
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

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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

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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.

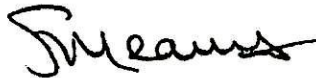
Second, Dinsmore and Clark have met with the University's new Director of Intercollegiate Athletics and the University's new Associate Athletic Director for Compliance. Based on their review of the results of our internal investigation, these experienced intercollegiate athletics administrators believe 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

NKU—Faculty Senate Evaluation of Administrators—PCC Draft, May 5, 2016

The evaluation forms will be distributed electronically to eligible faculty, and faculty shall submit their responses electronically. All full-time faculty members are eligible to participate in the evaluation. Evaluations will be anonymous and confidential.*

The evaluation instrument and instructions will be distributed to eligible evaluators. A deadline date for responses will be included.

The faculty portion of the evaluation process must be completed prior to the close of the Spring Semester each year.

Each evaluator will be requested to complete the Administrator's Evaluation Form and return it, along with any narrative comments. Narrative comments are encouraged.

Completed forms will be returned electronically to Faculty Senate Office.

After the evaluation instruments have been returned to the Faculty Senate, a statistical summary of the results will be developed. Copies of the summary and the verbatim transcript of narrative comments will then be forwarded only to the administrator being evaluated, his or her immediate supervisor, the Provost/Vice President for Academic Affairs, and the President. In the case of the President, the summary and transcripts will also be forwarded to the Chair of the Board of Regents. The information can be shared with others only by specific permission of the person evaluated. The evaluations are part of the administrator's confidential personnel file. The Faculty Senate President has access to all the compiled results, and will meet with the University President, as well as the Chair of the Board of Regents, to discuss the President's results.

The results of the survey will be utilized as a formal and significant part of the performance appraisal by the appropriate supervisor of the evaluated administrator. The evaluator will weigh the results of the survey within the greater context of the evaluation, and will receive a formal response to the survey results from the evaluated administrator. The Provost—as Chief Academic Officer—will report to the relevant faculty a synopsis of the administrator's evaluation.** Should significant concerns arise from the survey results, both the Provost and the administrator will respond formally to the affected faculty, including suggestions to address areas of administrator performance needing improvement. Every effort should be made to have these suggestions be specific and achievable.

*An option to sign the evaluation will be available.

**Using the same process, the President will report to the faculty about the evaluation of the Provost.

Proposed Amendment to the Faculty Handbook, August 2016

**Presented by Provost Ott Rowlands to the Faculty Senate for consideration and approval
Language drafted and approved by the Graduate Council on February 12, 2015**

**The following language would replace Section 1.10, Graduate Faculty, in the 2016-2017
Faculty Handbook:**

1.10. GRADUATE FACULTY

1.10.1. FULL GRADUATE FACULTY STATUS

All NKU faculty who meet the faculty credentials policy passed by the Board of Regents (7/09) will be granted full graduate faculty status. This policy states: “faculty teaching graduate or post-baccalaureate course work must have an earned doctorate or terminal degree in the teaching discipline or related discipline.”

Faculty appointed to full graduate faculty status may:

- Teach or supervise graduate students
- Chair a thesis or dissertation committee or serve as a committee member
- Advise graduate students
- Serve on Graduate Council
- Serve as a graduate program director
- Vote upon any issue that is presented for a vote by all graduate faculty

1.10.2. ASSOCIATE GRADUATE FACULTY STATUS

Faculty who do not meet the requirements of the faculty credentials policy may have their credentials evaluated by their academic department to determine their qualifications for associate graduate faculty status through alternative credentials. Final approval for all faculty credentialing, including alternative credentialing, rests with the Provost.

Faculty who receive associate graduate faculty status may:

- Teach graduate level courses
- Serve on thesis or dissertation committees

Faculty who receive associate graduate faculty status may not:

- Serve as a graduate program director
- Chair a thesis or dissertation committee
- Serve on Graduate Council
- Vote on Graduate Council issues presented to all graduate faculty

Page 94, #5

Replace the sentence:

The investigator must be satisfied that the explanation has been understood and consent in writing obtained without duress or deception.

With:

The investigator must be satisfied that the explanation has been understood and obtain consent in writing, unless documentation of informed consent has been waived, without duress or deception.

Page 96, Section C

Replace all of Section C with:

C. Research that involves human subjects but does not need approval from the Institutional Review Board

In pursuit with CFR 46.101, federal guidelines state that only the IRB can determine the status of a proposed study. Because of this mandate, all potential research studies involving human participants or identifiable records must be submitted to the IRB for review before being started.

One narrowly defined study type is recognized as an exception to this policy. IRB review and approval is not needed for:

1. Studies in undergraduate classes or graduate seminars that involve human participants and are:
 - a. conducted solely for instructional purposes, and
 - b. not intended to contribute to general knowledge.

When a study is designed to provide a learning experience for students and when the instructor and student investigator(s) have no plan, intention, desire, or hope to publish, present, or report the findings of this study in any off-campus setting (e.g., journal, report, conference, other off-campus outlet, etc.), the activity will not be considered to be research, and will not require IRB review.

In this instance, faculty instructors are wholly responsible for classroom projects conducted by students in their classes, and for ensuring that these student projects treat human participants ethically.

Page 97, paragraph 1

Replace paragraph 1 (The principal investigator should provide the board with...), with:

The Principal Investigator should provide the board with a protocol for each new research project involving human subjects. In addition, all supporting documents should be included, such as: questionnaires, signed letters of participation and agreement by institutions participating with Northern Kentucky University, personal interview statements, and debriefing procedures. In accordance with board guidelines, a single copy should be submitted to the IRB Administrator for review. Please note, grant proposals for external support should not be used as the protocol because they are often too long and frequently do not address the concerns of the board.

Page 97, Section F, 1st sentence

Replace this sentence:

All protocols are screened for completeness by the board chair prior to the conduct of a formal review.

With:

All protocols are screened for completeness during IRB Pre-Review by the IRB Administrator prior to the conduct of a formal review.

