

# Professional Concerns Committee Agenda for March 15, 2018

**UC 375**  
3:15 pm

1. Call to Order, Adoption of Agenda
2. Approval of Minutes from PCC Meeting of March 1, 2018
3. Chair's Report and Announcements
4. Old Business
  - Voting Item: Consensual Relations Policy (3 attachments)
5. New Business
6. Adjournment

**Professional Concerns Committee**  
**Minutes for March 15, 2018**  
**UC 135, 3:15 pm**

**Members in Attendance:** S. Alexander, A. Al-Bahrani, K. Ankem, T. Bowers, I. Encarnacion, J. Farrar, S. Finke, K. Fuegen, N. Grant, J. Hammons, K. Katkin, A. Miller, S. Nordheim, T. Songer, M. Torres, M. Washington, K. Schwartz for M. Whitson, J. Wroughton.

**Guests:** Sue Ott Rowlands

**Members Not in Attendance:** P. Bills, T. Bonner, J. Clarkin, E. Fenton, B. Karrick, M. Kirk, B. Mittal, G. Newell, L. Wermeling, B. Zembrodt.

1. Call to Order, Adoption of Agenda
  - a. The Meeting was called to order, and the agenda was adopted unanimously with the addition of a discussion item regarding the Early Childhood Center.
2. Approval of Minutes from PCC Meeting of March 1, 2018.
3. Chair's Report and Announcements
  - a. Executive Committee and Board of Regents met since our last meeting.
  - b. Faculty Regent elections are coming soon. Open fora are scheduled with election on March 26
  - c. From Faculty Senate:
    - i. HR and Legal will come to Faculty Senate to discuss the handling of recent episodes of faculty member misconduct.
    - ii. Discussion of the proposal to shorten the semester. This will be a lengthy process. PCC is fairly evenly divided, as is the rest of the faculty. There has been a general suggestion that less content will be taught in a shortened semester. A proposal was discussed to collect all the arguments in favor and against the proposal so they will be in one place to aid in the discussion. This is at the idea stage currently with the potential for a faculty workgroup to try to work out the details of a more complete proposal. There are concerns about courses that meet once a week—graduate courses, courses taught in the evening, lab courses.
    - iii. A revised final exam schedule was discussed with voting at the next meeting. The Registrar is working quickly to resolve the issues before the Monday meeting.
    - iv. There will be a survey coming out soon on campus issues and on the budget.
    - v. TEEC has recommended that a Center for Teaching and Learning be formed and be housed in the basement of Nunn Hall.
  - d. From Board of Regents:
    - i. Discussion of budget. State Senator Wil Schroder has put forward a bill (S.66) to allow NKU to borrow to meet the long-term obligation for pensions. This would mitigate the immediate impact on the budget by amortizing the increase across several years. A loss of 140-150 jobs across the university is expected if pension reform is not passed.
  - e. Provost and VP GERO have met with the Chair about the proposed changes to the research misconduct policy.
  - f. An anonymous letter was received by K. Katkin detailing some concerns about administrative bloat in Steely Library. The materials were included with the PCC meeting handouts.
  - g. On the consent agenda for the BOR meeting, some Steely Library faculty members inadvertently were left off the promotion and tenure approval list. The Provost assured that this omission will be corrected at the next BOR meeting and will not affect the employment or promotions of those faculty.
  - h. Most of the PCC comments on the revised Acceptable Use policy were accepted by IT. The email response was distributed with the meeting materials.
4. New Business: Discussion of the Early Childhood Center.

- a. An email was distributed to parents around noon on March 15 reporting that the ECC was closing effective June 1.
  - b. Dan Nadler came to PCC to discuss the future of the ECC in April 2017. With Mr. Nadler's endorsement, in May 2017 PCC and Faculty Senate recommended that a high-quality child care facility remain on-campus to serve faculty and staff members and NKU students, and that the process of evaluating the future of the Early Childhood Center be inclusive and transparent and directly include all stakeholders (including current and past ECC families). PCC member J. Gilbert agreed to serve on the review committee at that time. No other information has been received by PCC since then.
  - c. PCC members expressed frustration and concern regarding the closing, especially about the decision-making process.
  - d. K. Katkin warned PCC members to be sure that we have correct information in our discussions.
  - e. J. Farrar suggested that we invite Dan Nadler to the next PCC meeting to answer questions and discuss the process.
  - f. A member suggested that we draft a letter or resolution concerning the decision and the process to be sent to the committee before the next meeting. Then, PCC could act on the resolution at the next meeting.
5. Old Business: Voting Item, Consensual Relations Policy
- a. K. Katkin began discussion on a draft response that seemed to be the consensus of PCC at our March 1 meeting.
    - i. Members were concerned about the policy process, wanted accommodation for pre-existing relationships, and were concerned about an absolute ban on relations between faculty and undergraduate students.
  - b. The committee was in consensus that the adoption of a policy in conflict with the faculty handbook should be opposed. The faculty handbook should be the authority regarding faculty relationships. There was also agreement that all consensual relationships that pre-date coming under the rule should be treated differently.
  - c. Discussion of the policy proposal continued.
    - i. Recommendation that there not be a uniform policy for all of campus.
    - ii. Should student relationships be treated differently according to graduate or undergraduate (or another category)?
    - iii. There was concern about the perceptions of the relationships and influence of the faculty member.
    - iv. There should be more clarification of roles. How are individuals in dual roles—faculty member who is also a graduate student, treated?
    - v. Should there be a stronger statement, particularly for a relationship within the same program or department?
    - vi. The current handbook policy leaves punishments as undefined. The policy proposal includes termination as a possible penalty. Should this be clarified?
    - vii. There are concerns about the power differential between faculty and students. It is hard to define all the differentials, even with no direct contact or supervision of a student. There is a perception of favoritism.
  - d. There was a motion to adopt the memo distributed with the minutes. The motion was approved without dissent.
  - e. PCC members were asked to seek input from their departments regarding changes to the faculty handbook language. This will be discussed at the next meeting.
6. The meeting was adjourned by K. Katkin.

Submitted,  
John Farrar

**From:** Jennifer Taylor  
**Sent:** Wednesday, March 07, 2018 9:58 AM  
**To:** Kenneth Katkin <katkink@nku.edu>  
**Cc:** Timothy Ferguson <fergusont2@nku.edu>  
**Subject:** FW: Acceptable Use Policy -- PCC Comments (Attached)  
**Importance:** High

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I have edited the Acceptable use policy per PCC's comments except for # 5

(5) On Page Three, the first bullet point below the header "Individual Responsibilities" begins with the words "Maintaining current operating system. . . ." Under the same header, the third bullet point begins with the words "Installing, using, scanning, . . . ." Both of these bullet points should be deleted, because the responsibility to install software, firmware, and virus protection lies with the University, and not with the individual user.

This change was not deemed appropriate because most faculty and staff on campus are administrators of the computers they use. This gives them the ability to make administrative changes to their systems. I recognize that IT technicians supply the software, virus protection, etc. however the statement is to protect university resources and data.

In response to PCC's question in # 7

(7) On Page Four, the third bullet point prohibits users from extending the network via services or devices. The PCC does not understand why this restriction is necessary or desirable.

NKU Networking states that these restrictions are necessary for the security of the network. Networking needs to have visibility into devices on the network and have the ability to manage the ports. Some devices could (and have in the past) create a network loop and change the topography causing a network outage for campus.

Please let me know if you have any additional questions or concerns.

Thank you,  
Jennifer Taylor  
Associate Director  
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Highland Heights, KY 41099  
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## MEMORANDUM

To: Tim Ferguson, Chief Information Officer, NKU

From: Ken Katkin, Chair, Faculty Senate Professional Concerns Committee (PCC)

Re: PCC Comments in Response to NKU's "Acceptable Use Policy" Proposal

Date: Jan 23, 2018

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I am the Chair of the Professional Concerns Committee (PCC) of the NKU Faculty Senate. At its meetings of December 7, 2017 and January 18, 2018, the PCC discussed the proposed revisions to NKU's "Acceptable Use Policy" that have been released for public comment. On behalf of the PCC, I hereby offer the following comments on the draft Policy proposal entitled "Acceptable Use Policy."

