
- Structure and authority of campus security/police services
- Policies concerning disposal of major assets of the university
- Foundation priorities
- Planning for support services related to academic functions
- University support services related to academic functions

4. Activities not normally affecting academic matters:

Consultation does not take place routinely in the following matters. When consultation does occur, the faculty act more as advisors or expert assistants than as colleagues. Decision-making or recommending authority generally is shared substantially with other groups (e.g. students, staff, the community) and in some cases other (non-faculty) groups may retain primary authority. Faculty bodies may feel free to give advice in these matters regardless of whether formal consultation occurs.

Examples:

- Management and investment of funds of the university and the foundation
- Implementation of budget priorities and policies
- Selection of contractors and vendors
- Routine operation of and planning for auxiliary enterprises

- Non-academic personnel policies (development and implementation)
- Staff personnel policies
- Selection of staff and lower level non-academic administrators
- Development and implementation of staff grievance policies
- Alumni and development structures and plans (not including academic matters)
- Selection of auditors and outside counsel
- Development and implementation of recreational policies
- Routine operation of intercollegiate athletics
- Development of lobbying and legislature efforts

Approved by NKU Faculty Senate February 23, 1998

September 12, 2013

Mr. Dennis Repenning
Chair, Board of Regents
Northern Kentucky University
Highland Heights, KY 41099

Dear Mr. Repenning:

In the wake of my decision to terminate Scott Eaton's employment as the Director of Intercollegiate Athletics, I directed our outside counsel, Dinsmore & Shohl ("Dinsmore"), to conduct a thorough financial review of the athletics department. Dinsmore retained the accounting firm of Clark Schaefer Hackett ("Clark") to perform that investigation under counsel's supervision.

I write to provide you with the key findings and principal recommendations provided to the University by Dinsmore as a result of its investigation.

INVESTIGATION

During the investigation, Dinsmore and Clark interviewed many current and former employees, including several interviews of Eaton. Dinsmore and Clark also reviewed the University's existing policies and procedures regarding financial controls, including procurement card policies. They also inspected and analyzed accounting, budget, and other financial records, such as receipts and account reconciliations. To facilitate this analysis, Clark used data extraction software, and Clark performed calculations of the financial loss resulting from Eaton's conduct.

KEY FINDINGS

Dinsmore and Clark determined that the majority of Eaton's fraudulent conduct occurred by him purchasing gift cards at a local Kroger store with his University procurement card and then using the gift cards for his personal use. This activity occurred between January 2007 and March 2013. The total amount of loss from this activity is \$262,106.

Dinsmore and Clark determined that Eaton also misappropriated University funds in several other ways:

1. Eaton used his procurement card to purchase items for his personal use at various other merchants;
2. Eaton purchased items from merchants using his procurement card, maintained a photocopy of the receipt for University accounting purposes, used the original receipt to return the items for "store credit," and then later used the store credit to purchase items for his personal use;

3. Eaton purchased items for his personal use from merchants using his procurement card and subsequently submitted falsified receipts to conceal the true nature of his purchase; and
4. Eaton used University printing services and materials, as well as University postage, to support his activities in the Massachusetts Basketball Coaches Association.

The sum total of these other fraudulent activities is \$49,109.

Dinsmore and Clark concluded that the principal reason that Eaton's fraudulent conduct was not detected earlier was because he manipulated other employees to gain their trust, and then he exploited their misplaced trust. Simply put, Eaton deliberately developed multiple ways to misappropriate University funds.

Regrettably, however, Dinsmore and Clark also found that there were failures of judgment and inaction on the part of other University employees over several years. Those employees were not in any way complicit in Eaton's misconduct. But they had multiple opportunities to detect, report, or thoroughly investigate reasonable suspicions and concerns, yet they failed to do so.

Dinsmore and Clark also concluded that, while the University's policies and financial controls are satisfactory, the University should strengthen its policies and financial controls to decrease the risk that a similar loss will occur in the future.

PRINCIPAL RECOMMENDATIONS

Dinsmore and Clark provided me with several recommendations. These recommendations fall into two distinct categories. The first category includes recommendations that will foster an institutional culture that will deter and detect unethical behavior. The second category includes recommendations that will enhance the University's financial controls with respect to procurement cards.

In order to create a culture where all faculty, staff, and students recognize their ethical obligation to report conduct that may be inappropriate, unethical, unlawful, or contrary to University policy, Dinsmore and Clark recommend the following actions:

1. The Code of Conduct should: (a) include a way for faculty and staff to obtain advice before making decisions that might constitute a violation; (b) include a way for faculty, staff, and students to confidentially report their concerns about potential violations by faculty and staff; (c) designate the University's Compliance Officer as the official within the University's administration to whom concerns or suspicions can be reported; (d) expressly state that faculty and staff who violate the Code of Conduct may be terminated or reported to law enforcement officials; and (e) expressly state that all faculty and staff have an obligation to report conduct that violates the Code of Conduct and that the failure to do so may result in disciplinary action against them.

2. During the orientation of new faculty and staff, the University should emphasize the importance of adhering to the University's Code of Conduct. This training should include discussions of hypothetical scenarios. All new employees should sign a document indicating that they agree to honor the Code of Conduct.
3. There should be regular training for all current faculty and staff.
4. All faculty and staff, including the President and senior administrators, should be required annually to acknowledge in writing that: (a) they understand the Code of Conduct; (b) in the preceding year, they have complied with it; and (c) they are not aware of any conduct by other faculty and staff that would constitute a violation.
5. Ethics and integrity should be an element in the performance review of every senior administrator, including the President, Vice Presidents, and Academic Deans, as well as every manager.
6. The University should consider moving the Division of Financial and Operational Auditing, which includes compliance, to report to the Vice President for Legal Affairs and General Counsel. The Director of Financial and Operational Auditing and the Compliance Officer should meet regularly and privately with the President.
7. The University should consider moving the Office of the Comptroller to report to the Vice President for Planning, Policy, and Budget.

In order to strengthen the University's institutional capacity to prevent, deter, and detect fraud and abuse of procurement cards, Dinsmore and Clark recommend the following actions:

1. The University should reduce the number of faculty and staff who have procurement cards.
2. The University should review and revise the current policy regarding permissible and impermissible uses of the procurement card to make the distinctions more clear and comprehensive.
3. The University should conduct periodic training for procurement cardholders and those employees responsible for reconciliation of procurement card purchases.
4. The University should enforce the requirement that faculty and staff provide documentation that demonstrates that each use of a procurement card was legitimate and permissible under University policy.
5. The University should amend current policies and procedures to segregate organizationally the responsibilities of the procurement card user from the employee who is responsible for reconciling that user's purchases.
6. The University should regularly conduct a critical analysis of procurement card activity to assess whether policies and procedures need to be amended.

Mr. Dennis Repenning
Page Four

The University will promptly begin to implement these two sets of recommendations. I will provide a status report to the Board of Regents at its regularly scheduled meeting in March 2014.

RELATED ISSUES

There are two additional issues of which you should be apprised.

First, University personnel continue to cooperate fully with the law enforcement investigations into Eaton's conduct. The University has notified the prosecutors that, if Eaton is prosecuted, the University will petition the court to order that Eaton make full restitution for all losses his conduct caused to the University, including the University's costs of conducting our investigation, which as of August 1, 2013, total approximately \$145,000.

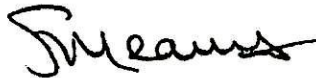
Second, Dinsmore and Clark have met with the University's new Director of Intercollegiate Athletics and the University's new Associate Athletic Director for Compliance. Based on their review of the results of our internal investigation, these experienced intercollegiate athletics administrators believe that there have been no violations of NCAA rules. They have contacted the Atlantic Sun about Eaton's conduct and our subsequent investigation of his conduct. Out of an abundance of caution, they will also contact the NCAA. I will keep you and the Board of Regents apprised of any developments in this regard.

CONCLUSION

The events that have prompted me to write this letter are unfortunate. Throughout the process, though, I have received the assistance and cooperation of people across the University, and I have also been fortunate to have the support and wise counsel of the Board of Regents. As a result of our collective, principled response, our University is now stronger – and we have great potential for even more success. We will achieve that success with a commitment to integrity. That is our pledge to you and the community we serve.