Page 99, Section G

Replace Section G with:

G. Actions by the Institutional Review Board

In pursuit with 45 CFR 46, after review and discussion of the protocol, the board will take one of the following actions:

1. Classify the Submission as Not Research: This includes quality improvement projects taking place in the classroom with no intention to present or publish collected data.
2. Approve the Research as Exempt: Exempt studies are those that involve no danger to the subjects. This includes procedures such as standard classroom activities or interviews on non-threatening topics. Projects that do not involve changes in the ordinary risks of daily life or in recognized occupational risks are also considered no-risk. Written informed consent is required in exempt IRB studies. No need for IRB oversight unless changes are made to the protocol.
3. Approve the Research as Expedited: The research may involve some risk to the subjects, but is not unreasonable. The potential benefits of the research outweigh the risks, and risk-management procedures have been taken to minimize the risks. This approval requires oversight

by the IRB and annual continuations must be submitted if the study will continue past the one year approval date.

4. Full Board Review Approval: A Full Board Review approval requires quorum approval of the IRB. The board may request the investigator to be present to discuss the research proposal. This may occur when the IRB finds the research to have more than minimal risks and as defined by federal regulations, the elements, procedures or interventions require additional provisions or safeguards.

5. Disapprove the Research: The board is of the opinion that the potential benefits of the research do not outweigh the risks to the subjects. Some modifications or clarifications might be requested of the PI in all types of research. The modifications required by the board may include such items as revising the consent form to explain the procedures more clearly, restricting use of a certain procedure, or requiring use of specified safeguards necessary for the protection of human subjects.

Page 100, Section K

2nd Sentence, replace this sentence:

Such forms must be retained by the investigator (or faculty advisor) for a minimum of three (3) years after termination of the project.

With:

Such forms must be retained by the investigator (or faculty advisory) for a minimum of six (6) years after termination of the project. If the records are part of a misconduct investigation, all records must be retained for a minimum of seven (7) years after the termination of the project.

Page 101, paragraph 2, sentence 1

Replace this sentence:

These records shall be maintained for at least three (3) years after completion of the research and shall be available to authorized member of the Department of Health and Human Services at reasonable times and in a reasonable manner.

With:

These records must be retained by the investigator (or faculty advisory) for a minimum of six (6) years after termination of the project. If the records are part of a misconduct investigation, all records must be retained for a minimum of seven (7) years after the termination of the project.

The records must be available to authorized members of the Department of Health and Human Services at reasonable times and in a reasonable manner.

16.5. ADVISING OF STUDENTS

Faculty should be familiar with the University's academic requirements, policies, and procedures as outlined in the University Catalog, including the Classification of Admissions Policy and the Placement Policy. Faculty should also be familiar with the Philosophy of Advising statement in the admissions section of the University Catalog. The catalog can be found online at: <https://catalog.nku.edu>.

16.6. HUMAN SUBJECT POLICIES

16.6.1. GENERAL

The Northern Kentucky University Institutional Review Board for the Protection of Human Subjects is appointed by the provost, who has administrative responsibility for safeguarding the rights and welfare of human subjects involved in research. The board consists of at least five members with varying academic backgrounds and at least one who is not an employee or agent of the University. Membership of the board will be reviewed annually by the provost, who will report any changes to the United States Secretary of Health and Human Service.

University policies and federal regulations regarding research with human subjects are implemented by the board and the University Office of Research, Grants, and Contracts, which serves as the administrative arm to the board and the provost.

The protection of human subjects from unnecessary risks can be achieved when: the human subject's participation is voluntary as reflected on the consent forms; the degree and nature of the risk have been carefully explained to the human subject; and there is a desirable balance between the potential benefits of the research and the risks undertaken by the human subject. The board has the sole responsibility to approve research with human subjects performed under the auspices of the University.

In reviewing all biomedical and behavioral research that involves human subjects conducted at Northern Kentucky University, the Institutional Review Board for the Protection of Human Subjects will utilize the following principles:

- A human subject will not be exposed to unreasonable risk to health or well-being whether physical, psychological, or social.
- Commensurate with the principle of protection of human subjects, the procedures for assessing and minimizing risk to human subjects shall respect and protect the academic freedom of the University's faculty and students in their pursuit of knowledge.
- The risks to an individual must be outweighed by the potential benefit to him/her or by the importance of the knowledge to be gained.

- The identity and personal privacy of human subjects and the confidentiality of information received will be protected.
- The nature of the research, the procedures to be followed, and the possible risks involved must be carefully and fully explained to the subject, parent or guardian, as appropriate. The investigator must be satisfied that the explanation has been understood and consent in writing obtained without duress or deception.
- Voluntary participation is essential in all projects. No information concerning a project may be withheld from a potential subject in order to increase the willingness of the subject to participate in the project.
- A subject may request at any time that his/her participation in the experiment be terminated, and the request shall be honored promptly and without prejudice.
- It shall be the responsibility of the individual investigator to decide when he/she does not have adequate knowledge of the possible consequences of his/her research, or of research done under his/her direction. When in doubt, he/she shall obtain the advice of others who do have the requisite knowledge.
- Potentially hazardous research procedures must be preceded by laboratory and animal experimentation or other scientifically established procedures that offer reasonable assurance that the safety of human subjects will be preserved.
- Remuneration may be offered to an individual for the time involved in a study, provided the investigator is satisfied that under the circumstances the remuneration is not so large as to constitute an undue or unreasonable inducement.
- It shall be a responsibility of Northern Kentucky University to ensure that research involving human subjects conducted by faculty, students, and employees of the University shall be performed carefully and with regard to the above principles.

16.6.2. RESEARCH THAT INVOLVES HUMAN SUBJECTS

There is human-subject involvement when an investigator obtains:

- Data through intervention or interaction with the individual; and/or
- Identifiable private information.

“Intervention” includes both physical procedures from which data are gathered and manipulations of the subject or the subject’s environment that are performed for research purposes.

“Interaction” includes communication or interpersonal contact between investigator and subject.

“Private information” includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place and information

that has been provided for specific purposes by an individual will not be made public. Private information must be individually identifiable.

All research conducted on human subjects—whether supported partly or wholly by external funds, University funds, or without funds—must have prior approval by the Institutional Review Board.

All proposals that request external support for activities involving human subjects under the auspices of the University must be submitted through the office of Research, Grants, and Contracts to the funding agency.