(1) On Page Two, just above the header "Individual Rights," the generic phrase "Kentucky Public Records Law" should probably be replaced with the more specific phrase "Kentucky Open Records Act," which is the name of the Kentucky statute that governs access to public records.

(2) On Page Two or Three, in the list of "Individual Rights," an additional bullet point should be added that provides: "Individuals have the right to receive training that will facilitate compliance with all responsibilities and restrictions set forth in this policy."

(3) On Page Three, just below the header "Individual Responsibilities," the words "operational or copyrighted" should be deleted. The word "operational" is too vague to have any meaning. The word "copyrighted" could apply to substantially all content on all university computers, including faculty members' teaching materials or published articles—or even to Web content such as course descriptions or student handbooks that should be readily available to the public.

(4) On Page Three, just below the header "Individual Responsibilities," the second sentence (which begins with the words "Per Northern Kentucky University's Information Security Policy. . .") should be replaced with a sentence that simply states "Highly sensitive data must be stored in compliance with Northern Kentucky University's Information Security Policy," followed by a hyperlink. This change is needed because NKU's Information Security Policy will presently be changing. After the change, the detailed prescriptions in the present draft Acceptable Use policy may no longer reflect the revised Information Security Policy.

(5) On Page Three, the first bullet point below the header "Individual Responsibilities" begins with the words "Maintaining current operating system. . . ." Under the same header, the third bullet point begins with the words "Installing, using, scanning, . . . ." Both of these bullet points should be deleted, because the responsibility to install software, firmware, and virus protection lies with the University, and not with the individual user.

(6) On Page Three, the eighth bullet point below the header "Individual Responsibilities" begins with the words "Using only the access and privileges. . ." In this bullet point, the following additional language should be added to clarify:

However, Incidental personal use of university technology resources is not prohibited by this policy. Incidental personal use is an accepted and appropriate benefit of being associated with NKU's rich technology environment. Appropriate incidental personal use of technology resources does not result in any measurable cost to the university, and benefits the university by allowing personnel to avoid needless inconvenience. Incidental personal use must adhere to all applicable university policies. Under no circumstances may incidental personal use involve violations of the law, or interfere with the fulfillment of an employee's university responsibilities.

This language is adopted from language set forth in Indiana University's Acceptable Use Policy, <<https://policies.iu.edu/policies/it-01-appropriate-use-it-resources/index.html>>, and in the policy of many other universities. It also reflects current salutary practice at NKU, as set forth on Pages 148-149 of the NKU Faculty Handbook ("the use of personal office space, local telephone, library resources and personal computer equipment incidental to outside activities . . . are permitted under the University's Ethical Principles and Code of Conduct . . . and the Faculty Handbook"). This principle should be stated explicitly in our Acceptable Use policy.

(7) On Page Four, the third bullet point prohibits users from extending the network via services or devices. The PCC does not understand why this restriction is necessary or desirable.

(8) On Page Four, the sixth bullet point prohibits users from introducing viruses to the network. The word "intentionally" should be added as the first word of the bullet point, which would now begin with "Intentionally introduce. . . ."

(9) On Page Four, the third-from-last bullet point concerns copyright infringement. Its use of the word "per" seems to be a typographical error that may reverse the intended meaning of the provision. The phrase "per copyright law" should be replaced with the phrase "in violation of copyright law."

(10) On Page Four, in the third sentence below the header "University Processes/Privacy," the words "are considered university property" should be deleted. The sentence would thus read: "In addition, all documents created, stored, transmitted, or received on university computers and networks may be subject to monitoring by systems administrators." Because Intellectual Property is governed by other policies that generally do NOT vest ownership of faculty members' work in the University, it is inaccurate and undesirable to characterize the university's right to surveil users' files as a "property" interest in the contents of documents stored on university computers.

(11) On Page Four, in the second bullet-point, the words "bona fide" should be inserted before the word "investigation," so that the bullet-point would now begin with the words: "In connection with a bona fide investigation by the university. . . ."

(12) On Page Five, following immediately following the header "University Rights," the long sentence should be divided into two sentences as follows. First, before the list of bullet points, the sentence should simply read: "When compelled by court order. . . ." This list of bullet points should then follow those five words. After the list of bullet points, a concluding sentence should state: "In the absence of

a court order, any such actions shall be taken only after the area vice president appropriate to the circumstances makes a written determination that there is an urgent and compelling need to do so.” These changes would clarify that these actions may not be taken without a court order or VP determination, and to impress upon each individual VP the seriousness of granting such a determination.

(13) On Page Five, under the header “University Rights,” the first bullet-point governs “Compensated outside work.” A second sentence should be added to this bullet-point to clarify that: “Work completed in satisfaction of a faculty member’s obligation to produce teaching materials, scholarly or creative activity, or service to the community is not considered ‘outside work,’ even if such work is compensated.” This sentence is needed to clarify that faculty members may use NKU resources to write scholarly books, or commissioned journal articles, for example. These works are compensated by outside entities, but are part of the ordinary scholarly work that is expected from NKU faculty members.

(14) On Page Five, under the header “Enforcement: Misuse of Electronic Resources,” the final bullet point states that “civil and/or legal action may be initiated.” Because this provision is triggered by “violations of university policies” rather than by “violations of law,” this bullet point should be deleted or amended. The University would not be justified in bringing a civil or legal action in an instance where no law has been violated. For the same reason, the word “fines” should be deleted from the preceding and succeeding bullet points. Without prevailing in a civil action, the University has no authority to levy “fines” against its employees, and should not idly threaten to do so.

(15) On Pages Five and Six, under the header “Enforcement: Misuse of Electronic Resources,” 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, language should be added immediately following the list of bullet points at the top of Page Six—and before the three subsequent paragraphs—to clarify 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”).

(16) Throughout the document, a number of the hyperlinks are broken or incorrect. The PCC recommends that all hyperlinks be checked (and corrected as needed) before the policy is finalized.

Thank you for taking these comments into consideration.

Best,  
--Ken Katkin, PCC Chair (2015-16 & 2016-17)  
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## MEMORANDUM

To: PCC  
From: K. Katkin, Chair  
Re: Draft Consensual Relations Policy  
Date: March 15, 2018

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In late February, the NKU administration released a proposed draft policy on “Consensual Relations.” We discussed this draft at our PCC Meeting of March 1, 2018. The following comments are intended to capture that discussion in the form of a recommendation that PCC can make to Faculty Senate concerning the draft policy.

\* \* \* \* \*

On February 22, 2018, the NKU administration released a proposed draft policy on “Consensual Relations.” The PCC discussed this draft at our Meetings of March 1, 2018 and March 15, 2018. The PCC recognizes that Section 16.9 of the NKU Faculty Handbook—which governs consensual relations between faculty members and students—may be in need of revision. The PCC and the Faculty Senate are willing to work with the Provost’s office to achieve a mutually satisfactory revision to Section 16.9. Adoption of the proposed draft administrative policy, however, would violate the NKU Faculty Handbook and would create more new practical problems than it would solve. Accordingly, as discussed herein, the PCC recommends that Faculty Senate vote to oppose the adoption of the proposed policy. Moreover, if this policy is first adopted without Senate approval, the PCC recommends that Faculty Senate should vote to oppose any subsequent amendment to the NKU Faculty Handbook that would bring the Handbook into conformity with this policy.

### BACKGROUND

In November 2016, the NKU administration released a proposed draft administrative policy on “Consensual Relations.” In the policy flow routing information listed at the top of the draft policy, the checkbox for “**REQUIRES Professional Concerns Committee REVIEW**” appropriately was checked. Accordingly, at our meeting of January 19, 2017, NKU Senior Advisor to the President for Inclusive Excellence & Title IX Coordinator Kathleen Roberts met with PCC to receive faculty input and to seek PCC’s recommendation. As noted in the Minutes of that meeting (appended to this Memorandum), the PCC expressed a number of concerns with the November 2016 draft policy, and did not approve its adoption. At the conclusion of this meeting, Ms. Roberts stated that she would redraft portions of the draft policy to reflect some of PCC’s discussion. She requested that PCC members with suggestions for inclusion should send written comments to her or to K. Katkin.