Because of the ongoing interest that this situation has received, I intend to share this letter with the University community.

Respectfully,



Geoffrey S. Mearns
President

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,

/s/ Darren W. Ford

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MEDIA, INC.

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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FILED ELECTRONICALLY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON
CASE NO. 2:16-CV-00028-WOB-CJS

JANE DOE

PLAINTIFF

v.

MOTION TO ENTER GAG ORDER AND TO SEAL

NORTHERN KENTUCKY UNIVERSITY, *et al.*

DEFENDANTS

*** **

Come Defendants Northern Kentucky University, Geoffrey S. Mearns, Kathleen Roberts, and Ann James, by and through counsel, in accordance with Joint General Orders 11-01 and 11-02 move the Court to enter a gag order on all parties and their counsel in this case and to seal all deposition transcripts and student records filed or to be filed of record in this case.

For the reasons set forth in the accompanying Memorandum of Law in Support of this Motion, Defendants request that the Court (1) enter a gag order prohibiting the parties and their counsel from any further communication with the press regarding the merits or allegations of this case and (2) seal the deposition transcripts and student records filed, or to be filed of record, in this case. A proposed order has been tendered herewith.

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON
CASE NO. 2:16-CV-00028-WOB-CJS

JANE DOE

PLAINTIFF

v. **MEMORANDUM OF LAW IN SUPPORT OF MOTIONS TO
ENTER GAG ORDER AND TO SEAL**

NORTHERN KENTUCKY UNIVERSITY, *et al.*

DEFENDANTS

*** **

Come Defendants, Northern Kentucky University (“NKU”), Geoffrey S. Mearns, Kathleen Roberts, and Ann James, by and through counsel, and hereby file this Motion for a Gag Order on all parties and their counsel in this case. Additionally, Defendants also ask the Court to seal all deposition transcripts and student records filed or to be filed of record in this case. In support of this Motion, Defendants state as follows:

I. INTRODUCTION

This is a case about a student’s complaint of sexual assault and the Defendants’ handling of that complaint. As such, this case has been the subject of publicity from the outset. While a certain amount of publicity is to be expected and neutral news-reporting should not be discouraged, active campaigning to the press by a party or a party’s counsel is inappropriate and untenable. Plaintiff and Plaintiff’s Counsel’s participation in the creation of unduly prejudicial publicity seriously threatens Defendants’ ability to obtain a fair trial by a panel of impartial jurors. In addition, due to their obligations under the Family and Educational Rights and Privacy Act (“FERPA”) and responsibilities to Plaintiff who has chosen to proceed anonymously, Defendants are effectively barred from rebutting or defending against the testimony the Plaintiff and Plaintiff’s Counsel have presented in the “court of public opinion” through the press.

II. ARGUMENT

A. A Gag Order Must Be Entered Prohibiting Parties and Their Counsel from Further Communication with the Media to Protect Defendants from Undue Prejudice.

“The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.” *Patterson v. Colorado*, 205 U.S. 454, 462 (1907); *see also Sheppard v. Maxwell*, 384 U.S. 333, 351 (1966). To further this fundamental principle, it is imperative that, unlike elections, court proceedings are not won through the media. *Bridges v. State of California*, 314 U.S. 252, 271 (1941).

As such, the Supreme Court has established that it is within the Court’s power to control the divulgence of information that leads to inflammatory publicity. *Sheppard*, 384 U.S. at 361. Specifically, a court may proscribe “extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters . . . concerning the merits of the case.” *Id.* (citing *State v. Van Duyne*, 204 A.D.2d 841, 852 (1964)). Therefore, this Court has discretion to limit the extent to which a party or her attorney may speak to the press regarding pending litigation. *See P&G v. Bankers Trust Co.*, 78 F.3d 219, 224 (6th Cir. 1996) (citing *Bantam Books v. Sullivan*, 372 U.S. 58, 70 (1963)).

While it is true that freedom of speech is essential to the administration of justice, “it must not be allowed to divert the trial from the very purpose of a court system to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures.” *Sheppard*, 384 U.S. at 350-51 (quoting *Cox v. State of Louisiana*, 379 U.S. 559, 583 (1965) (Black, J., dissenting)) (internal quotation marks omitted). Admittedly, there is a presumption against restraining free speech. *CBS v. Davis*, 510 U.S. 1315, 1317 (1994) (citing *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971) (internal citation omitted)).

However, this presumption is not absolute. *CBS*, 510 U.S. at 1317 (citing *Near v. Minnesota*, 283 U.S. 697, 716 (1931)). Courts may limit the dissemination of information pertaining to pending cases under exceptional circumstances. *Id.* The case at hand presents such an exceptional circumstance and requires special protection by this Court.

This case involves not only a sensitive subject matter, an allegation of sexual violence on campus, which claim directly implicates the unique legal responsibilities Defendants have in maintaining the privacy rights of not only the Plaintiff, but other nonparty students as well. Defendants are statutorily bound by FERPA to keep information about all students confidential and may only disclose such information in accordance with FERPA and its regulatory requirements. This includes any “personally identifiable information” relating to students and former students. *See* FERPA, 20 USCS § 1232g. Additionally, while having waived her FERPA rights in filing this action, Defendants have nonetheless acted to maintain Plaintiff’s privacy, as she has chosen to remain anonymous in these proceedings. However, nonparty students whose records are impacted both by the pleadings in this action, as well as Plaintiff and her counsel’s media statements, have not waived their FERPA rights and are entitled to at least the same protections.

In contrast, Plaintiff and her counsel are not bound by such responsibilities. They have used this as an opportunity to speak directly to the press and have been oft quoted in the media regarding this case. They have made legal conclusions and divulged information that was only obtained through the discovery process. More importantly they have made factual assertions to which these Defendants are barred from responding without impinging the privacy rights of nonparty students.

Specifically, this case has been the subject of at least seven separate known news stories since January, 2016. The most recent of these was published in the Cincinnati Enquirer on August 14, 2016. Exhibit 1 hereto. The article indicates that Plaintiff and her counsel were specifically interviewed for and contributed to the story. Exhibit 1 at 2-3. In that article, Plaintiff is quoted, or information she gave in separate interviews is relayed, at least nine (9) times. *See* Exhibit 1. Therein, she discusses numerous matters related to this action, including allegedly being “afraid of retribution from school administrators”; that she allegedly was not informed of potential disciplinary actions against her accused attacker; that the accused “continually violated” sanctions and that NKU allegedly gave him permission to do so; that she was publically “yelled at” and called a “slut” and a “whore” by other students; and that her calls to police regarding her accused’s whereabouts allegedly were ignored. *See* Exhibit 1. Such statements, the truth of which Defendants deny but cannot factually respond to, clearly influence the reader.

Plaintiff’s Counsel, Kevin Murphy, was also quoted or paraphrased more than five (5) times regarding the substance of this case. *See* Exhibit 1. Specifically, Murphy opined that NKU’s behavior was “appalling” and that he was “personally shocked” about the contents of Defendant Kachurek’s deposition. Exhibit 1 at 1-2. He refers to the Defendants as “these folks in the ivory tower” and asserts that NKU inadequately enforces sanctions. Exhibit 1 at 3. Further, he calls NKU’s handling of the case “disgraceful” and continues to disclose the details of FRE 408 communications between him and counsel for NKU. Exhibit 1 at 3. Defendants have declined, and continue to decline, to violate the privacy rights of their students for the purpose of making a public defense. In fact, Defendants are statutorily gaged and precluded by law from countering such assertions while Plaintiff and her counsel are not similarly constrained.

It is Defendants' belief that Plaintiff filed or directed the filing of Defendant Kachurek's deposition, which was featured in the aforementioned news story, with intent to utilize the deposition to further her trial by media. No notice of the filing of record was provided to Counsel for Defendants, as required by Fed. R. Civ. P. 30(f)(3), resulting in the fact that the press became aware the transcript had been made a part of the record before Defendants knew. In fact, Defendants learned the transcript had been filed, not via notice from Plaintiff, but by a phone call from the newspaper advising it would be running a story on the matter. Plaintiff is well aware, given the significant discovery issues that have been and are being addressed by the Court concerning the discovery of FERPA protected documents, that Defendants are statutorily barred from providing any meaningful response to the media to defend against these spurious allegations.