16.6.3. RESEARCH THAT INVOLVES HUMAN SUBJECTS BUT DOES NOT NEED APPROVAL FROM THE INSTUTUIONAL REVIEW BOARD

Approval from the Institutional Review Board is not required when the research:

- Is conducted in accepted educational settings, involving normal educational practices such as research on instructional strategies or classroom management methods;
- Involves the use of educational tests, if the information does not identify the subjects;
- Involves surveys or interviews, except when responses are identifiable with the individual subjects;
- Involves observations, except when observations are recorded in such a manner that the subjects can be identified; and/or
- Involves the collection or study of existing data, documents, records, diagnostic specimens, if these sources are publicly available or if the information is recorded in a way that cannot be identified with the subjects.

All research proposals with human-subject involvement must be reviewed by the board chair or board reviewer designated by the chair to assess and confirm exempt status.

16.6.4. INVESTIGATOR’S LEGAL RESPONSIBILITY IN RESEARCH WITH HUMAN SUBJECTS

The investigator is legally responsible for any research or related activities that involve human subjects conducted under the auspices of the University and/or that utilize University time, facilities, resources, and/or students. The University’s legal counsel has the responsibility for resolution of any legal questions.

16.6.5. APPLICATION PROCEDURES

Principal investigators are required to submit a protocol describing the proposed research project to the Institutional Review Board for review and approval.

The principal investigator should provide the board with a protocol for each new research project involving human subjects. In addition, all supporting documents should be included, such as: questionnaires, signed letters of participation and agreement by institutions participating with Northern Kentucky University, consultants, physicians, sponsors, faculty advisers, personal interview statements, and debriefing procedures. A single stapled copy, in accordance with board guidelines, should be submitted to the board chair for exempt or expedited review. If a full board review is necessary, ten (10) additional copies will be required. The protocol should be limited to ten (10) pages or fewer. Grant proposals for external support are usually too long and frequently do not address the concerns of the board.

The investigator should discuss the need for the research, its objectives, the methods to be used to accomplish the objectives, the risks involved, and the procedures used to protect the subjects from, or minimize, the risks. Risks may be classified as physical, psychological, social to individuals, and social to groups. These are defined as follows:

Physical Risk: The extent to which physical injury is a possibility from physical activity, injections, or stimuli from electrical apparatus, fumes, light, noise, etc.

Psychological Risk: The extent to which research interrupts the normal activity of human subjects resulting from immediate or long-term stress. Stress includes any situation that threatens one's desired goals.

Social Risk to Individuals: The extent to which a subject is deprived of formal or informal relationships within social groups.

Social Risk to Groups: The extent to which a subject group, either formal or informal, is exposed to factors that may reduce the group's viability.

Any research proposing to place any individual at risk is obligated to obtain and document legally effective informed consent. Informed consent is the knowing consent of an individual, or his/her legally authorized representative, who is able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion.

Research that has been approved by the board may be reviewed, approved, or disapproved by University officials. They may not, however, approve the research if the Institutional Review Board has not first approved it.

16.6.6. REVIEW OF APPLICATION BY THE INSTITUTIONAL REVIEW BOARD

All protocols are screened for completeness by the board chair prior to the conduct of a formal review. A board member may not cast a vote, or be otherwise involved, in either the initial or conducting review or any activity in which he/she has any conflicting interest, or any involvement, except to provide information requested by the board. The review performed by the board will determine whether subjects will be placed at risk. The policy criterion for determining risk is defined as follows:

“Subject at risk” is any individual who may be exposed to the possibility of injury, including physical, psychological, or social injury, as a consequence of participation as a subject in any research, development, or related activity that departs from the application of established and accepted methods necessary to meet his/her needs or that increases the ordinary risks of daily life, including the recognized risks inherent in a chosen occupation or field of service.

If risk is involved, the answers to the following questions will be considered:

- Are the risks to the subject too outweighed by the benefits to the subject and the importance of the knowledge to be gained as to warrant a decision to allow the subject to accept these risks?
- Are the rights and welfare of any such subjects adequately protected?
- Is legally effective informed consent obtained by adequate and appropriate methods in accordance with the provisions of federal regulations?

The board may use expedited review procedures for certain kinds of research involving no more than minimal risk and for minor changes in research protocols having prior board approval. Such review will be conducted by the board chair or by one or more experienced board reviewers designated by the chair. Under the expedited procedure, the reviewer(s) may exercise all the authorities of the board except that of final disapproval of the research. All board members will be notified of all research approved in the expedited review procedure. Any protocol not approved under the expedited procedure will be referred to the full board for review.

Approval of research will necessitate that the board determine that the following requirements are satisfied:

- Risks to subjects are minimized.
- Risks to subjects are reasonable in relation to anticipated benefits.
- Selection of subjects is equitable.
- Informed consent will be obtained from each prospective subject or the subject’s legally authorized representative.
- The informed consent will be appropriately documented.
- Data will be regularly monitored to insure subjects’ safety.

16.6.7. ACTIONS BY THE INSTITUTIONAL REVIEW BOARD

After review and discussion of the protocol, the board will take one of the following actions:

16.6.7.1. CLASSIFY THE RESEARCH AS *NO RISK*

No risk projects are those that involve no danger whatever to the subjects. This includes procedures such as standard classroom activities or interviews on non-threatening topics. Projects that do not involve changes in the ordinary risks of daily life or in recognized occupational risks are also considered *no risk*. Written informed consent is required in *no risk* projects.

16.6.7.2. APPROVE THE RESEARCH AS *RISK*

The research may involve some risk to the subjects, but is not unreasonable. The potential benefits of the research outweigh the risks, and risk-management procedures have been taken to minimize the risks.

16.6.7.3. CONDITIONALLY APPROVE THE RESEARCH AS *RISK*

The board will require minor modifications to a part of the proposed research. The modifications required by the board may include such items as revising the consent form to explain the procedures more clearly, restricting use of a certain procedure, or requiring use of specified safeguards necessary for the protection of human subjects. The board may request the investigator to be present to discuss the research proposal.

16.6.7.4. DISAPPROVE THE RESEARCH

The board is of the opinion that the potential benefits of the research do not outweigh the risks to the subjects.