Thirteen months later, on February 22, 2018, a revised draft “consensual relations” policy proposal was released by the administration for notice-and-comment on the Policy.nku.edu Web Site.



During the thirteen-month interim, there was no further communication about this issue between the administration and Faculty Senate. Moreover, the revised proposal was never presented to PCC or Senate. In fact, although PCC had never approved its predecessor, the policy flow routing information listed at the top of the revised draft policy released in February 2018 no longer contained any checkbox for **“REQUIRES Professional Concerns Committee REVIEW.”**

### **The Proposed Policy Violates The NKU Faculty Handbook**

Section 16.9 of the Faculty Handbook (appended to this Memorandum) governs consensual relations between faculty members and students or other NKU employees. Section 16.9 contains few blanket prohibitions on such relations, instead choosing to rely primarily on a system of confidential disclosure and mitigation of harm. For example, Section 16.9.3 governs consensual relations between faculty members and students who are enrolled in their classes. It says:

Consensual relationships in situations involving direct supervision (e.g., between a faculty member and student in his/her class, or between a faculty member and student he/she is supervising in independent laboratory research, or between a supervisor who has the power to evaluate, promote, or grant raises and his/her employee) should be avoided. If such relationships arise, arrangement should be made to remove one of the parties from the supervisory situation or to have evaluations of the supervised party made in another way. For example, in the case of faculty and student, the student should be placed in another course or be paired with another thesis or laboratory instructor. In cases where this is not possible, the department chair or the dean of the college should determine the best means for impartial evaluation of the student's work after consulting with the parties involved. Consideration should be given to having another faculty member evaluate the student's work. Faculty members should also remove themselves from other situations (awards committees, etc.) in which their decisions may reward or punish students with whom they are currently (or with whom they have been previously) involved.

The proposed draft policy, in contrast, would flatly prohibit all consensual relations between faculty members and undergraduate students, including relationships that involve no such direct or indirect supervision. And it would also subject faculty members who engage in such relations to disciplinary action up to and including termination. In these and other respects, the proposed administrative policy could lead NKU faculty members to be disciplined for conduct that Section 16.9 of the Faculty Handbook expressly tolerates. Indeed, in some instances, the proposed administrative policy could lead NKU faculty members to be disciplined for making disclosures to their department chairs that Faculty Handbook Section 16.9.3 expressly requires them to make.

While the PCC understands that the acceptance of consensual relations codified in Section 16.9 may reflect more lenient standards of a prior era than are optimal today, we are dismayed that the administration has proposed to address this concern by adopting an administrative policy that would violate the NKU Faculty Handbook, rather than by forthrightly proposing to amend the pertinent language of the Handbook. If the proposed policy is adopted, then NKU administrators will be called upon to take action that is inconsistent with the Faculty Handbook.

## **Proposing To Adopt A Policy That Violates The Faculty Handbook Is Uncollegial**

The Preamble to the NKU Faculty Handbook states that:

This Faculty Handbook is intended to define the rights and obligations of the Northern Kentucky University administration and faculty members. All of the material in this Handbook has been approved by the Northern Kentucky University Board of Regents and, as such, constitutes official University policy.

By this language, NKU administrators must respect the rights and obligations of NKU Faculty Members as defined in the Faculty Handbook. Proposing to adopt and enforce administrative policies that violate those faculty rights and obligations breaches this duty of respect. Similarly, the preamble to the Statement of Collegial Governance at NKU (set forth in Appendix C of the Faculty Handbook) states that:

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.

Section A.1.7 of the Statement of Collegial Governance at NKU likewise reaffirms that:

Colleagues are bound by the decisions relating to or affecting matters which are reached through collegial processes.

Notably, every provision of the Faculty Handbook (including Section 16.9) reflects a decision that has been reached through the collegial process. Accordingly, NKU administrators have an obligation to honor and support the decisions that are codified in the Faculty Handbook. Promulgating administrative policy proposals that would require those Handbook provisions to be routinely dishonored violates this duty of honor and support. And if the present draft “consensual relations” policy proposal is adopted, its subsequent enforcement would regularly cause additional breaches of administrators’ obligation to honor and support decisions reached through the collegial process that would remain codified at Section 16.9 of the Faculty Handbook.

If an NKU academic administrator (or faculty member) believes that a provision in the Faculty Handbook should be amended, the Faculty Handbook itself provides a collegial process for making such an amendment. Specifically, Section 15 of the Faculty Handbook provides:

Amendments to this Handbook may be proposed by any member of the full-time, tenure-track or tenured faculty, by a department chair, by a dean, by the provost, or by the president. The proposed amendment must be in writing and must be accompanied by the rationale for the change; it must point out all sections of this Handbook that would be altered or deleted if the amendment were to be adopted. The proposed amendment and supporting documentation must be presented to the Faculty Senate Executive Committee and to the provost, simultaneously, for the purpose of initiating the amendment process.

The Executive Committee may refer the proposal to a committee, which shall report its recommendation to the Faculty Senate. Proposed amendments to this Handbook must be considered by both the Faculty Senate and the provost prior to action by the Board of Regents.

The preamble to the Faculty Handbook also makes explicit what Section 15 implies:

All changes or revisions to the Faculty Handbook must be approved by the Faculty Senate and the Board of Regents.

In sum, the Faculty Handbook contemplates that amendments shall be made only after due deliberation, careful drafting, and consensus-building. Adoption of the proposed draft administrative policy on “consensual relations” would effectively amend Section 16.9 of the Handbook, but would do so without complying with any of the essential elements of Section 15. In particular, the proposed policy falls short of the Section 15 requirements in each of the following respects:

- Not proposed by a department chair, dean, provost, or president.
- Not accompanied by the rationale for the change.
- Doesn’t point out all—or any—sections of this Handbook that would be altered or deleted if the amendment were to be adopted.
- Was not presented to Faculty Senate Executive Committee.
- Approval of Faculty Senate has not been sought.

To be sure, Section 16.1.1 of the Faculty Handbook acknowledges that “[t]he Policies that appear in this Handbook are those ordinarily published in a faculty handbook and are representative policies. They are not intended to be all-inclusive.” And Section 16.1.2 further provides that “a]dditional policies will be adopted from time to time that also require faculty participation or compliance, such as policies set forth in the Student Handbook, including the grade appeal and sexual harassment policies.”

But the language of Sections 16.1.1-2 necessarily refers to policies that cover subjects that are not addressed by the Faculty Handbook (such as grade appeals). This language does not provide the administration with *carte blanche* to ignore the Faculty Handbook or to effectively amend it without complying with Section 15. To the contrary, Section A.1.8 of the Statement of Collegial Governance at NKU makes clear that:

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.

The Provost thus has a particular responsibility to oppose the adoption of administrative policies that would undermine or contravene decisions that have been made within the collegial system and that have been codified in the Faculty Handbook. To fail in this particular responsibility is to undermine the system of collegial governance at NKU.

### **Adopting A Policy That Violates The Faculty Handbook Is Ineffective**

In addition to being uncollegial, promulgation of administrative policies that contradict or contravene the Faculty Handbook is also likely to be impractical and ineffective. When such policies are adopted without amending the Handbook, the result is that the university's policies become self-contradictory, and thus fail in their essential purpose of facilitating compliance. For example, a faculty member considering pursuit of a consensual relationship with a student in a separate academic unit might consult the NKU Faculty Handbook to determine whether such pursuit is permissible. The Handbook, after all, purports "to define the rights and obligations of the Northern Kentucky University administration and faculty members" and to "constitute[] official University policy," and it contains a provision entitled "Consensual Relations."