Furthermore, this most recent article is not the first instance of Plaintiff's Counsel speaking directly to and being quoted by the press regarding the merits of this case. Murphy is extensively quoted in a January 22, 2016 Northern Kentucky Tribune article. Therein Murphy alleged NKU counseling staff discouraged Plaintiff from reporting her alleged sexual assault to the police; described Plaintiff's alleged sexual assault as "brutal"; alleged that the accused attacker was not actually punished; stated that NKU allegedly "did not uphold its own rules"; concluded that an email sent by Defendant Kachurek was an "affront to [Plaintiff's] First Amendment rights"; and alleged that Defendants "betrayed [Plaintiff's] trust and their actions . . . further compounded to harm her."

Murphy is quoted equally extensively in a January 25, 2016 Cincinnati Enquirer article. In this article, Murphy stated that Defendants "did nothing to protect [Plaintiff] like they told her they would" and opined that "what happened here is so horrible – it has to stop." Murphy also

alleged that a pre-suit letter from Defendants, which was a confidential FRE 408 communication, was sent to “embarrass and humiliate” Plaintiff in “retaliation for threatening to exercise her rights.” Additionally, he stated that an email sent by Defendant Kachurek was a “deliberate attack on [Plaintiff] in retaliation for exercising her First Amendment rights” and a “threat against anyone who wished to join her in support.” Likewise, Murphy is further quoted in a January 25, 2016 article from WCPO Cincinnati. He stated that “NKU failed [Plaintiff] miserably”; alleged that NKU did not enforce sanctions on Plaintiff’s alleged attacker; and implied that NKU treated the alleged attacker as a victim rather than Plaintiff.¹

These comments paint an extremely negative picture of the Defendants in widely disseminated news sources. The comments impermissibly present legal arguments and conclusions that will allow the public to decide the case on misinformation, or at the very least on one-sided information, as Defendants cannot respond and implicate the privacy rights of the Plaintiff and other nonparty students, being statutorily constrained by FERPA, to which Plaintiff and her counsel are not bound. Regardless of the responsibilities imposed upon Defendants under FERPA, Defendants decline to defend their case in the media at the expense of their students’ privacy.

The likelihood of a panel of local jurors being irreparably biased against Defendants due to these public statements is dangerously high. Therefore, it is essential to the interests of justice that Plaintiff and her Counsel be held to the same restriction as to communication, or speculation, of FERPA protected information that Defendants are bound and a gag order be granted.

¹ Plaintiff’s Counsel has further provided comment and asserted alleged facts to which Defendants cannot respond to others who have reported his comments in social media. *See* Exhibit 2.

B. Deposition Transcripts and Student Records Must Be Sealed to Protect Against Further Exposure

Additionally, Defendants ask the Court, in accordance with Joint General Orders 11-01 and 11-02, to seal all deposition transcripts and student records filed or to be filed of record in this case. As indicated above, Defendants believe that Plaintiff filed or directed the filing of Defendant Kachurek's deposition transcript in violation of Fed. R. Civ. P. 30(f)(3) for the purpose of exploiting Kachurek's testimony for media benefit.

Plaintiff's manipulation of the media is evident in her discovery efforts as to sexual misconduct matters involving other students. Attorney Murphy is well aware Defendants cannot respond or comment on matters involving other students, yet questioned Defendant Kachurek concerning alleged events with the clear intention to place those events in the court of public opinion. Plaintiff has now taken the deposition of NKU Athletic Director Ken Bothof for the same purposes. At no point in Mr. Bothof's deposition was he examined as to any fact or matter involving the Plaintiff – and could not as Bothof has no knowledge of, nor any involvement whatsoever in, the events surrounding her claims. Attorney Murphy's examination specifically sought private, FERPA protected information about other students.² Plaintiff seeks to manipulate Defendants' adherence to its statutory obligations under FERPA and the protection of student privacy rights for her benefit in the court of public opinion. While Plaintiff has wide latitude in discovery, the sealing of depositions will prevent the abuse of discovery for salacious media purposes.

To the extent Plaintiff seeks the education records of nonparty students or former students NKU has assured its compliance with FERPA, and protection of the privacy rights of nonparty students, through the entry of an Agreed Protective Order (DE # 18) addressing NKU's

² While permitting the deposition of Mr. Bothof, Magistrate Smith specifically acknowledged Defendants' obligation to object to such questioning on FERPA grounds. (DE # 39)

statutory notice obligations, allowing for adequate notice to nonparty students and the opportunity to be heard before the Court on the production of their personal education records. These nonparty students should not be denied this basic due process. Plaintiff's Counsel is well aware that should Plaintiff seek the education records of nonparty students he must do so in accordance with the Agreed Protective Order. Of course, Plaintiff's Counsel is similarly aware that victims of sexual misconduct, like his client, desire to preserve their privacy, and properly produced records may well reveal rumors and unsupported allegations to be false. Instead, Plaintiff's Counsel's tactic is to ask questions he knows Defendants cannot answer and allow negative inferences to be created.

Documents containing the private education records of nonparty students should not be exposed to the public or be the subject of further press scrutiny, unless and until this Court should rule to allow such disclosure. Sealing the transcripts and records is the only way to protect such documents and information from further public dissemination as they cannot be effectively redacted to ensure the privacy rights of the nonparty students at issue.

III. CONCLUSION

Due to the extreme imbalance between the parties' abilities to publically comment on this case, there is a severe likelihood of juror bias against the Defendants. It is essential for the Court to regulate the information that is publically disseminated in this case to protect the Defendants from further harm and to protect the privacy of nonparty students who may be implicated. Therefore, Defendants request the Court to grant a gag order prohibiting the parties and their counsel from any further communication with the press regarding the merits or allegations of this case and to seal the deposition transcripts and student records filed, or to be filed of record, in this case.

Respectfully Submitted,

STURGILL, TURNER, BARKER & MOLONEY, PLLC

/s/ Katherine M. Coleman

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing, if applicable, to the following:

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/s/ Katherine M. Coleman
ATTORNEY FOR DEFENDANTS

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What did former NKU top cop do about possible rape confession?



James Pilcher, jpilcher@enquirer.com 5:40 p.m. EDT August 14, 2016



(Photo: Provided/Northern Kentucky University)

Update, 3:20 p.m. Sunday: Northern Kentucky University's president issued a public statement addressed to colleagues about The Enquirer's article Sunday, saying that NKU "has robust policies and procedures dealing with sexual misconduct in all forms, including sexual assault."

Geoffrey S. Mearns declared parts of the article "misleading," but did not elaborate in his statement (<http://president.nku.edu/campuscommunication/campussafety.html>).

Mearns declined multiple interview requests from The Enquirer through an NKU spokeswoman.

Previous reporting: HIGHLAND HEIGHTS - In 2013, a newly minted freshman arrived at Northern Kentucky University on a full academic scholarship.

Within a few months, she says she was raped by a fellow freshman.

But instead of pressing criminal charges, the woman kept it to herself for several months. After eventually seeking counseling, she decided to take the case through the school's internal administrative discipline system. Her would-be attacker was found to have probably assaulted her even as he claimed innocence. His punishment: a possible suspension if he broke any more rules and orders to stay away from the woman and out of certain areas on campus.

Yet she continually ran across her accused attacker on campus, in possible violation of those sanctions. After several such incidents and a perception that the school didn't enforce those sanctions and treated her badly, she sued the school in federal court under Title IX, the federal law that covers sexual equality, harassment and assault on college campuses. That treatment, according to the lawsuit, included an email from NKU's police chief that faculty members and other students saw as accusing the woman of slandering the male student.

The email, written last September, said the female complainant "has been publicly slandering the male student." This came even after the administrative process ruled against the male student, although the police chief later said it was in reference to possible allegations by the alleged victim that the male student was dealing drugs.

And now, The Enquirer has learned the former police chief acknowledged in a deposition that two unidentified friends of the woman's alleged attacker told him that the man confessed to the attack just prior to sending that email.