16.6.8. DISPOSITION OF THE RECOMMENDATIONS

Approvals, recommendations, restrictions, conditions, or disapprovals of application are communicated to the investigator by the board chair. If an application is disapproved for nonconformity with the policies of the board and the University, the board shall forward to the investigator a statement setting forth in detail the reasons for the nonconformity and recommendations of the board for modification of the research proposal.

16.6.9. RIGHTS OF APPEAL

If the investigator believes that the proposal has been disapproved because of incorrect, unfair, or improper evaluation by the board, the investigator may appeal to the appropriate dean who then may request a reconsideration and hearing of the proposal by the board. Within ten (10) days after a negative decision, the affected investigator must show cause in writing or at a designated hearing as to why the board's decision should be reversed.

16.6.10. APPEAL DECISION

The board may take one of the following actions:

- Approve;
- Require modification; or
- Disapprove.

16.6.11. RECORDS AND DOCUMENTATION OF THE INVESTIGATOR

The investigator is required to obtain and keep documentary evidence of informed consent of the human subjects or their legally authorized representatives. Such forms must be retained by the investigator (or faculty advisor) for a minimum of three (3) years after termination of the project.

16.6.12. INSTITUTIONAL REVIEW BOARD RECORDS

The board is required to keep copies of all documents presented or required for initial and continuing review by the board. These include copies of all research proposals received, scientific evaluations (if any accompany the proposals), approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects. Minutes of board meetings shall reflect meeting attendance; actions taken by the board; votes on actions, which will show the number of members voting for, against, and abstaining; the basis for requiring changes in or for disapproving research; and written summaries of discussions about controverted issues and their resolution. Other documents will include records of continuing review activities; copies of all correspondence between the board and investigators; a list of board members; written procedures; statements of significant new findings; reports of injuries; progress reports; and unanticipated problems.

These records shall be retained for at least three (3) years after completion of the research and shall be available to authorized member of the Department of Health and Human Services at reasonable times and in a reasonable manner. These records will be continually reviewed by the Office of Research, Grants, and Contracts with follow-up concerning conditions of approvals, additional information requested, etc.

The records of the board pertaining to individual research activities are not accessible to persons outside the board other than the records of projects supported by external funds that are subject to inspection by federal employees.

Except as otherwise provided by law, information acquired in connection with a research, development, or related activity that refers to or can be identified with a particular subject will not be disclosed except:

- With the consent of the subject or a legally authorized representative; or
- As may be necessary for the Secretary of Health and Human Services to carry out his/her responsibilities under federal regulations.

16.6.13. POLICY FOR LIABILITY FOR INSTITUTIONAL REVIEW BOARD

Due to the privilege of sovereign immunity, the University, as an institution, is protected through the State Board of Claims. In addition, the University maintains a professional liability policy covering most actions of the faculty and staff. In the event the professional liability policy should fail, the University Board of Regents, in its By Laws adopted August 27, 1976 and revised August 13, 1992, insured that if any legal action is taken or claims filed against any faculty or staff member, he/she will be provided legal defense and indemnification for any acts or actions taken while on official business of the University (see Section 1.3, Legal Defense and Indemnification/Notice Requirement, and Appendix B, Article IV, Regents' By Laws).

16.7. SCIENTIFIC/RESEARCH MISCONDUCT

16.7.1. PREAMBLE AND POLICY STATEMENT

The preeminent principle in all research is the quest for truth. The credibility of such research must be above reproach if the public trust is to be maintained. Any compromise of the ethical standards required for conducting academic research cannot be condoned. While breaches in such standards are rare, these must be dealt with promptly and fairly by all parties in order to preserve the integrity of the research community.

A critical element of any policy on research misconduct is that it be a fair and effective process for distinguishing instances of genuine and serious misconduct from insignificant deviations from acceptable practices, technical violations of rules, or simple carelessness. The policy defined in this Handbook will allow such distinctions to be made in a manner that minimizes disruption and protects the honest researcher from false or mistaken accusations.

Research misconduct, as defined in Section 8.2, below, is not condoned at Northern Kentucky University and allegations of such misconduct will be investigated in accordance with the

INFORMATION SECURITY

POLICY NUMBER: RESERVED FOR FUTURE USE

POLICY TYPE: ADMINISTRATIVE

RESPONSIBLE OFFICIAL TITLE: CHIEF INFORMATION OFFICER

RESPONSIBLE OFFICE: OFFICE OF INFORMATION TECHNOLOGY

EFFECTIVE DATE: 7/2/2016

NEXT REVIEW DATE: 6/1/2017

SUPERSEDES POLICY DATED: N/A

REQUIRES LEGAL/COMPLIANCE REVIEW:

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

REQUIRES I.T. POLICY COUNCIL REVIEW:

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

REQUIRES PROFESSIONAL CONCERNS COMMITTEE REVIEW:

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

REQUIRES HUMAN RESOURCES REVIEW:

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

REQUIRES BOARD OF REGENTS APPROVAL:

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

I. POLICY STATEMENT

Northern Kentucky University recognizes the obligation to protect confidentiality, maintain the integrity, and ensure appropriate availability of information regarding students, faculty, staff, alumni, and customers, and to provide proper administrative, technical and physical safeguards to protect university information assets per NKU's data classification categories (see below).

The NKU Information Security Policy covers:

- information and data that are acquired, transmitted, processed, managed, transferred, stored, and/or maintained by NKU organizations;
- security of passwords, decryption, and encryption processes
- all data systems and equipment including departmental, divisional and other ancillary systems, as well as information residing on these systems and equipment;
- work/home/personal electronic and mobile devices of NKU faculty, staff, alumni, and administrators which access information technology information and data;

Each member of the NKU campus community is personally responsible for the security and protection of NKU information and data resources over which he or she has access, use, and/or control, and must adhere to the Acceptable Use Policy. Resources to be protected include data stored on any laptops, desktops, mobile devices (iPads, tablets, cell phones, etc.), any data which are accessed, transferred or stored, regardless of format (text, graphic, audio), passwords, decryption and encryption processes. The physical and logical integrity of these resources must be protected against threats such as unauthorized intrusions, malicious misuse, inappropriate or unsafe transmission or storage of confidential data, inappropriate release of confidential or private information (whether accidental or intentional) or inadvertent compromise, such as theft or loss.