In such a case, the faculty member would learn from Faculty Handbook Section 16.9.4 that a consensual relationship with a student in a separate academic unit "can have negative consequences" of which the faculty member "should be aware . . . and should enter relationships with caution." Based on this language, the Faculty member would reasonably conclude that such relationships are discouraged but not prohibited at NKU, and might proceed to pursue such a relationship despite the admonition. If the primary purpose of the proposed administrative regulation is to deter faculty members from seeking to form such relationships with students, then this purpose would be more effectively served by amending the Faculty Handbook than by quietly adopting an administrative regulation that is in conflict with the Faculty Handbook.

Enforcement of an administrative regulation that violates the Faculty Handbook also would be ineffective and problematic. To be sure, the NKU officials who promulgate and enforce administrative regulations likely will seek to enforce the policies they have promulgated, including against faculty members. But the deans, chairs, and faculty committees who are more directly involved in disciplining (or reviewing the performance of) faculty members all will remain duty-bound to apply the Faculty Handbook, which is intended to define the rights and obligations of the Northern Kentucky University administration and faculty members and which remains the most authoritative source of official faculty policies. Indeed, the Faculty Senate would admonish any faculty committee—including an RPT Committee or a peer disciplinary Committee—never to prioritize a university administrative policy above contradictory language in the NKU Faculty Handbook. Accordingly, adopting administrative regulations that are in conflict with the Faculty Handbook creates an unnecessary and undesirable incoherence about what NKU's policy actually is. This incoherence likely will lead to unpredictability of outcomes. Nothing good can come from the confusion.

### **Principles for a Revised Section 16.9**

As noted above, the Faculty Senate and the PCC understand that the acceptance of consensual relations currently codified in Faculty Handbook Section 16.9 may reflect more lenient standards of a prior era that no longer are appropriate today. We note that Section 15 of the NKU Faculty Handbook provides a procedure for amending the Faculty Handbook, which can be initiated by any faculty member, including a department chair, dean, provost, or president. We invite any interested administrator of faculty rank to initiate this procedure to propose an amendment to Section 16.9.

We recommend that—like current Section 16.9—the proposed amended provision should continue to apply only to faculty members, in our capacities as teachers and as supervisors. As we believe is currently the case, a separate policy should govern consensual relations among staff, or between staff and students. While the two separate policies might substantially overlap in substance, separate policies are needed to protect both the integrity of the Faculty Handbook as the authoritative repository of policies that define the rights and obligations of faculty members, and the role of the Faculty Senate in our system of collegial governance. “Hybrid” rulemaking of the type exemplified by this policy proposal is destructive of both ends. Its use has as increasingly caused unnecessary and counterproductive dissension between faculty and administration, even on subjects—including the present one—in which the substantive views of faculty and administration may not be very far apart. Abandoning the use of “hybrid” notice-and-comment policymaking in all instances where the subject matter at issue is addressed in the faculty handbook would improve the effectiveness of NKU’s maintenance of academic policies and procedures and would improve the health of relations between faculty and administration relationships and the quality of governance documents.

Bifurcating the current proposal into separate faculty and staff policies would also reduce (but not eliminate) the need to define who is covered by each policy. The current proposal uses the generic terms “faculty,” “student,” and “staff,” but does not define those terms. But at NKU, many students are on work-study, many staffers use their tuition waiver benefits to enroll in classes, and some staffers without faculty rank teach credit-bearing courses. The Faculty Handbook applies only to people (including adjunct professors) who have faculty rank. An amended Section 16.9—like the present provision—therefor would not need to define who counts as a faculty member to whom the policy applies. An amended staff policy, in contrast, would benefit greatly from explicit provisions explaining how the policy applies to work-study students or to staffers taking classes. Such a staff policy might usefully provide that a staff member who teaches a course is subject to Faculty Handbook Section 16.9 in her capacity as a teacher.

If current consensual relations policies are to be tightened, the Faculty Senate also recommends that the draft proposal’s definition of “extended family member” be further liberalized to encompass virtually all consensual relationships—including more casual ones than contemplated in the current draft proposal—that pre-date both parties’ arrival at NKU. Without this change, some NKU staffers and faculty members might be obliged to discourage people in their social circles from taking courses at NKU, for fear of running afoul of the policy. Conversely, treating pre-existing dating relationships the same as pre-existing marital or extended family relationships would not seem to be in conflict with any of the purposes or policies underlying the proposal.

## CONCLUSION

For the reasons described herein, the Faculty Senate opposes the adoption of the proposed “consensual relations” policy in its current form. The Faculty Senate remains willing to work within the system of collegial governance to amend Section 16.9 of the NKU Faculty Handbook. If the proposed policy is adopted as an administrative regulation without Senate consent, however, the Senate will oppose future initiatives to amend Section 16.9 to bring it into conformity with the administrative policy.

**Professional Concerns Committee**  
**Minutes for Jan 19, 2017**  
**SU 109**  
**3:15 pm**

**Members in Attendance:** K. McErlane, K. Katkin, J. Farrar, S. Weiss, L. Wermeling, Y. Kim, A. Watkins, H. Ericksen, B. Buckley, M. Carrell, B. Mittal, S. Nordheim, M. Torres, A. Miller, K. Fuegen, J. Hammons, J. Gilbert, B. Zembrodt, B. Puente-Baldoceda

**Members Not in Attendance:** S. Alexander, K. Schwarz, K. Ankem, G. Newell, D. Dreese, K. Sander, S. Neely, T. Bonner, S. Finke

**Guest:** Provost Sue Ott Rowlands, Kathleen Roberts

**4. New Business**

- Discussion Item: **Consensual Relationships Policy** (Guest: Senior Advisor to the President for Inclusive Excellence & Title IX Coordinator Kathleen Roberts).

Kathleen Roberts presented a draft consensual relations policy and sought faculty input. As drafted, the consensual relations policy would be inserted into the current sexual misconduct policy (as section 7), rather than be promulgated as a separate policy. The draft would prohibit all romantic relationships between faculty members and students, except within marriage. It would also prohibit most romantic relationships between faculty members and staff members. Workplace relations between spouses and family members are governed by a separate nepotism policy.

Significant discussion ensued. Many PCC members expressed concern about the lack of clarity in the current draft about which relations between faculty and staff (or faculty and other faculty) are permissible, and which would be prohibited. The draft policy uses the phrase “power differential” but many PCC members thought this phrase was unclear, and some thought it was inappropriate. Some members thought the real problem involves power and control. Others thought it involved conflict of interest. PCC members debated whether consensual relationships were properly grouped with sexual misconduct, or, alternatively, whether a separate policy should be created. Several members proposed that Faculty and staff should have a way to report relationships reported with one another, so that workplace reporting arrangements can be revised to avoid conflicts of interest.

Because faculty and staff members can take courses at NKU, it was suggested that the draft policy's definition of “students” needs to be clarified. Discussion also ensued as to whether graduate students should be categorized separately from undergraduate students under this policy. Several PCC Members suggested that if the policy goes into effect, it should make some provision for pre-existing relationships.

Kathleen Roberts said that she would redraft portions of the draft policy to reflect some of PCC's discussion. She requested that PCC members with suggestions for inclusion should send written comments to her or to K. Katkin.

## **Appendix B**

### **NKU Faculty Handbook Sections 16.9-16.10.**

#### **16.9. STATEMENT ON CONSENSUAL RELATIONSHIPS**

##### **16.9.1. GENERAL**

Consensual relationships are relationships in which both parties appear to have agreed to the partnership. The consensual relationships that are of concern to Northern Kentucky University are the amorous, romantic, or sexual relationships between faculty and students and between supervisors and employees. Although consensual relationships, by definition, are desired by both parties, they can nevertheless have consequences that are decidedly undesirable, both to the parties involved and to the University as a whole. The following statement is offered for the protection of members of the University community and for the health and productivity of the University in general.

##### **16.9.2. POTENTIAL HARMS FROM CONSENSUAL RELATIONSHIPS**

It is a generally accepted ethical principle in our society that one avoids situations in which one makes official evaluations of relatives, family members, spouses, or other persons with whom one has an intimate relationship. Such a relationship, combined with a responsibility for evaluation is considered a "conflict of interest." In this sense, the objectivity of a faculty member evaluating a student with whom he/she is involved would be considered suspect. Likewise, the fairness of a supervisor evaluating an employee with whom he/she is involved would be considered questionable. Evaluations made under such circumstances may threaten the credibility of a university's educational mission as well as the reputation of its working environment.