Furthermore, former chief Les Kachurek testified under oath last month that he didn't pass that information on to his supervisors, acknowledging that the new information might have changed the punishment for the accused attacker.

In the deposition, Kachurek never gave a reason for not passing on the possible confession. And Kachurek acknowledged that he learned the information even before he sent that controversial email later the same day.

He also said in the deposition that the case was handled through the administrative process and therefore had "been adjudicated" and that the woman's accused attacker "had been held responsible." The accused attacker never faced any criminal charges.

Furthermore, Kachurek testified that he was not given enough information by school administrators to enforce those sanctions against the male student or anyone else found in violation of the school's policy against sexual harassment or assault.

"I did not have those documents," Kachurek said during the July 12 deposition, referring to a list of the sanctions or a picture of the male student.

Kachurek also remained unapologetic about that email. He only said he should have used the word "allegedly" in front of slander.

The transcript of the deposition was filed in federal court late last month and obtained by The Enquirer from the courthouse. Kachurek recently left NKU after about a year in the post - he was not at the school when the alleged attack took place, but handled much of the fallout. In the deposition, Kachurek said he left of his own accord, but was frustrated with the scrutiny by faculty and a lack of resources.

"Mr. Kachurek's testimony described NKU's behavior perfectly - appalling," said Kevin Murphy, the Fort Mitchell lawyer representing the woman named

as Jane Doe in the lawsuit. "I was personally shocked to hear what he had to say, but I was thankful he told the truth."

The woman filed the suit against the school in January, claiming that NKU administrators did not do enough to protect her and keep her alleged attacker away from her as they both attended class. The suit also claims administrators were indifferent and possibly even hostile to her pleas for help. It names the school as well as top administrators, including President Geoff Mearns and even Kachurek as co-defendants. No specific damages are specified.

NKU spokeswoman Amanda Nageleisen declined comment on the suit and the deposition, saying the university cannot comment on pending litigation and would not discuss the sanctions citing student privacy concerns.

In court documents, however, outside lawyers hired by NKU denied any wrongdoing by the school, arguing that all procedures and applicable laws were followed. The school has hired a Lexington-based law firm to defend the case.

'I wasn't strong enough'

The suit comes as universities across the country have struggled with what to do about sexual assaults on campus. New regulations released by the Department of Education in 2011 required schools to create an internal administrative process for dealing with violations of the federal law known as Title IX which covers sexual discrimination and assaults on campuses. These systems are separate from the criminal system, which is also available to would-be victims.

According to NKU data, there have been 30 reports of assaults/offenses to the school or the NKU police between 2010-2015, including 19 in 2014-15 alone. School officials have previously said that increase may be due to possible victims being comfortable reporting such incidents instead of an actual rise in sexual assaults.

By comparison, there were 47 "forcible sex" crimes reported to the University of Cincinnati police alone between 2012-2014, the last year data was available for that school. And there were 20 rapes reported at Ohio State University's main campus in 2014 alone.

One such report at NKU included the one by the woman about the 2013 incident. In the suit, the woman says a fellow student raped her in her dorm room in her first semester of her freshman year. In a separate interview with The Enquirer, she says she wasn't drunk and had not been drinking, and that she had just thought she would be talking to the male student whom she had just met recently.

In the interview, the woman known as "Jane Doe" in the suit says she did not pursue criminal charges because she was ashamed and didn't want her parents to know. But after several months of keeping it to herself, she finally told her mother and sought counseling on campus.

"It was eating me up inside," said the woman, still a student at the school. The Enquirer is withholding her name by request because she said she is afraid of retribution from school administrators and fellow students. "I had been an athlete and thought I was strong. But I couldn't accept to myself that I wasn't strong enough to stop what happened or deal with it afterward."

So in the spring of 2014, she told her mother and went to counselors on campus. That led her to school administrators who she says pressured her to keep the complaint within the internal disciplinary system. She also acknowledges that filing criminal charges would have been futile since at least several months has passed since the alleged attack.

The woman went through Norse Violence Prevention Center, which had just been formed. That led to her going through the process that oversees NKU's internal discipline system for sexual assault that includes hearings in front of an administrative panel made up of a student, a faculty member and a staff member. Such a panel ruled in June 2014 that it was more likely than not that sexual misconduct had occurred and the discipline was then handed down.

He was not suspended and was ordered to stay away from the woman. There was a suspension issued, but it was held "in abeyance" or the equivalent of being on probation.

"They never told me until after the fact that expulsion was never seen as an option," the woman said. "My mom and I were completely confused and thought there would be no way that he could do something like that and basically nothing be done about it."

Yet according to the woman and her lawyer Murphy, the male student continually violated those sanctions, showing up in her cafeteria or even her dormitory with little to no warning from administrators. She said she called the police several times yet nothing was done. She also said that she would be confronted by her would-be attacker, only to find out afterward he had been given permission to be in that area. At one point, he was even hired to check all IDs entering the school's activity center.

"When I saw him again (at the school cafeteria), it was like reliving the whole thing over again," the woman said. "And before long, his friends and people who knew him were yelling at me for as much as an hour, calling me a slut or a whore."

In the deposition, Kachurek said he didn't think allowing a would-be attacker to have contact with his alleged victim was a "best practice" and that he would not have allowed such a person to be hired at the gym. He also said such a finding would probably have meant expulsion at Alfred State University in New York where he last worked.

Kachurek also acknowledged that the school's administration was technically responsible for enforcing the administrative sanctions. But he said would-be victims called the police department after hours to help remove the person potentially violating sanctions. Kachurek also said he had asked the administration that the police department be notified of such sanctions, yet that hadn't happened as of his departure from the school last month.

Kachurek also said he had no way to identify such a possible violator because there was nothing on file at the department. The school notified Kachurek's predecessor of the sanctions in a brief email that identified the male student by name.

In a separate interview, the woman's lawyer Murphy echoed those sentiments.

"Are those folks in the ivory tower in their cars at night, checking to see if the person under sanctions is staying away from her," Murphy said. "Do they get in their cars and patrol the areas where the person under sanctions is prohibited from? The answer to that is no."

The Enquirer is also not naming her alleged attacker but did try to contact him for comment. He did not respond to several emails. In the deposition, he is described as a well-known and popular figure on campus.

Not apologetic for email

The woman's lawyer Murphy said that NKU's handling of the case was "disgraceful," saying all she asked for initially was counseling and a scholarship to transfer to another Kentucky public university to get away from her alleged attacker.

Kachurek left the school late last month after about a year as chief of the 22-member department. He declined comment when reached through his current employer the Malvern, Pa.-based FBI-Law Enforcement Executive Development Association, a non-profit law enforcement training agency (it has no ties to the Federal Bureau of Investigation).

In the deposition, Kachurek described protesting to supervisors that he worked in a "hostile" environment because of the scrutiny over his decisions by NKU's faculty senate (there were several motions and inquiries into the email as well as other incidents on campus involving the NKU police). Kachurek also said he was never given full resources to do the job he was hired for, and that when he arrived his staff had never been trained on Title IX issues. He also said the school routinely declined to enact his suggestions to improve on-campus safety, including instituting a full-time sign-in process at the dormitories.

"Residential housing personnel felt that their procedures were adequate and were not willing to entertain our suggestions for improvement," Kachurek said.

Kachurek came under fire last fall after sending that email that intimated that the woman was slandering her alleged attacker. In his deposition he said that other school administrators used the word slander, and that they said the woman was accusing the man of dealing drugs.

Still, the email, which was sent to his supervisor and internally within the police department, went campus-wide. Several faculty members viewed it as being insensitive to a possible victim of sexual assault, and it led to an inquiry by the faculty senate. In fact, Kachurek is named in the suit in part for sending that email.

In the deposition, Kachurek said he should have put the word "allegedly" in front of the word slander and that he was referring to the possibility that the woman had accused her accused attacker of selling drugs. He said he was not willing to apologize for the email.

"I believe anyone who reads it certainly is entitled to their own interpretation," he said.

Kachurek also expressed frustration that his recommended changes to improve security were not implemented to his knowledge.

"Changes have been proposed, but to the best of my knowledge, have not been enacted," Kachurek said.