It is the policy of NKU to:

- safeguard personal and confidential information of NKU students, faculty, staff, alumni, and customers, regardless of format or medium;
- protect against anticipated threats or hazards to the physical security or integrity of NKU information and data assets, including data files and hardware equipment;
- ensure campus compliance with federal and state laws, regulations, NKU policies, procedures, and standards regarding information security, privacy and prevention of threats, breaches, and intrusions;
- ensure employees, departments, and organizations operate in compliance with state and federal laws for access, usage, and transmission of electronic data (FERPA, HIPAA, etc). Compliance with state law includes following the State University Model Records Retention Schedule and NKU Records Management Policy for the retention and disposal of electronic records
- ensure departments and organizations are held responsible for implementing appropriate managerial, operational, physical, and technical controls for access, usage, transmission, storage, and disposal of NKU data in compliance with this policy.

II. ENTITIES AFFECTED

This policy applies to all individuals who access, use, or control NKU information or data resources. Those individuals covered include, but are not limited to faculty, staff, students, contractors, alumni, and individuals authorized by affiliated institutions or organizations.

III. DEFINITIONS

Classification Definitions and Examples

The table on the next page clarifies the nature of each data category and provides criteria for determining which classification is appropriate for a particular set of data.

	Confidential Data <i>(highest, most sensitive)</i>	Private Data <i>(moderate level of sensitivity)</i>	Public Data <i>(low level of sensitivity)</i>
Legal Requirements	Protection of data is required by law (i.e. HIPAA, FERPA, GLBA, etc.)	NKU has a contractual obligation to protect the data	Governed by the Kentucky Open Records Act, K.R.S. §§ 61.870 to 61.884
Reputation Risk	High	Medium	Low
Other Institutional Risks	Information which provides access to resources, physical or virtual	Smaller subsets of protected data from a school or department	General university information
Access	Only those individuals designated with approved access, signed non-disclosure agreements, and a need-to-know	NKU employees and non-employees who have a business need-to-know	Unrestricted
Examples	<ul style="list-style-type: none"> • Student education records • Individual health records and information • Human subjects research data that identifies individuals • Prospective students • Personally Identifiable Financial Information • Campus Security Systems and Details • Credit card numbers • Certain management information • Social Security Numbers • Government restricted and/or classified information • Financial transactions of students and employees • Personnel records (Although certain records contained within employee personnel files may be “public records” subject to disclosure, personnel files should be maintained as confidential data and disclosure of “public records” shall only be made after a case-by- case determination.) 	<ul style="list-style-type: none"> • Information resources with access to confidential data • Research data or results that are not confidential data • Information covered by non-disclosure agreements • Materials for performance of official duties • Proprietary information of NKU or others contained within proposals, contracts, or license agreements 	<ul style="list-style-type: none"> • Campus maps • Directory information (e.g. Contact Information, Find It) • Departmental Websites • Academic course descriptions • News • Information posted on university website • Budgets • Purchase Orders • All institutional data made available to the general public by the Open Records Act

IV. RESPONSIBILITIES

All employees working with NKU data are responsible for properly protecting that data. The following protective measures should be used as a foundation for your due diligence in keeping data secure.

DO:

- Understand NKU's Data Classification Categories (see addendum):
- The NKU Data Classification categories will be used as reference in defining Confidential, Private, and Public data
- Confidential and Private data are to be protected from disclosure, breaches, unauthorized alteration, and data loss.
 - Examples of Confidential data include, but are not limited to social security numbers, drivers license numbers, credit card or banking information, student academic information such as grades or GPA, etc.
 - Examples of Private data include but are not limited to academic reports, research data, technical reporting such as system logs, faculty tenure evaluations, etc.
 - Public data items include campus promotional materials, class schedules, catalog information, annual reports, press releases, directory information, etc.
- For a more comprehensive list of examples and legal requirements, please visit: <http://datagovernance.nku.edu/content/dam/DataGovernance/docs/Data%20Classification.pdf>
- Follow FERPA guidelines: The Family Educational Rights and Privacy Act (FERPA) guidelines are maintained and must be adhered to for student rights and controlled disclosures of their records. For information regarding NKU and FERPA guidelines, see <http://www.nku.edu/~registrar>
- Use Encryption for Laptops: All NKU owned laptops will be encrypted. NKU IT personnel will assist in providing encryption services. NKU employees are not permitted to remove encryption from laptops, and exceptions will only be permitted with VP and CIO approval.
- Store Data within NKU Networks: Data that is classified as Confidential or Private should be stored within the NKU file server network ("J" / "K" drives) or the Microsoft OneDrive service, provided through NKU. Storing such data on hard drives (laptops, desktops, tablets, etc.) can subject the data to breach by viruses, malware, hacking, physical loss of device, etc. IT can assist if you require storage quotas that exceeds currently allocated amounts.
- Use Virtual Private Network (VPN) to access data when not on campus (home, travel, etc.) Our VPN technology provides security when used from remote locations. See <http://oit.nku.edu/vpn.html>
- Only access confidential and/or private data through encrypted or secure networks when on campus
- A secured login must be used when leaving your device unattended. (i.e. When leaving your computer unattended, you must lock your screen and require login to re-access)
- Do dispose of non-permanent confidential and private data as soon as possible according to the State University Model Records Retention Schedule to reduce risk and potential liability.
- Do report any breaches, inappropriate disclosures, abuses, data loss, or unauthorized alterations to abuse@nku.edu
- Do require personnel handling confidential or private data to sign non-disclosure statements.
- If a personally owned device is lost or stolen and has been used to access confidential or private information, it is the individual's responsibility to report this to abuse@nku.edu

DO NOT:

- Store Confidential or Private data within Cloud and Third Party Data Services: The use of individual “cloud” based storage services such as Google Docs, Drop Box, Amazon, iCloud, or other external storage for NKU Confidential or Private data is prohibited. (Microsoft OneDrive, provided through NKU, is the only cloud based storage service approved for storage of NKU confidential or private data.) Third party contracts that require data collection, distribution, or interfaces with NKU systems will require Legal, IT, and Procurement approval.
- Store Confidential or Private data on portable or mobile storage devices: “Flash” or “Thumb” drives are prohibited when storing NKU Confidential or Private Data, unless the device and/or data has been properly encrypted. For assistance with encryption of mobile and portable devices, please call the IT Service Center.
- Share Passwords: Sharing or using weak passwords may put NKU data at risk. Even in the safest environment, a password disclosure by unauthorized personnel or hackers could result in a data breach. Use strong passwords, and do not share with friends, co-workers or family.
- Email Messages: Do not send Confidential or Private data through email. Even internal email messages are vulnerable to possible attack.
- Do not mix NKU confidential or private data with individual personal records.