Because of the inherent power differential between faculty/staff and students, and supervisors and employees, there is also a danger that consensual relationships may evolve into coercive ones. The line between consent and harassment is a fine one, and perceptions of this boundary may not necessarily be shared. Thus it is possible that a party involved in what was believed to be a consensual relationship may become involved in what turns out to be a case of sexual harassment. There have also been cases in which parties involved in consensual relationships have been charged with sex discrimination.

##### **16.9.3. CONSENSUAL RELATIONSHIPS IN SITUATIONS INVOLVING DIRECT SUPERVISION.**

Consensual relationships in situations involving direct supervision (e.g., between a faculty member and student in his/her class, or between a faculty member and student he/she is supervising in independent laboratory research, or between a supervisor who has the power to evaluate, promote, or grant raises and his/her employee) should be avoided. If such relationships arise, arrangement should be made to remove one of the parties from the supervisory situation or to have evaluations of the supervised party made in another way. For example, in the case of faculty and student, the student should be placed in another course or

be paired with another thesis or laboratory instructor. In cases where this is not possible, the department chair or the dean of the college should determine the best means for impartial evaluation of the student's work after consulting with the parties involved. Consideration should be given to having another faculty member evaluate the student's work. Faculty members should also remove themselves from other situations (awards committees, etc.) in which their decisions may reward or punish students with whom they are currently (or with whom they have been previously) involved. Likewise, in the case of a consensual relationship between a supervisor and an employee, the employee should be transferred to another work unit or, if that is not possible, the supervisor of both parties should determine the best means for impartial evaluation of the employee after consulting with the parties involved. Consideration should be given to having an outside evaluation of the employee's work. In all situations of direct supervision, a consensual relationship should be reported to the faculty member's or supervisor's executive officer (e.g., department chair, unit director). Such notification may help insure that arrangements for unbiased evaluations are made and may help prevent later misunderstandings about the nature of the situation. Notification and any subsequent action taken should remain confidential insofar as the confidentiality is consistent with state and federal law.

#### **16.9.4. CONSENSUAL RELATIONSHIPS NOT INVOLVING DIRECT SUPERVISION**

Although less problematic, consensual relationships in situations not involving direct supervision (e.g., between faculty and students in separate academic units or supervisors and employees in separate work units), can have negative consequences. For instance, the campus reputation of both parties may be affected by the knowledge of the relationship or by speculation about it. Also, there is the possibility that one may suddenly be placed in a position of responsibility for or called upon to evaluate another. For instance, a student may change majors and join the faculty member's department or a faculty member or supervisor may be asked to serve on a campus-wide admission, awards, or grievance committee. Members of the University community should be aware of such potential problems and should enter relationships with caution.

#### **16.10. NEPOTISM**

Northern Kentucky University seeks to employ or promote the best-qualified person for a position. Therefore, decisions on selection, salary, promotion, and all matters pertaining to faculty employment will be made without regard to the relationship of an applicant or one employee of the University to another or the relationship of an applicant or employee to a member of the Board of Regents. No person shall be employed or promoted to a faculty position if the result would be that a head of an administrative unit and a member of his/her immediate family by blood or marriage would be members of the same administrative unit; in the University's best interest, however, exceptions may be made to this policy upon the recommendation of a majority of the members of the administrative unit, subject to approval by the provost and the consent of the president. Relatives by blood or marriage include parents and children, husbands and wives, brothers and sisters, brothers- and sisters-in-law, mothers- and fathers-in-law, sons- and daughters-in-law, uncles, aunts, nieces and nephews, and step relatives in the same relationships (see 16.9, Statement on Consensual Relationships).



# CONSENSUAL RELATIONSHIPS

**POLICY NUMBER:** RESERVED FOR FUTURE USE

**POLICY TYPE:** HYBRID - ACADEMIC/ADMIN

**RESPONSIBLE OFFICIAL TITLE:** INTERIM CHIEF ADMINISTRATION OFFICER; VICE PRESIDENT, STUDENT AFFAIRS; PROVOST

**RESPONSIBLE OFFICE:** STUDENT CONDUCT, RIGHTS, & ADVOCACY; HUMAN RESOURCES; PROVOST

**EFFECTIVE DATE:** UPON APPROVAL

**NEXT REVIEW DATE:** APPROVAL PLUS FOUR YEARS

**SUPERSEDES POLICY DATED:** N/A

**REQUIRES LEGAL/COMPLIANCE REVIEW:**

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

**REQUIRES I.T. POLICY COUNCIL REVIEW:**

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

**REQUIRES HUMAN RESOURCES REVIEW:**

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

**BOARD OF REGENTS REPORTING (CHECK ONE)::**

(PER SECTION V. OF THE APPROVED POLICY REQUEST FORM):

PRESIDENTIAL RECOMMENDATION (CONSENT AGENDA/VOTING ITEM):

PRESIDENTIAL REPORT (INFORMATION ONLY)

## I. POLICY STATEMENT

Northern Kentucky University (NKU) is committed to maintaining a working and academic environment free from conflict of interest, favoritism, and exploitation. This policy addresses romantic relationships and/or sexual interactions that, although consensual, may create actual and perceived conflicts of interest and create the possibility of favoritism or exploitation.

## II. ENTITIES AFFECTED

All NKU employees (faculty, staff, administrators, and student workers) and students.

## III. REASON FOR POLICY

University community members must be able to participate in university academic and/or workplace activities that are free from conflicts of interest, favoritism, and exploitation. Relationships between certain categories of individuals that are associated with the university risk undermining the educational purpose of the university and can disrupt the working and educational environment.

## IV. DEFINITIONS

**Consensual Relationship** – A romantic relationship and/or sexual interaction agreed to by the involved parties (even if it is a single interaction).

**Consent** – Consent is clear, knowing, and voluntary. Silence, in and of itself, cannot be interpreted as consent. Verbal consent is not a requirement of this policy; however, consent may be given by words as long as those words create mutually understandable, clear permission regarding willingness to engage in sexual activity.

Consent to one form of sexual activity does not imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts.

Kentucky law (**KRS §510.020**) states:

Lack of consent results from:

- a) Forcible compulsion;
- b) Incapacity to consent; or
- c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

A person is deemed incapable of giving consent if he or she is:

- a) Less than sixteen (16) years old;
- b) An individual with an intellectual disability or suffering from a mental illness;
- c) Mentally incapacitated;
- d) Physically helpless; or
- e) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.

**Students** – All those enrolled full-time or part-time in any course, program of study, or discipline.

**Extended Family Member –**

For purposes of this policy, an extended family member is defined as follows:

- Age 18 or older,
- Not related to the employee by blood, or if a blood relative (or relative by adoption or marriage) is of the same or younger generation than employee and
- Not legally married (to anyone), and
- Not currently eligible for Medicare, and
- Must reside in your household and have done so for a period of at least 12 months, and
- Must be financially interdependent for 12 months or longer.

The employee must be able to provide proof of financial interdependence with an extended family member through at least one of the following means:

- A joint mortgage, lease or other evidence of common residence such as utility bills in both names
- Durable property or health care power of attorney
- Joint ownership of a motor vehicle
- Joint checking account or credit card in both names
- Designation of each other as the primary beneficiary in a will, life insurance policy or retirement plan

**V. RELATIONSHIPS SUBJECT TO THIS POLICY**

This policy prohibits consensual relationships between:

<b>Employees (faculty, staff and administrators)</b>	<b>AND</b>	<b>Undergraduate students</b>
<b>Employees (faculty, staff and administrators)</b>	<b>AND</b>	<b>Any graduate student the employee teaches, manages, supervises, advises, or evaluates in any way</b>
<b>Student employees (including resident advisors and assistants, and graduate research and/or teaching assistants)</b>	<b>AND</b>	<b>Any student that the student employee teaches, manages, supervises, advises, or evaluates in any way</b>
<b>Employees (faculty, staff and administrators)</b>	<b>AND</b>	<b>Any employee where one manages, supervises, and/or evaluates the other in any way</b>

If there is any question whether or not a relationship falls within this policy, the employee in the position of greater power should contact their supervisor or the Director of Employee Relations and EEO in Human Resources for guidance.