NKU spokesman Nageleisen declined comment on the proposed changes although NKU's lawyers argued in court documents that the dormitory security had been improved.

Toward the end of his deposition, the woman's lawyer asked Kachurek about the case overall, "Chief, don't you find this appalling?"

"Yes," Kachurek answered.

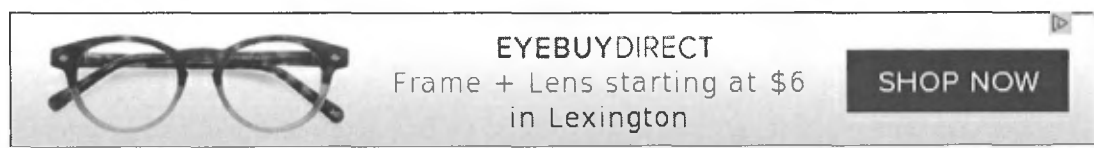
Sexual Assaults/Offenses at NKU

Here are the number of sexual assaults or offenses reported to Northern Kentucky University administration or police between 2010-2015

2010	1
2011	2
2012	5
2013	3
2014	10
2015	9

Source: NKU

Read or Share this story: <http://cin.ci/2bqPe4c>



EYEBUYDIRECT
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in Lexington

SHOP NOW

31
Cards for NKU Survivor facing Retaliation from her School!!!

Event for Cards for Survivors! Hosted by **Nadia Dawisha**

Nadia Dawisha invited you

Going
Maybe
Can't Go

11
going

0
maybe

2
can't go

Thursday, March 31 at 1 AM

Attn: Cards for NKU Survivor, Mr. Kevin L. Murphy, Graydon Head & Pritchey LLP, P.O. Box 17534, Ft. Mitchell, KY 41017-0534

A student at Northern Kentucky U needs our help and support! She just filed a Title IX lawsuit, and her case is HORRIFIC. You can read about it here: <http://www.cincinnati.com/story/news/2016/01/25/lawsuit-nku-indifferent-alleged-sex-assault/79301784/>

The woman's lawyer filed me in on the atrocious details. After her rape, this student, then a freshman, never received accomodations or counseling. Her perpetrator was found responsible in front of a three-person panel, but was only given probation - and repeatedly broke the no-contact order. When she protested the school's handling her case by carrying a mattress on campus like Emma S from Columbia, the university police chief brought in police dogs and THEN sent out an email to the ENTIRE SCHOOL saying she could be arrested!!!

It only got worse after that. One of the administrators emailed her and told her if she didn't stop speaking out, the university would access all of her records related to her rape and release them!!!

The lawyer said this student is a minority student, brilliant and driven, but her life has fallen apart and she feels so alone. Her parents sat in front of him and just WEPT. He said she desperately needs help and support! Let's give it to her!! xoxoox

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Sunday at Attn: U of M
for Cards for Survivors!
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EXHIBIT 2

Nadia Dawisha
January 27 at 9:16pm

Omg!! I had THE MOST heartbreaking convo today. A lawyer is representing a woman from Northern Kentucky U, who was raped in 2013 and just filed a Title IX lawsuit. Her case is HORRIFYING!! The school didn't give her accommodations or counseling, and when she participated in a peaceful protest by carrying a mattress on campus like Emma S from Columbia, the university police chief sent out an email to the ENTIRE SCHOOL saying she could be arrested for defamation!!! THEN one of the administrators emailed her and told her if she didn't stop speaking out, the university would access all of her records related to her rape and release them!!! Oh and by the way, the school found her perp responsible, but only gave him probation - he broke his no-contact agreement. The lawyer said this student is a minority student, brilliant and driven, but her life has fallen apart and she feels so alone. Her parents sat in front of him and just WEPT. Anyone want to send her cards??

Like Comment

2 people like this

Seen by 29

Abby Crain Sometimes cards just don't seem like enough 😊 but it's something! Lets do it!!
Like Reply January 27 at 11:04pm

Nadia Dawisha I know 😊 But we do what we can, here's the article about the case! <http://www.cincinnati.com/story/news/education/2017/01/27/nku-lawsuit-nku-179301784/>



Lawsuit: NKU 'indifferent' about alleged sex assault

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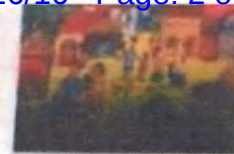
Like Reply January 27 at 11:36pm

Nadia Dawisha Abby Crain did I mention that the university cops brought POLICE DUGS to the peace protest of a handful of people??
Like Reply January 27 at 11:38pm

Write a reply

Emily KollerTech Yes I do
Like Reply 1 Yesterday at 12:08am

Nadia Dawisha DONE!



Oxford Citizens for Peace and Justice (OCPJ) Community Forum
145 members

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Nadia Dawisha Abby Crain did I mention that the university cops brought POLICE DOGS to the peace protest of a handful of people??
Like Reply January 27 at 11:38pm

Write a reply

Emily Kollaritsch Yes I do
Like Reply 1 Yesterday at 12:00am

Nadia Dawisha DONE!!
<https://www.facebook.com/events/548801968612232/>



31 Cards for NKU Survivor facing Re...
Thu 1 AM · Attn: Cards for NKU Survivor, Mr...
for Cards for Survivors

+ Join

Like Reply yesterday at 12:01am

Bocca Tinder That is fucking disgusting. I am so sorry that a human endured all of that! do you recall when the rape was supposed to be the worst part?

Like Reply 1 Yesterday at 10:22am

Nadia Dawisha I know right?? I just made a card event for her!!!
Like Reply 23 hrs

Write a reply

Write a comment

Community Forum

145 members

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON
CASE NO. 2:16-CV-00028-WOB-CJS

JANE DOE

PLAINTIFF

v.

ORDER

NORTHERN KENTUCKY UNIVERSITY, *et al.*

DEFENDANTS

*** **

This matter having come before the Court of the Motion to Seal by Defendants, and the Court having reviewed and being otherwise sufficiently advised, Defendants' Motion is GRANTED and it is hereby ORDERED as follows:

A gag order shall be entered prohibiting parties and their counsel from communicating with the press regarding the merits or allegations of this case and all deposition transcripts and student records filed, or to be filed of record, in this case will be hereby sealed.

RESOLUTION

To: PCC
From: Prof. Ken Katkin, Chair
Date: Oct 6, 2016
Re: Draft Resolution of Disapproval of NKU’s Decision To Seek Judicial Gag Order
Against NKU Student

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, the University determined by a preponderance of the evidence that the assailant had performed “nonconsensual sexual intercourse” on Jane Doe. Nonetheless, the University did not suspend or expel the student perpetrator, nor did it enforce its decree that the perpetrator must stay away from Jane Doe. To the contrary, even after the University nominally sustained Jane Doe’s allegations, the Campus Police Chief emailed his officers to tell them that Jane Doe was “slandering” her assailant. The Chief refused to retract this opinion at a subsequent public meeting of the NKU Faculty Senate.

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 has chosen not to do so.

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

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

[DRAFT – Not Voted, Not Adopted]

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 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/>>.

Dear Colleagues,

Thanks for your concern over the abrupt realignment of the NKU Summer Teaching Schedule and the lack of input by those directly affected. Anticipating that a formal response will be forthcoming from the Senate, please consider incorporating these comments into your response. Some reiterate concerns brought up during Monday's Faculty Senate meeting, so please excuse any redundancies.