V. VIOLATIONS

Any university employee, student or non-university individual who stores university data outside NKU networks and secure servers without proper permissions and protection measures is in violation of this policy and will be subject to appropriate disciplinary action, including possible dismissal and/or legal action.

Depending upon the nature and seriousness of the infraction, any faculty, staff, student, contractor, alumni, or other user within the university network found to have violated this policy may be:

- removed from the network
- subject to disciplinary action, up to and including termination of employment or expulsion
- held personally responsible for any fees, charges or other costs to recover from incidents, including fraud protection for breach of information
- subject to legal actions from internal and external agencies.

Please see the [Acceptable Use Policy](#) for additional details on IT Usage and Policy enforcement, and contact the [IT Help Desk](#) or (x6911) for assistance with security needs.

VI. EXCEPTIONS

Exceptions are limited in regards to data and information protection measures. If an individual is required to store highly sensitive, Confidential or Private data for a business need that are outside NKU managed networks, that individual must obtain permission from the Chief Information Officer and the area Vice President.

VII. REFERENCES AND RELATED MATERIALS

REFERENCES & FORMS

RELATED POLICIES

REVISION HISTORY

REVISION TYPE	MONTH/YEAR APPROVED
New Policy	07/2016
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	

INFORMATION SECURITY

APPROVALS

FINAL APPROVAL

SENIOR VICE PRESIDENT FOR ADMINISTRATION & FINANCE

SEE EMAIL ATTACHMENT
Signature

7/2/2016
Date

Sue Hodges Moore
Printed Name

PRESIDENTIAL APPROVAL

PRESIDENT

SEE EMAIL ATTACHMENT
Signature

7/2/2016
Date

Geoffrey S. Mearns
Printed Name

BOARD OF REGENTS APPROVAL

BOARD OF REGENTS (IF FORWARDED BY PRESIDENT)

- This policy **WAS NOT** forwarded to the Board of Regents.
 This policy **WAS** forwarded to the Board of Regents.

The Board of Regents approved this policy on ____/____/____.
(Attach a copy of Board of Regents meeting minutes showing approval of policy.)

The Board of Regents rejected this policy on ____/____/____.
(Attach a copy of Board of Regents meeting minutes showing rejection of policy.)

POLICY COORDINATOR



Signature

7/2/2016
Date

Justin M. Duncan
Printed Name

Justin Duncan

From: Geoffrey Mearns
Sent: Saturday, July 02, 2016 11:23 AM
To: Sue Hodges Moore
Cc: Justin Duncan
Subject: Re: Data Policies for ET Review

Yes.

Geoffrey S. Mearns
President
Northern Kentucky University

> On Jul 1, 2016, at 9:04 AM, Sue Hodges Moore <moores4@nku.edu> wrote:

>

> Geoff, these policies have gone through the policy approval process and were thoroughly vetted by all of the necessary players. Do you approve? They take effect today.

>

> Thanks,

>

> Sue

>

> Sue Hodges Moore

> Senior Vice President for Administration and Finance Northern Kentucky

> University

> 836 Lucas Administrative Center

> Nunn Drive

> Highland Heights, KY 41099

> Office # 859-572-5349

>



>
> Colleagues,
>
> Attached are four draft policies:
>
>
> • Information Security
>
> • Information Security Incident Response
>
> • Data Governance & Security
>
> • Electronic Signature
>
> These policies have been through the open comment period and subsequently reviewed by each policy's drafting team. These policies are tentatively scheduled to take effect July 1. Please review the attached policies and provide feedback at your earliest convenience.
>
> -Sue
>
>
>
> Justin M. Duncan
> Coordinator, Institutional Effectiveness Division of Administration &
> Finance Northern Kentucky University AC 812
> O: (859) 572-7704
> [REDACTED]
> duncanj6@nku.edu<mailto:duncanj6@nku.edu>
>
>
> <ETReviewDraft_DataGovernance6-24-16.docx>
> <ETReviewDraft_ElectronicSignature6-24-16.docx>
> <ETReviewDraft_InformationSecurity6-23-16.docx>
> <ETReviewDraft_ITIncidentResponse6-24-16.docx>

To: Chief Information Officer, Office of Information Technology
From: Prof. Ken Katkin, PCC Chair
Re: NKU Policy on "Information Security Policy"
Filed: June 6, 2016

I am the Chair of the Professional Concerns Committee (PCC) of the NKU Faculty Senate. Neither the PCC nor the Faculty Senate meet over the summer. I have not conferred with any other member of the PCC before filing these comments. Accordingly, the following comments represent only my own views. However, I intend to disseminate these comments to the incoming PCC Members in advance of our first meeting in Fall 2016.

I offer the following comments on the draft Policy proposal entitled "Information Security Policy."

(1) On Page One and Page Five, the draft policy cross-references another NKU Policy entitled "Acceptable Use Policy." However, the hyperlink in the cross-reference is dead, making it difficult for the reader to locate the "Acceptable Use Policy" being cross-referenced.

(2) On Page Two, the second bullet point contains a reference to "HIPPA." This reference probably refers to the Health Insurance Portability and Accountability Act of 1996, which is properly abbreviated "HIPAA."

(3) On Page Three, the data classification table adopts a definition of "public data" that places excessive and undesirable restrictions on the use and dissemination of such data. In order to preserve the open information sharing requirements of NKU's academic culture, to protect the freedom of speech of all NKU community members, and to comply with the letter and spirit of Kentucky's Open Records Act, the following revisions to the draft language in the "public data" column are needed.