If an employee (faculty, staff, administrator, or student employee) or student is involved in a relationship described above that began prior to the approval date of this policy, the employee in the position of greater power must contact their supervisor or the Director of Employee Relations and EEO in Human Resources to determine appropriate steps.

If the relationship exists prior to an individual being employed by NKU or becoming a student at NKU, the employee should contact Human Resources.

## VI. RELATIONSHIPS NOT SUBJECT TO THIS POLICY

This policy does not apply to spouses or extended family members (domestic partners); for the definition of extended family members, please refer to Part IV of this policy.

Other policies exist that establish guidelines regarding spouses or relatives working in the same department; see the [Nepotism](#) policy.

## VII. VIOLATION OF THIS POLICY

Any individual found to have violated this policy may be subject to disciplinary action up to and including termination. Adverse employment action will be taken only pursuant to applicable institutional handbooks and procedures.

Retaliation against a person who, in good faith, reports a potential violation under this policy, assists someone with a report of a violation, or participates in any manner in an investigation or in the resolution of a complaint made under this policy is strictly prohibited and will not be tolerated.

## VIII. REFERENCES AND RELATED MATERIALS

### REFERENCES & FORMS

NKU Human Resources definition of dependents eligible for benefits coverage (includes extended family members) - <https://inside.nku.edu/hr/benefits/health/dependentseligible.html>

### RELATED POLICIES

[NKU Values and Ethical Responsibilities](#)

[Sexual Misconduct](#)

[Nepotism](#)

### REVISION HISTORY

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

**PRESIDENTIAL APPROVAL**

**PRESIDENT**

Signature

Date

Gerard St. Amand

**BOARD OF REGENTS APPROVAL**

**BOARD OF REGENTS (IF FORWARDED BY PRESIDENT)**

- This policy was forwarded to the Board of Regents on the **Presidential Report (information only)**.  
Date of Board of Regents meeting at which this policy was reported: \_\_\_\_/\_\_\_\_/\_\_\_\_.
- This policy was forwarded to the Board of Regents as a **Presidential Recommendation (consent agenda/voting item)**.
  - 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.)

**EXECUTIVE ASSISTANT TO THE PRESIDENT/SECRETARY TO THE BOARD OF REGENTS**

Signature

Date

Benjamin Jager

**MEMORANDUM**

To: PCC  
From: K. Katkin, Chair  
Re: Draft Consensual Relations Policy  
Date: March 15, 2018

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In late February, the NKU administration released a proposed draft policy on “Consensual Relations.” We discussed this draft at our PCC Meeting of March 1, 2018. The following comments are intended to capture that discussion in the form of a recommendation that PCC can make to Faculty Senate concerning the draft policy.

\* \* \* \* \*

On February 22, 2018, the NKU administration released a proposed draft policy on “Consensual Relations.” The PCC discussed this draft at our Meetings of March 1, 2018 and March 15, 2018. The PCC recognizes that Section 16.9 of the NKU Faculty Handbook—which governs consensual relations between faculty members and students—may be in need of revision. The PCC and the Faculty Senate are willing to work with the Provost’s office to achieve a mutually satisfactory revision to Section 16.9. Adoption of the proposed draft administrative policy, however, would violate the NKU Faculty Handbook and would create more new practical problems than it would solve. Accordingly, as discussed herein, the PCC recommends that Faculty Senate vote to oppose the adoption of the proposed policy. Moreover, if this policy is first adopted without Senate approval, the PCC recommends that Faculty Senate should vote to oppose any subsequent amendment to the NKU Faculty Handbook that would bring the Handbook into conformity with this policy.

**BACKGROUND**

In November 2016, the NKU administration released a proposed draft administrative policy on “Consensual Relations.” In the policy flow routing information listed at the top of the draft policy, the checkbox for “**REQUIRES Professional Concerns Committee REVIEW**” appropriately was checked. Accordingly, at our meeting of January 19, 2017, NKU Senior Advisor to the President for Inclusive Excellence & Title IX Coordinator Kathleen Roberts met with PCC to receive faculty input and to seek PCC’s recommendation. As noted in the Minutes of that meeting (appended to this Memorandum), the PCC expressed a number of concerns with the November 2016 draft policy, and did not approve its adoption. At the conclusion of this meeting, Ms. Roberts stated that she would redraft portions of the draft policy to reflect some of PCC’s discussion. She requested that PCC members with suggestions for inclusion should send written comments to her or to K. Katkin.

Thirteen months later, on February 22, 2018, a revised draft “consensual relations” policy proposal was released by the administration for notice-and-comment on the Policy.nku.edu Web Site.

During the thirteen-month interim, there was no further communication about this issue between the administration and Faculty Senate. Moreover, the revised proposal was never presented to PCC or Senate. In fact, although PCC had never approved its predecessor, the policy flow routing information listed at the top of the revised draft policy released in February 2018 no longer contained any checkbox for **“REQUIRES Professional Concerns Committee REVIEW.”**

### **The Proposed Policy Violates The NKU Faculty Handbook**

Section 16.9 of the Faculty Handbook (appended to this Memorandum) governs consensual relations between faculty members and students or other NKU employees. Section 16.9 contains few blanket prohibitions on such relations, instead choosing to rely primarily on a system of confidential disclosure and mitigation of harm. For example, Section 16.9.3 governs consensual relations between faculty members and students who are enrolled in their classes. It says:

Consensual relationships in situations involving direct supervision (e.g., between a faculty member and student in his/her class, or between a faculty member and student he/she is supervising in independent laboratory research, or between a supervisor who has the power to evaluate, promote, or grant raises and his/her employee) should be avoided. If such relationships arise, arrangement should be made to remove one of the parties from the supervisory situation or to have evaluations of the supervised party made in another way. For example, in the case of faculty and student, the student should be placed in another course or be paired with another thesis or laboratory instructor. In cases where this is not possible, the department chair or the dean of the college should determine the best means for impartial evaluation of the student’s work after consulting with the parties involved. Consideration should be given to having another faculty member evaluate the student’s work. Faculty members should also remove themselves from other situations (awards committees, etc.) in which their decisions may reward or punish students with whom they are currently (or with whom they have been previously) involved.

The proposed draft policy, in contrast, would flatly prohibit all consensual relations between faculty members and undergraduate students, including relationships that involve no such direct or indirect supervision. And it would also subject faculty members who engage in such relations to disciplinary action up to and including termination. In these and other respects, the proposed administrative policy could lead NKU faculty members to be disciplined for conduct that Section 16.9 of the Faculty Handbook expressly tolerates. Indeed, in some instances, the proposed administrative policy could lead NKU faculty members to be disciplined for making disclosures to their department chairs that Faculty Handbook Section 16.9.3 expressly requires them to make.

While the PCC understands that the acceptance of consensual relations codified in Section 16.9 may reflect more lenient standards of a prior era than are optimal today, we are dismayed that the administration has proposed to address this concern by adopting an administrative policy that would violate the NKU Faculty Handbook, rather than by forthrightly proposing to amend the pertinent language of the Handbook. If the proposed policy is adopted, then NKU administrators will be called upon to take action that is inconsistent with the Faculty Handbook.

## **Proposing To Adopt A Policy That Violates The Faculty Handbook Is Uncollegial**

The Preamble to the NKU Faculty Handbook states that:

This Faculty Handbook is intended to define the rights and obligations of the Northern Kentucky University administration and faculty members. All of the material in this Handbook has been approved by the Northern Kentucky University Board of Regents and, as such, constitutes official University policy.

By this language, NKU administrators must respect the rights and obligations of NKU Faculty Members as defined in the Faculty Handbook. Proposing to adopt and enforce administrative policies that violate those faculty rights and obligations breaches this duty of respect. Similarly, the preamble to the Statement of Collegial Governance at NKU (set forth in Appendix C of the Faculty Handbook) states that:

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.