1. The information presented by Kim Scranage does not support a change in summer schedules.
 - a. All of the competitor schools listed offer a variety of schedules, and none has adopted such a restrictive approach to summer scheduling.
 - b. The enrollment declines cited as justification for making a change cannot be caused by our current schedule, because this schedule was in effect during the high enrollment years as well. The problem was clearly related to a change in financial aid and the disincentive for summer teaching (prorated salaries) that caused a reduction in the number of summer courses offered.
2. The early May start date does not provide a sufficient break for students or faculty following the traditional academic year. Burnout is a clear problem that impairs student success and faculty effectiveness. In contrast, the shorter intersession classes typically include some novelty (travel, field work, cadaver dissection) that is engaging to both students and faculty involved and a welcome break from traditional coursework.
3. Lab courses and writing courses cannot easily be compressed into a 6-week session. Student learning will suffer greatly as a result. It was clear that few students are willing to enroll in a summer-long course. It is also unlikely that faculty would be willing to teach a full 12-week session, especially at a prorated rate for low-enrollment courses.
4. Faculty teaching summer courses were not consulted, and they are the experts on how to successfully teach their courses. How can you have student success without involving the faculty?
5. It was not clear why Student Government was encouraged to vote on the plan while Faculty Senate was not given the same option. This is not shared governance. I would recommend that any issue affecting faculty (e.g. grading, course schedules, etc.) brought by the administration to SGA should require advance notification to the Senate and the opportunity for the Senate to present to SGA prior to an SGA vote.
6. As additional implementation measures are developed based on the Strategic Plan, there should be a guiding principle that all affected entities are contacted and provided an opportunity to provide feedback prior to finalization of new policies, procedures, etc. We all understand that the Strategic Plan includes broad language that can be interpreted in multiple ways. The implementation is where crucial decisions are made, and we need a stronger voice in that process.
7. The implementation should be delayed at least one year to allow for further consideration of the numerous exceptions that arose in such a short period of time during the Monday Faculty Senate meeting. It's safe to assume there are many others we are not aware of. The

implementers clearly did not do their homework, or they would have been more aware of these needs and pedagogical concerns.

Thanks for your time and support of a sensible summer schedule that best meets the needs of all NKU constituents.

Sincerely,

Chris Curran
A&S Senator-at-large
Associate Professor, Biological Sciences
Curranc1@nku.edu



REALIGNMENT OF SUMMER SCHEDULE

*ignite
your
Spark*

KIMBERLY C. SCRANAGE, VICE PRESIDENT FOR
ENROLLMENT AND DEGREE MANAGEMENT

DR. IDNA CORBETT, VICE PROVOST FOR UNDERGRADUATE
ACADEMIC AFFAIRS

ALLEN COLE, REGISTRAR

KAITLYN SCHAEFER, STUDENT GOVERNMENT ASSOCIATION
REPRESENTATIVE



CHARGE

Due to continuing decreases in summer enrollments and at the request of the President, the Provost formed a work group Summer 2015 to examine the summer schedule with the goal of increased enrollment and completion rates.

WORK GROUP

- **Arne Almquist** – Associate Provost, Library
- **Michael Bush** – Faculty, Political Science/Criminal Justice/Organizational Leadership; Faculty Senate Representative
- **Alan Cole** – University Registrar
- **Idna Corbett** – Vice Provost for Undergraduate Academic Affairs
- **Christian Gamm** – Director, Graduate Programs
- **Kim Graboskey** - Director, Student Account Services
- **Francois LeRoy** – Executive Director, Center for Global Engagement and International Affairs
- **Pat Moynahan** – Director, Norse Advising
- **Becky Porterfield** – Dean, College of Business

Amy Racke – Assistant Dean, College of Arts and Sciences
Cindy Reed – Dean, College of Education and Human Services
Kaitlyn Schaefer – Student Government Representative
Kim Scranage - Vice President for Enrollment and Degree Management
Leah Stewart – Assistant Vice President for Enrollment and Financial Assistance
Beth Sweeney – Associate Provost for Administration
Roger Zarnowski – Chair, Mathematics and Statistics; Council of Chairs Representative

CURRENT STRUCTURE

Summer Semester 2016 (excluding Chase Law):

Full Session (13 weeks) – from May 9 to Aug 6

Intercession (3 weeks) – from May 9 to May 28

Consecutive Sessions (5 weeks each)

- a. Session 1 – from June 6 to July 9
- b. Session 2 – from July 11 to Aug 13

Session (8 weeks) – from June 6 to July 30

Session (6 weeks) – from June 13 to July 23

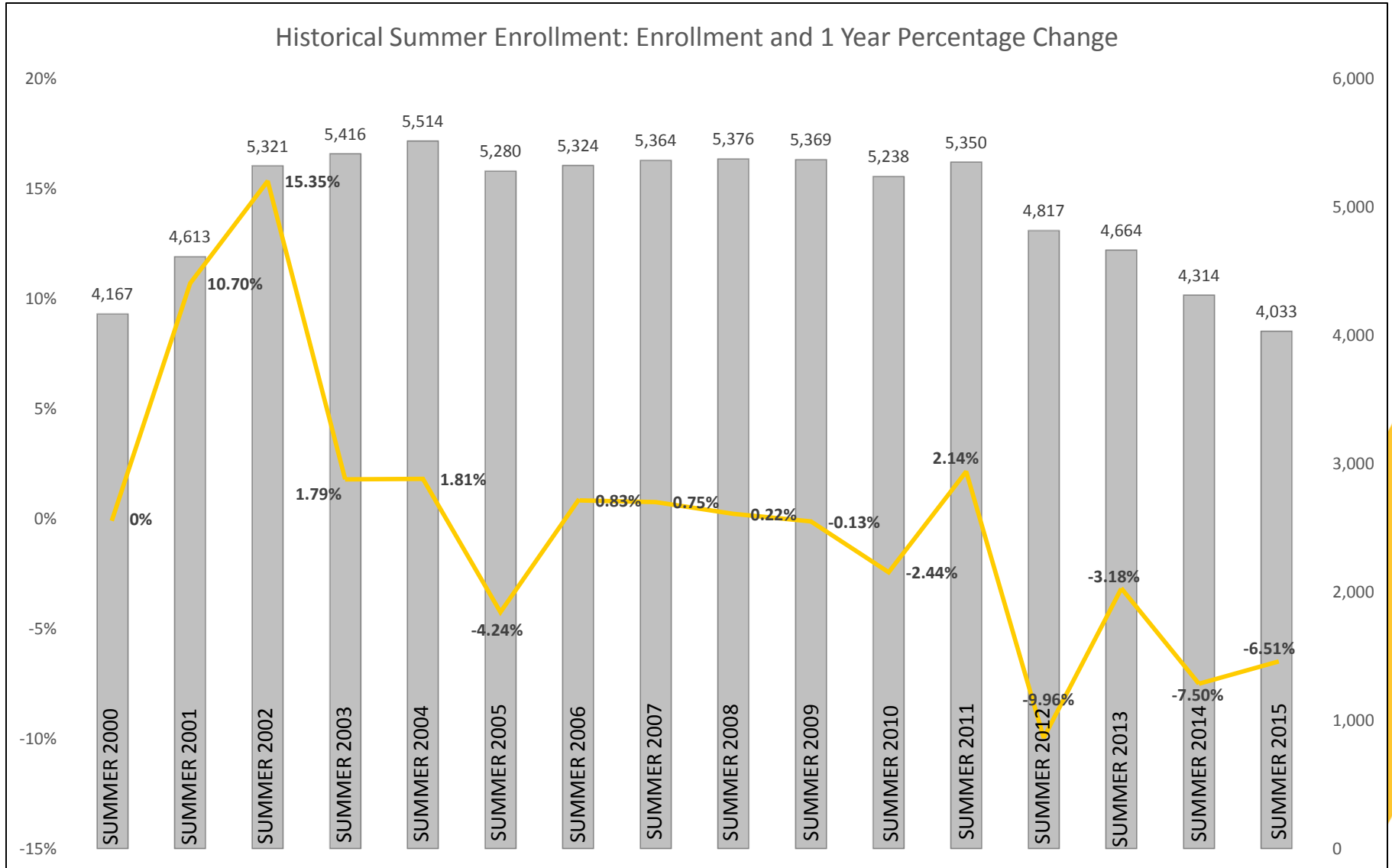
PACE (7 weeks each)

- a. Session 1 – from May 9 to June 25
- b. Session 2 – from June 27 to Aug 13

WHAT WE RESEARCHED

- EAB research on best practices
- NKU Enrollment trends
- Competitor summer offerings