(a) In the current draft, "access" to "public data" is limited only to "NKU affiliates and general public with a need-to-know." This language raises the possibility that an NKU community member could be disciplined for sharing public data with someone who does not have a "need-to-know." By definition, "public data" should be available to the public, without any threshold need to demonstrate any need-to-know. See Ky. Rev. Stat. § 61.872(2) ("Any person shall have the right to inspect public records."). The language describing who is entitled to have "access" to "public data" should therefore be amended to simply read: "unrestricted."

(b) In the current draft, the language describing "legal requirements" of "public data" seems not to comply with the presumption of openness set forth in the Kentucky Open Records Act and in the University's own stated commitment to preserve the open information sharing requirements of NKU's academic culture. As drafted, this policy language states that protection of public data "is at the discretion of the owner or custodian" of the data. This language seems to imply that the owner or custodian of public data has discretion to withhold public data from the public. The Kentucky Open Records Act, in contrast, codifies into Kentucky law the policy "that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others." Ky. Rev. Stat. § 61.871. In most instances, therefore, if an NKU owner or custodian were to exercise "discretion" to deny access to public data, such an exercise

would violate the Kentucky Open Records Act. To resolve this problem, the language describing the “legal requirements” of “public data” should be amended to read: “is governed by the Kentucky Open Records Act, KRS §§ 61.870 to 61.884.”

(c) In the current draft, the list of “examples” of “public data” seems misleadingly restrictive, in that all but one example concerns material that the University voluntarily publicizes through its Web Site. In fact, however, the category of “public data” includes all institutional data that is not “confidential data” or “private data,” including a great deal of data (such as salary data) that is not routinely or voluntarily posted on University Web Sites. The Kentucky Open Records Act defines “public records” as “all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency,” Ky. Rev. Stat. § 61.870(2), except those that fall within a specific exception set forth at Ky. Rev. Stat. § 61.878. To avoid creating the misleading impression that “public data” is limited only to categories of information that the University chooses voluntarily to publicize, an additional bullet point should be added to the list of examples, which would read: “all institutional data made available to the general public by the Kentucky Open Records Act.”

(4) On Page Three, the three sub-bullet points at the bottom of the page each contain misleading, unclear, or unhelpful examples. In particular:

(a) In the draft policy, examples of “confidential data” include “student academic information such as grades or GPA, etc.” Under the Kentucky statute on Personal Information Security and Breach Investigations being implemented by this policy, in contrast, such “personal information” is confidential only where it includes unique individual identifying information such as “an individual’s first name or first initial and last name; personal mark; or unique biometric or genetic print or image.” Ky. Rev. Stat. § 61.931(6); see also Ky. Rev. Stat. § 61.878(2) (“No exemption in [the Kentucky Open Records Act] shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.”). At NKU, it is relatively common practice for summary grading data to be disseminated in ways that identify the professor and the course, but not the students. Such information dissemination is valuable, is not prohibited by Kentucky law, and should not be discouraged by this policy.

(b) In the draft policy, examples of “private data” include “academic reports, research data, technical reporting such as system logs, faculty tenure evaluations, etc.” As discussed above, most items on this list are properly classified as “public records” unless some specific exception to the Kentucky Open Records applies.

(c) In the draft policy, examples of “public data” include “campus promotional materials, class schedules, catalog information, annual reports, press releases, directory information, etc.” Because every item on this list is a form of institutional data that the University voluntarily chooses to disseminate, the list creates the misleading and false impression that no institutional data can qualify as “public data” unless the University voluntarily decides to disseminate such data. As discussed above, the Kentucky Open Records Act provides a much larger and more inclusive definition of “public information” that specifically includes information whose dissemination “may cause inconvenience or embarrassment to public officials or others.” Ky. Rev. Stat. § 61.871.

Because these three bullet points are both misleading and unnecessary, I recommend that they simply be deleted. The reader can rely on the Table that appears on the same page for examples, if necessary.

(5) It is unclear whether the data security “do’s and don’ts” set forth on Pages Four and Five of the draft policy are intended to apply to the process of calculating student grades that is routinely performed by individual faculty members. Such application would be burdensome and cumbersome for many faculty members, and is not contemplated by FERPA or by Kentucky Law. Indeed, neither FERPA, nor the US Department of Education regulations that implement FERPA, require any data security standards whatsoever. See 20 U.S.C. § 1232g; 34 C.F.R. Part 99. Rather, FERPA requires only that NKU must not have “a policy or practice of permitting the release of education records . . . without the written consent of their parents. . . .” 20 U.S.C. § 1232g(b)(1). Similarly, the US Department of Education regulations that implement FERPA require only that “[a]n educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective. . . .” 34 C.F.R. § 99.31(a)(1)(ii). In addition, the Kentucky statute on Personal Information Security and Breach Investigations that is being implemented by this policy specifically EXCLUDES educational records from its coverage. See Ky. Rev. Stat. §61.931(6)(f) (“Personal information” means an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with . . . individually identifiable health information . . . EXCEPT FOR EDUCATION RECORDS COVERED BY the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. sec. 1232g.”) (emphasis added).

Moreover, professors’ gradebooks—including electronic gradebooks saved as files in programs such as MS EXCEL—are not “education records” under FERPA. See 34 C.F.R. § 99.3(b)(1) (“The term ‘education records’ does not include: Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.”). Rather, as the United States Supreme Court explained in 2002, students’ grades first become “education records” only when they are submitted to the registrar, and not earlier:

FERPA requires "a record" of access for each pupil. This single record must be kept "with the education records." This suggests Congress contemplated that education records would be kept in one place with a single record of access. By describing a "school official" and "his assistants" as the personnel responsible for the custody of the records, FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar, not individual assignments handled by many student graders in their separate classrooms.

Owasso Independent School Dist. No. I-011 v. Falvo, 534 U.S. 426, 434-35 (2002).

As drafted, the data security “DO’S & DON’TS” set forth on Pages Four and Five of the draft policy might be construed to prohibit NKU faculty members from calculating student grades for particular assignments on their own home computers, or from using email or a flash drive to transfer worksheets containing such calculations back to their office computers. While ideally all NKU faculty members will one day receive training and technology that will facilitate the use of more secure solutions at all times, this is not the case today. Accordingly, the draft policy should be revised to clarify that professors’ individual gradebooks or grading worksheets are not covered by the policy unless they are also covered by FERPA.