Section A.1.7 of the Statement of Collegial Governance at NKU likewise reaffirms that:

Colleagues are bound by the decisions relating to or affecting matters which are reached through collegial processes.

Notably, every provision of the Faculty Handbook (including Section 16.9) reflects a decision that has been reached through the collegial process. Accordingly, NKU administrators have an obligation to honor and support the decisions that are codified in the Faculty Handbook. Promulgating administrative policy proposals that would require those Handbook provisions to be routinely dishonored violates this duty of honor and support. And if the present draft “consensual relations” policy proposal is adopted, its subsequent enforcement would regularly cause additional breaches of administrators’ obligation to honor and support decisions reached through the collegial process that would remain codified at Section 16.9 of the Faculty Handbook.

If an NKU academic administrator (or faculty member) believes that a provision in the Faculty Handbook should be amended, the Faculty Handbook itself provides a collegial process for making such an amendment. Specifically, Section 15 of the Faculty Handbook provides:

Amendments to this Handbook may be proposed by any member of the full-time, tenure-track or tenured faculty, by a department chair, by a dean, by the provost, or by the president. The proposed amendment must be in writing and must be accompanied by the rationale for the change; it must point out all sections of this Handbook that would be altered or deleted if the amendment were to be adopted. The proposed amendment and supporting documentation must be presented to the Faculty Senate Executive Committee and to the provost, simultaneously, for the purpose of initiating the amendment process.

The Executive Committee may refer the proposal to a committee, which shall report its recommendation to the Faculty Senate. Proposed amendments to this Handbook must be considered by both the Faculty Senate and the provost prior to action by the Board of Regents.

The preamble to the Faculty Handbook also makes explicit what Section 15 implies:

All changes or revisions to the Faculty Handbook must be approved by the Faculty Senate and the Board of Regents.

In sum, the Faculty Handbook contemplates that amendments shall be made only after due deliberation, careful drafting, and consensus-building. Adoption of the proposed draft administrative policy on “consensual relations” would effectively amend Section 16.9 of the Handbook, but would do so without complying with any of the essential elements of Section 15. In particular, the proposed policy falls short of the Section 15 requirements in each of the following respects:

- Not proposed by a department chair, dean, provost, or president.
- Not accompanied by the rationale for the change.
- Doesn’t point out all—or any--sections of this Handbook that would be altered or deleted if the amendment were to be adopted.
- Was not presented to Faculty Senate Executive Committee.
- Approval of Faculty Senate has not been sought.

To be sure, Section 16.1.1 of the Faculty Handbook acknowledges that “[t]he Policies that appear in this Handbook are those ordinarily published in a faculty handbook and are representative policies. They are not intended to be all-inclusive.” And Section 16.1.2 further provides that “[a]dditional policies will be adopted from time to time that also require faculty participation or compliance, such as policies set forth in the Student Handbook, including the grade appeal and sexual harassment policies.”

But the language of Sections 16.1.1-2 necessarily refers to policies that cover subjects that are not addressed by the Faculty Handbook (such as grade appeals). This language does not provide the administration with *carte blanche* to ignore the Faculty Handbook or to effectively amend it without complying with Section 15. To the contrary, Section A.1.8 of the Statement of Collegial Governance at NKU makes clear that:

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.

The Provost thus has a particular responsibility to oppose the adoption of administrative policies that would undermine or contravene decisions that have been made within the collegial system and that have been codified in the Faculty Handbook. To fail in this particular responsibility is to undermine the system of collegial governance at NKU.



### **Adopting A Policy That Violates The Faculty Handbook Is Ineffective**

In addition to being uncollegial, promulgation of administrative policies that contradict or contravene the Faculty Handbook is also likely to be impractical and ineffective. When such policies are adopted without amending the Handbook, the result is that the university's policies become self-contradictory, and thus fail in their essential purpose of facilitating compliance. For example, a faculty member considering pursuit of a consensual relationship with a student in a separate academic unit might consult the NKU Faculty Handbook to determine whether such pursuit is permissible. The Handbook, after all, purports "to define the rights and obligations of the Northern Kentucky University administration and faculty members" and to "constitute[] official University policy," and it contains a provision entitled "Consensual Relations."

In such a case, the faculty member would learn from Faculty Handbook Section 16.9.4 that a consensual relationship with a student in a separate academic unit "can have negative consequences" of which the faculty member "should be aware . . . and should enter relationships with caution." Based on this language, the Faculty member would reasonably conclude that such relationships are discouraged but not prohibited at NKU, and might proceed to pursue such a relationship despite the admonition. If the primary purpose of the proposed administrative regulation is to deter faculty members from seeking to form such relationships with students, then this purpose would be more effectively served by amending the Faculty Handbook than by quietly adopting an administrative regulation that is in conflict with the Faculty Handbook.

Enforcement of an administrative regulation that violates the Faculty Handbook also would be ineffective and problematic. To be sure, the NKU officials who promulgate and enforce administrative regulations likely will seek to enforce the policies they have promulgated, including against faculty members. But the deans, chairs, and faculty committees who are more directly involved in disciplining (or reviewing the performance of) faculty members all will remain duty-bound to apply the Faculty Handbook, which is intended to define the rights and obligations of the Northern Kentucky University administration and faculty members and which remains the most authoritative source of official faculty policies. Indeed, the Faculty Senate would admonish any faculty committee—including an RPT Committee or a peer disciplinary Committee—never to prioritize a university administrative policy above contradictory language in the NKU Faculty Handbook. Accordingly, adopting administrative regulations that are in conflict with the Faculty Handbook creates an unnecessary and undesirable incoherence about what NKU's policy actually is. This incoherence likely will lead to unpredictability of outcomes. Nothing good can come from the confusion.

### **Principles for a Revised Section 16.9**

As noted above, the Faculty Senate and the PCC understand that the acceptance of consensual relations currently codified in Faculty Handbook Section 16.9 may reflect more lenient standards of a prior era that no longer are appropriate today. We note that Section 15 of the NKU Faculty Handbook provides a procedure for amending the Faculty Handbook, which can be initiated by any faculty member, including a department chair, dean, provost, or president. We invite any interested administrator of faculty rank to initiate this procedure to propose an amendment to Section 16.9.

We recommend that—like current Section 16.9—the proposed amended provision should continue to apply only to faculty members, in our capacities as teachers and as supervisors. As we believe is currently the case, a separate policy should govern consensual relations among staff, or between staff and students. While the two separate policies might substantially overlap in substance, separate policies are needed to protect both the integrity of the Faculty Handbook as the authoritative repository of policies that define the rights and obligations of faculty members, and the role of the Faculty Senate in our system of collegial governance. “Hybrid” rulemaking of the type exemplified by this policy proposal is destructive of both ends. Its use has as increasingly caused unnecessary and counterproductive dissension between faculty and administration, even on subjects—including the present one—in which the substantive views of faculty and administration may not be very far apart. Abandoning the use of “hybrid” notice-and-comment policymaking in all instances where the subject matter at issue is addressed in the faculty handbook would improve the effectiveness of NKU’s maintenance of academic policies and procedures and would improve the health of relations between faculty and administration relationships and the quality of governance documents.

Bifurcating the current proposal into separate faculty and staff policies would also reduce (but not eliminate) the need to define who is covered by each policy. The current proposal uses the generic terms “faculty,” “student,” and “staff,” but does not define those terms. But at NKU, many students are on work-study, many staffers use their tuition waiver benefits to enroll in classes, and some staffers without faculty rank teach credit-bearing courses. The Faculty Handbook applies only to people (including adjunct professors) who have faculty rank. An amended Section 16.9—like the present provision—therefor would not need to define who counts as a faculty member to whom the policy applies. An amended staff policy, in contrast, would benefit greatly from explicit provisions explaining how the policy applies to work-study students or to staffers taking classes. Such a staff policy might usefully provide that a staff member who teaches a course is subject to Faculty Handbook Section 16.9 in her capacity as a teacher.