ENROLLMENT TRENDS



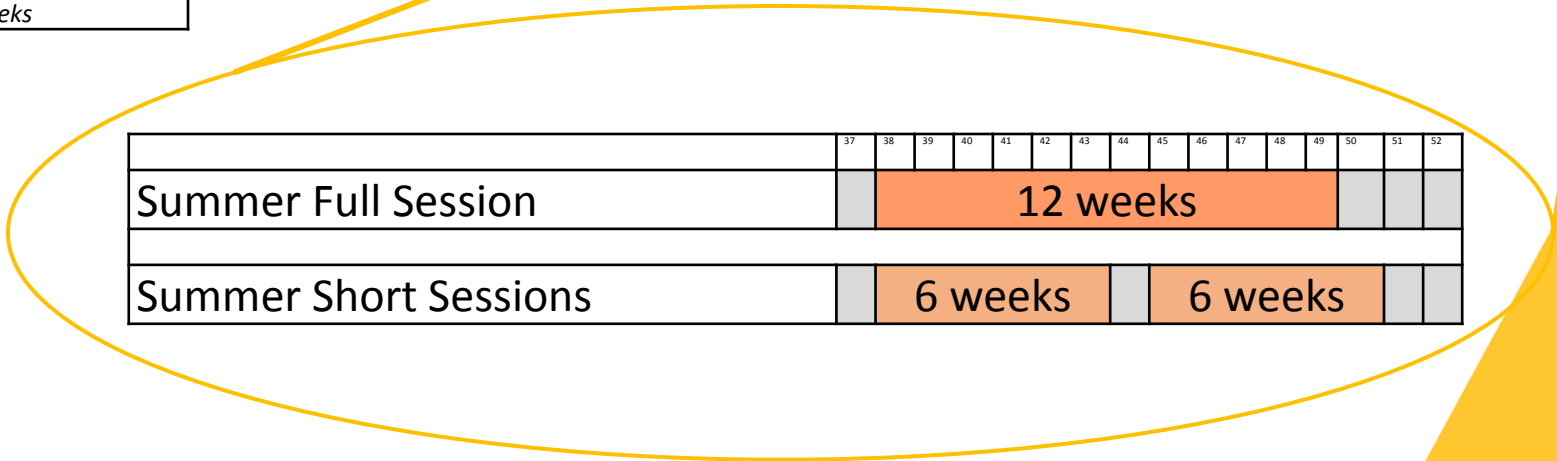
COMPETITOR ANALYSIS

- **UC** has 13 full weeks for Summer, and within that, there is a 4-week “May” session, and two 5-week sessions, along with various other variable time frames for *sessions*. –6 sessions
- **UK** has 12 full weeks for Summer, but only offers two *sessions* -- a 4-week First *session* followed by an 8-week Second *session*. There are no full semester classes offered. –2 sessions
- **Miami** has 12 full weeks for Summer, and like UK, there are no full semester classes offered; rather, there are two consecutive 6-week *sessions*, or three consecutive 4-week *sessions*, as well as, two separate 8-week *sessions* (non-consecutive). – 8 sessions
- **EKU** has 12 full weeks for Summer, with two consecutive 6-week *sessions*, as well as, two separate 8-week *sessions* (non-consecutive). – 5 sessions
- **WKU** has 13 full weeks for Summer, with five different *session* start dates that result in 23 different ending dates (throughout the Summer). –5 sessions
- **UL** has 14 full weeks for Summer, with two consecutive 5-week *sessions* included, as well as, a separate 10-week *session* and a 3-week “May” *session*. It is not clear that full semester classes are offered. – 4 sessions

NEW SUMMER SCHEDULE

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52
Full Semester								(16 weeks)								Winter Intersession				Full Semester								Spring Break				Full Summer (12 weeks)												Off weeks							
Half Semester (8 weeks)								Half Semester (8 weeks)								Winter Intersession				Half Semester (8 weeks)								Spring Break				Half Semester (8 weeks)						Summer A (6 weeks)						Summer B (6 weeks)						Off weeks	
PACE (8 weeks)								PACE (8 weeks)								Winter Intersession				PACE (8 weeks)								Spring Break				PACE (8 weeks)						PACE (7 weeks)						PACE (7 weeks)						Off weeks	

	Fall Break
	Winter Intersession
	Spring Break
	Off weeks



	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52
Summer Full Session	12 weeks															
Summer Short Sessions	6 weeks							6 weeks								

THANK YOU



Realignment of Summer Schedule

Approved by Executive Team on April 26, 2016

Background:

On April 26, 2016 the President and ET based on recommendations from the committee and AAC approved a new format for summer sessions that will be implemented beginning in Summer 2017, as follows:

The Summer Session Work Group recommends moving from the current eight-session format to one that include a full term (12 weeks) and two six-week terms, excluding PACE. This would allow students to academically and financially plan more effectively. In addition, this new model would lend itself to a clear marketing strategy focused on easy access for students. Thus, with the focus on student success and cost savings, we are proposing to redefine the summer term and move to a more efficient model – one that will have a positive impact on enrollment and improve time to degree completion.

Rationale:

State Priorities – Kentucky’s postsecondary and adult education system strategic agenda, Stronger by Degrees, focuses on four urgent priorities: college readiness; student success; research, economic, and community development; and efficiency and innovation. The second priority, student success, calls for “helping more students advance through the educational system and graduate in less time—working-age adults as well as recent high school graduates.” A key strategy for Policy Objective 4, *Increase high quality degree production and completion rates at all levels and close achievement gaps, particularly for lower-income, underprepared, and underrepresented minority students*, is to “Provide institution and student incentives to increase high-quality degree production and completion rates.” Structuring the summer offerings with student success in mind will reduce time to degree for many students, and allow NKU to improve degree production and completion rates.

Institutional Priorities – Student success, defined by our collective ability to “Provide a supportive, student-centered educational environment that promotes academic success, global awareness, and timely graduation” (*Fuel the Flame*), is the paramount goal within the 2013-18 Strategic Plan *Fuel the Flame*. Embedded within the overall goal of student success is our objective to “Develop programs and course delivery methods that meet the diverse needs of our student body” (*Fuel the Flame*). The delivery of courses within this streamlined summer schedule provides for a seamless transition throughout the summer and into the following fall semester. Furthermore, the schedule provides a vehicle for students to advance in a timely fashion towards a degree while simultaneously providing greater flexibility in our efforts to “Promote financial access and affordability for students” (*Fuel the Flame*). In summary, the proposed summer schedule encompasses many components of our institutional priorities and Strategic Plan.

Implications for Student Success:

To derive the greatest impact on student success, the following principles will be followed when planning and implementing summer program offerings:

1. Selection of courses based on student needs.
2. Course offerings must include a variety of formats.

3. Decisions on which courses to offer must be data driven, which will require monitoring student progression toward degree completion.
4. The model must be flexible enough to allow special cases, such as condensed format courses and courses whose nature require a different time span (such as study abroad, labs, and internships).
5. The model must allow faculty who choose to teach in more than one session the time to plan their courses and complete grading before the next term.
6. Course offerings within one program will not conflict with each other, so that students can take more than one course at a time in order to advance in their degree completion path.
7. The model will include at least one week between the last summer session and the beginning of the fall semester to allow faculty time to prepare for fall.
8. An analysis of previous summer offerings conducted to determine course demand.
9. Whenever possible, departments who offer general education courses will offer such courses in the summer to allow students the opportunity to move ahead in their degree path.
10. Departments will determine the appropriate session length for the courses they offer (i.e. a full 12-week session or a 6-week session).

Committee Members:

Arne Almquist – Associate Provost, Library

Michael Bush – Faculty, Political Science/Criminal Justice/Organizational Leadership; Faculty Senate Representative

Alan Cole – University Registrar

Idna Corbett – Associate Vice Provost for Undergraduate Academic Affairs

Christian Gamm – Director, Graduate Programs

Kim Graboskey - Director, Student Account Services

Francois LeRoy – Executive Director, Center for Global Engagement and International Affairs

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Leah Stewart – Assistant Vice President for Enrollment and Financial Assistance

Beth Sweeney – Associate Provost for Administration

Roger Zarnowski – Chair, Mathematics and Statistics; Council of Chairs Representative

03/21/16 ks

Proposed Amendment to the Faculty Handbook, as amended September 29, 2016
Presented by Provost Ott Rowlands to the PCC and Faculty Senate for consideration and approval
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

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~~ **at the end of the PRP participation period. During the PRP participation period, a faculty member shall be eligible to serve on Reappointment, Promotion, and Tenure Committees, but shall not be compelled to do so.**

The deadline for filing applications for the PRP with the department chair, dean and program administrator is January ~~1~~ **15** unless notice of a revised date is given.