(6) On Page Five, the draft policy threatens that faculty members found to have violated this policy may be subject to termination of employment. The draft policy does not address the procedures by which guilt might be assessed or penalties meted out. To avoid any ambiguity, I recommend adding language clarifying that:

Such penalties shall be levied through ordinary disciplinary procedures set forth in other official University personnel policy documents, such as the NKU Personnel Policies and Procedure Manual, the NKU Faculty Policies and Procedures (the "Faculty Handbook"), or the Chase College of Law Faculty Policies and Procedures (the "Chase Faculty Handbook").

Thank you for taking these comments into consideration.

Best,
--Ken Katkin, PCC Chair (2015-16 & 2016-17)
Professor of Law
Salmon P. Chase College of Law
556 Nunn Hall
Northern Kentucky University
Highland Heights, KY 41099
(859) 572-5861 phone
(859) 572-5342 fax
katkink@nku.edu

MEMORANDUM

To: PCC
From: Prof. Ken Katkin, Chair
Date: Sept 8, 2016
Re: NKU Seeks Judicial Gag Order on NKU Student

At the PCC Meeting of Sept 1, 2016, we briefly discussed recent news reports stating that NKU has filed a motion seeking a judicial gag order against a female NKU undergrad who was raped by a fellow NKU student. At that meeting, I asked the Committee whether this is an issue that Faculty Senate should weigh in on. Several PCC members spoke in favor of PCC studying the matter further, with an eye towards bringing a faculty statement to Senate, if warranted. No PCC Member spoke against doing so. Accordingly, I offered to gather news reports and legal filings, and to put the issue on a near-future Agenda.

Here are links to some news articles that 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/>>.

Cincinnati Citybeat:

<<http://www.citybeat.com/news/blog/20832041/morning-news-green-partys-jill-stein-weighs-in-on-harambe-walnut-hills-gets-big-development-ohio-cities-say-no-thanks-to-legal-medicinal-weed>>.

In addition, here is a link to the full-text of NKU's "**Motion To Enter Gag Order**," which was filed in United States District Court on Aug 26, 2016 (21 Pages):

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

[NKU Values & Ethical Responsibilities Statement](#)

When we discuss this matter, we may wish to consider whether the decision to file this motion is consistent with the [NKU Values & Ethical Responsibilities Statement](#) that was adopted by the Board of Regents in April 2016, and amended in May 2016. Among other provisions, that Statement provides that:

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.

PCC may wish to consider whether the university's decision to seek a judicial gag order complies with the obligation of all NKU community members to promote individual freedom to discuss relevant matters with fellow NKU community members and with the public. In so doing, PCC may wish to consider whether the university's decision to seek a judicial gag order properly respects the freedom of speech of one NKU student to express her views on matters having to do with NKU and its policies.

In addition, the [NKU Values & Ethical Responsibilities Statement](#) also 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.

PCC may wish to consider whether the decision to file this request for a gag order was made in retaliation or retribution against an NKU student for making a good faith report of misconduct or other ethics or compliance-related concern.

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>.

Code of Student Rights and Responsibilities

The NKU [Code of Student Rights and Responsibilities](#) was approved by the NKU Board of Regents on November 21, 2012. In its Preamble, this Code 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.

PCC may wish to consider whether the university's decision to seek a judicial gag order improperly interferes with the right each NKU student to enjoy "the freedom of speech both on and off campus."

The full text of the NKU [Code of Student Rights and Responsibilities](#) is online at: <http://scra.nku.edu/Infostudents/Infostudents.html>.

NKU Fuel The Flame (Goals)

NKU's Mission Statement is included within the university publication entitled "[Fuel The Flame](#)," which also sets forth some elaboration of each of the University's goals and values. One of NKU's goals and values is "Institutional Excellence." In the "[Fuel The Flame](#)" document, "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.**

PCC may wish to consider whether the university's decision to seek a judicial gag order reflects the passion for student-centered learning that is extolled in our Mission Statement. PCC may also wish to consider whether seeking to suppress public discussion of the university's response to a campus rape is consistent with the university's stated goal of holding itself accountable to the public and others who invest in our future.

The full text of the NKU [Code of Student Rights and Responsibilities](http://fueltheflame.nku.edu/goals.html) is online at: [<http://fueltheflame.nku.edu/goals.html>](http://fueltheflame.nku.edu/goals.html).

In its motion seeking the gag order, the university made some reference to FERPA, the federal Family Educational Rights and Privacy Act. FERPA does not impose any direct limitations on the right of the NKU student to speak about her own experiences. Earlier this year, Jon Krakauer--the author of the nonfiction bestseller "Missouri"--published [a long piece about campus rape in the NY TIMES MAGAZINE](http://www.nytimes.com/2016/01/20/magazine/how-much-should-a-university-have-to-reveal-about-a-sexual-assault-case.html). In the piece, Krakauer noted: "When universities want to deny public access to information that might blemish their reputations, they routinely claim that [privacy law] prevents them from disclosing such information — even when disclosure is plainly warranted. In many instances, the suppressed records concern sexual-assault complaints." In case anyone is interested, this article is online at: [<http://www.nytimes.com/2016/01/20/magazine/how-much-should-a-university-have-to-reveal-about-a-sexual-assault-case.html>](http://www.nytimes.com/2016/01/20/magazine/how-much-should-a-university-have-to-reveal-about-a-sexual-assault-case.html).

Finally, 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/Doe-NKU-Complaint.pdf).

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

The PCC is mentioned in Paragraph 39 of the Plaintiff's Complaint, and in Paragraph 33 of the University's response. The PCC motion that is discussed therein addressed only statements made by Chief Kachurek during a public meeting of Faculty Senate and in a published email, and did not concern any prior events. Accordingly, NKU's assertion "that the faculty Professional Concerns Committee [did] not have full knowledge of the events underlying these claims" is not pertinent to the motion that PCC actually approved, which did not purport to rest on such knowledge.

I hope these documents and news reports will be helpful in framing PCC's exploration of these matters.

Proposed Amendment to the Faculty Handbook, September 7, 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.**

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.

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.