MEMORANDUM

To: Professional Concerns Committee

From: K. Katkin, Chair

Re: "Tuition Waiver Benefit" Provision of NKU Faculty Handbook

Date: Sept 29, 2016

Section 11.8 of the NKU Faculty Handbook currently provides:

11.8. TUITION WAIVER

Each full-time regular faculty member may take up to six (6) semester hours of NKU course work each semester without being required to pay tuition. Each full-time regular faculty will be provided with a tuition waiver benefit of six (6) semester hours of NKU course work each semester for the faculty member's spouse and each dependent. "Full-time regular faculty" is defined as tenured full-time faculty, tenure track full-time probationary faculty, and non-tenure track renewable full-time faculty.

After one year of continuous service a temporary full-time faculty may take up to six (6) semester hours of NKU course work each semester without being required to pay tuition. This benefit is not extended to the temporary full-time faculty member's spouse or dependents.

The preface to the NKU Faculty Handbook states that "[t]his Faculty Handbook is intended to define the rights and obligations of the Northern Kentucky University administration and faculty members. All of the material in this Handbook has been approved by the Northern Kentucky University Board of Regents and, as such, constitutes official University policy." The same preface further states that "All changes or revisions to the Faculty Handbook must be approved by the Faculty Senate and the Board of Regents."

Nonetheless, without notifying the Faculty Senate or amending the Faculty Handbook, in response to budget considerations the University periodically has made minor modifications to the Tuition Waiver policy. Accordingly, in some respects, the university currently does not mirror the tuition waiver benefit language set forth in the faculty handbook. For example, the University now restricts the spouse/dependent benefit to undergraduate courses only, while the handbook contains no such limitation. In other respects, the current policy may be more generous than the handbook provision. For example, while the handbook does not guarantee any tuition waiver benefit to the spouses

or dependents of temporary non-tenure-track faculty members, current NKU policy extends the benefit to such spouses and dependents beginning in the temporary faculty member's fourth year at NKU.

In light of the university's practice of periodically making minor changes to the tuition waiver benefit without adhering to the formalities of amending the handbook, the handbook itself has not reliably served as an accurate source of information about the benefit. In principle, PCC could respond to this disparity in any of three ways: (1) PCC could recommend that the handbook be amended to reflect the current tuition waiver benefit policy; (2) PCC could decline to recommend any amendment to the handbook, and recommend instead that the university comply with the handbook language; or (3) PCC could recommend that the handbook be amended to state the core principles of the tuition waiver benefit, while expressly authorizing the administration to modify the details.

Language that would implement the first option has been provided by the Provost and is set forth on Page 4 of this document.

The current NKU Tuition Waiver Benefit policy is set forth on the Human Resources website (<https://hr.nku.edu/benefits/waiver.html>). The full text that currently appears on that website is appended on Pages 5-6 of this document.

For two reasons, I recommend the third option: amending the NKU Faculty Handbook to state the core principles of the tuition waiver benefit, while expressly authorizing the administration to modify the details. First, going-forward, this approach would eliminate the need for periodic revision of the handbook. Second, I believe that the integrity of the handbook (and the role of the faculty in the shared governance of the university) is harmed every time the administration disregards a handbook provision. Because the substance of this provision is of relatively minor significance, in this case I think it is better to eliminate the source of the non-compliance than to fight for compliance.

Here is some draft language that would implement the third option:

11.8. TUITION WAIVER

Each full-time regular faculty member may take up to six (6) credit hours of NKU course work per semester/entire summer session without being required to pay tuition. Each full-time regular faculty will be provided with a tuition waiver benefit of six (6) semester hours of NKU course work each semester for the faculty member's spouse and each dependent. "Full-time regular faculty" is defined as tenured full-time faculty, tenure track full-time probationary faculty, and non-tenure track renewable full-time faculty.

Analogous tuition waiver benefits shall be made available to temporary non-tenure track full-time faculty members and to part-time faculty members, and may be made available to spouses and dependents of such faculty members. Specific details of tuition waiver benefit programs may vary from time to time. The current NKU Tuition Waiver Benefit policy shall be maintained by the Department of Human Resources and shall be published on the Human Resources website (<https://hr.nku.edu/benefits/waiver.html>).

PCC should choose one of these options to recommend to Faculty Senate.

Proposed Amendment to the Faculty Handbook, August 2016

Presented by Provost Ott Rowlands to the Faculty Senate for consideration and approval

Rationale: Language revised to reflect NKU's current tuition waiver benefit

Current language reads:

11.8. TUITION WAIVER

Each full-time regular faculty member may take up to six (6) semester hours of NKU course work each semester without being required to pay tuition. Each full-time regular faculty will be provided with a tuition waiver benefit of six (6) semester hours of NKU course work each semester for the faculty member's spouse and each dependent. "Full-time regular faculty" is defined as tenured full-time faculty, tenure track full-time probationary faculty, and non-tenure track renewable full-time faculty.

After one year of continuous service a temporary full-time faculty may take up to six (6) semester hours of NKU course work each semester without being required to pay tuition. This benefit is not extended to the temporary full-time faculty member's spouse or dependents.

The following language accurately reflects the NKU Tuition Waiver Benefit on the Human Resources website (<https://hr.nku.edu/benefits/waiver.html>):

11.8. TUITION WAIVER

Each full-time regular faculty member may take up to six (6) credit hours of NKU course work per semester/entire summer session without being required to pay tuition. Each full-time regular faculty will be provided with a tuition waiver benefit of six (6) semester hours of NKU course work each semester for the faculty member's spouse and each dependent. "Full-time regular faculty" is defined as tenured full-time faculty, tenure track full-time probationary faculty, and non-tenure track renewable full-time faculty.

After one academic year of continuous service a temporary non-tenure track full-time faculty may take up to six (6) credit hours of NKU course work per semester/entire summer session without being required to pay tuition. Beginning in the fourth year of continuous service, the employee's spouse and dependents will also eligible for six (6) hours per semester.

After two semesters/entire summer session over the course of one academic year of continuous service a part-time faculty member may take up to three (3) credit hours per semester/entire summer session without being required to pay tuition. The employee's legal spouse and dependents are not eligible for the tuition benefit.

<https://hr.nku.edu/benefits/waiver.html>.



Tuition Waiver

Northern Kentucky University offers a Tuition Waiver Program to employees to promote the professional and personal development of its faculty and staff and assist employees' families in obtaining education and training.

Employees are eligible to utilize tuition waiver for undergraduate, graduate or law classes after successful completion of probationary period. **Spouses and/or dependents are eligible to utilize tuition waiver for undergraduate classes at NKU only - cannot be used at any other college or university.**

For additional information regarding the use of the tuition waiver, please see "More Tuition Waiver Information" links above.

More Tuition Waiver Information

- [Policies and Procedures](#)
- [How To Apply](#)
- [NKU Tuition Waiver Form](#)
- [State Waiver Program](#)

Below is a breakdown of the tuition waiver benefits based on employee category available to NKU employees:

Employees with full-time status

- Faculty/Tenured
- Faculty/Tenure track, Probational
- Faculty/Non-Tenure Track, Renewable
- Staff/Regular

- Staff/13-month contract

WAIVER: Maximum of six (6) credit hours per semester/entire summer session for the employee and the employee's legal spouse and dependents.

Employees with part-time status

- Staff/Regular
- Staff/13-month contract working 20 or more hours per week

WAIVER: Maximum of three (3) credit hours per semester/ entire summer session for the employee and the employee's legal spouse and dependents.

Faculty/Non-Tenure Track, Temporary

WAIVER: Maximum of six (6) credit hours per semester/entire summer session for the employee after one academic year of continuous service. Beginning in the fourth year of continuous service, the employee's spouse and dependents will also be eligible for six (6) hours per semester.

Faculty/Part-time

WAIVER: Maximum of three (3) credit hours per semester/entire summer session for the employee who has taught two semesters/entire summer session over the course of one academic year of continuous service. Employee's legal spouse and dependents are not eligible for the tuition waiver benefit.