If current consensual relations policies are to be tightened, the Faculty Senate also recommends that the draft proposal’s definition of “extended family member” be further liberalized to encompass virtually all consensual relationships—including more casual ones than contemplated in the current draft proposal—that pre-date both parties’ arrival at NKU. Without this change, some NKU staffers and faculty members might be obliged to discourage people in their social circles from taking courses at NKU, for fear of running afoul of the policy. Conversely, treating pre-existing dating relationships the same as pre-existing marital or extended family relationships would not seem to be in conflict with any of the purposes or policies underlying the proposal.

## CONCLUSION

For the reasons described herein, the Faculty Senate opposes the adoption of the proposed “consensual relations” policy in its current form. The Faculty Senate remains willing to work within the system of collegial governance to amend Section 16.9 of the NKU Faculty Handbook. If the proposed policy is adopted as an administrative regulation without Senate consent, however, the Senate will oppose future initiatives to amend Section 16.9 to bring it into conformity with the administrative policy.

## Appendix A

# Professional Concerns Committee Minutes for Jan 19, 2017 SU 109 3:15 pm

**Members in Attendance:** K. McErlane, K. Katkin, J. Farrar, S. Weiss, L. Wermeling, Y. Kim, A. Watkins, H. Ericksen, B. Buckley, M. Carrell, B. Mittal, S. Nordheim, M. Torres, A. Miller, K. Fuegen, J. Hammons, J. Gilbert, B. Zembrodt, B. Puente-Baldoceda

**Members Not in Attendance:** S. Alexander, K. Schwarz, K. Ankem, G. Newell, D. Dreese, K. Sander, S. Neely, T. Bonner, S. Finke

**Guest:** Provost Sue Ott Rowlands, Kathleen Roberts

## 4. New Business

- Discussion Item: **Consensual Relationships Policy** (Guest: Senior Advisor to the President for Inclusive Excellence & Title IX Coordinator Kathleen Roberts).

Kathleen Roberts presented a draft consensual relations policy and sought faculty input. As drafted, the consensual relations policy would be inserted into the current sexual misconduct policy (as section 7), rather than be promulgated as a separate policy. The draft would prohibit all romantic relationships between faculty members and students, except within marriage. It would also prohibit most romantic relationships between faculty members and staff members. Workplace relations between spouses and family members are governed by a separate nepotism policy.

Significant discussion ensued. Many PCC members expressed concern about the lack of clarity in the current draft about which relations between faculty and staff (or faculty and other faculty) are permissible, and which would be prohibited. The draft policy uses the phrase “power differential” but many PCC members thought this phrase was unclear, and some thought it was inappropriate. Some members thought the real problem involves power and control. Others thought it involved conflict of interest. PCC members debated whether consensual relationships were properly grouped with sexual misconduct, or, alternatively, whether a separate policy should be created. Several members proposed that Faculty and staff should have a way to report relationships reported with one another, so that workplace reporting arrangements can be revised to avoid conflicts of interest.

Because faculty and staff members can take courses at NKU, it was suggested that the draft policy’s definition of “students” needs to be clarified. Discussion also ensued as to whether graduate students should be categorized separately from undergraduate students under this policy. Several PCC Members suggested that if the policy goes into effect, it should make some provision for pre-existing relationships.

Kathleen Roberts said that she would redraft portions of the draft policy to reflect some of PCC’s discussion. She requested that PCC members with suggestions for inclusion should send written comments to her or to K. Katkin.

## **Appendix B**

### **NKU Faculty Handbook Sections 16.9-16.10.**

#### **16.9. STATEMENT ON CONSENSUAL RELATIONSHIPS**

##### **16.9.1. GENERAL**

Consensual relationships are relationships in which both parties appear to have agreed to the partnership. The consensual relationships that are of concern to Northern Kentucky University are the amorous, romantic, or sexual relationships between faculty and students and between supervisors and employees. Although consensual relationships, by definition, are desired by both parties, they can nevertheless have consequences that are decidedly undesirable, both to the parties involved and to the University as a whole. The following statement is offered for the protection of members of the University community and for the health and productivity of the University in general.

##### **16.9.2. POTENTIAL HARMS FROM CONSENSUAL RELATIONSHIPS**

It is a generally accepted ethical principle in our society that one avoids situations in which one makes official evaluations of relatives, family members, spouses, or other persons with whom one has an intimate relationship. Such a relationship, combined with a responsibility for evaluation is considered a “conflict of interest.” In this sense, the objectivity of a faculty member evaluating a student with whom he/she is involved would be considered suspect. Likewise, the fairness of a supervisor evaluating an employee with whom he/she is involved would be considered questionable. Evaluations made under such circumstances may threaten the credibility of a university’s educational mission as well as the reputation of its working environment.

Because of the inherent power differential between faculty/staff and students, and supervisors and employees, there is also a danger that consensual relationships may evolve into coercive ones. The line between consent and harassment is a fine one, and perceptions of this boundary may not necessarily be shared. Thus it is possible that a party involved in what was believed to be a consensual relationship may become involved in what turns out to be a case of sexual harassment. There have also been cases in which parties involved in consensual relationships have been charged with sex discrimination.

##### **16.9.3. CONSENSUAL RELATIONSHIPS IN SITUATIONS INVOLVING DIRECT SUPERVISION.**

Consensual relationships in situations involving direct supervision (e.g., between a faculty member and student in his/her class, or between a faculty member and student he/she is supervising in independent laboratory research, or between a supervisor who has the power to evaluate, promote, or grant raises and his/her employee) should be avoided. If such relationships arise, arrangement should be made to remove one of the parties from the supervisory situation or to have evaluations of the supervised party made in another way. For example, in the case of faculty and student, the student should be placed in another course or

be paired with another thesis or laboratory instructor. In cases where this is not possible, the department chair or the dean of the college should determine the best means for impartial evaluation of the student's work after consulting with the parties involved. Consideration should be given to having another faculty member evaluate the student's work. Faculty members should also remove themselves from other situations (awards committees, etc.) in which their decisions may reward or punish students with whom they are currently (or with whom they have been previously) involved. Likewise, in the case of a consensual relationship between a supervisor and an employee, the employee should be transferred to another work unit or, if that is not possible, the supervisor of both parties should determine the best means for impartial evaluation of the employee after consulting with the parties involved. Consideration should be given to having an outside evaluation of the employee's work. In all situations of direct supervision, a consensual relationship should be reported to the faculty member's or supervisor's executive officer (e.g., department chair, unit director). Such notification may help insure that arrangements for unbiased evaluations are made and may help prevent later misunderstandings about the nature of the situation. Notification and any subsequent action taken should remain confidential insofar as the confidentiality is consistent with state and federal law.

#### **16.9.4. CONSENSUAL RELATIONSHIPS NOT INVOLVING DIRECT SUPERVISION**

Although less problematic, consensual relationships in situations not involving direct supervision (e.g., between faculty and students in separate academic units or supervisors and employees in separate work units), can have negative consequences. For instance, the campus reputation of both parties may be affected by the knowledge of the relationship or by speculation about it. Also, there is the possibility that one may suddenly be placed in a position of responsibility for or called upon to evaluate another. For instance, a student may change majors and join the faculty member's department or a faculty member or supervisor may be asked to serve on a campus-wide admission, awards, or grievance committee. Members of the University community should be aware of such potential problems and should enter relationships with caution.

#### **16.10. NEPOTISM**

Northern Kentucky University seeks to employ or promote the best-qualified person for a position. Therefore, decisions on selection, salary, promotion, and all matters pertaining to faculty employment will be made without regard to the relationship of an applicant or one employee of the University to another or the relationship of an applicant or employee to a member of the Board of Regents. No person shall be employed or promoted to a faculty position if the result would be that a head of an administrative unit and a member of his/her immediate family by blood or marriage would be members of the same administrative unit; in the University's best interest, however, exceptions may be made to this policy upon the recommendation of a majority of the members of the administrative unit, subject to approval by the provost and the consent of the president. Relatives by blood or marriage include parents and children, husbands and wives, brothers and sisters, brothers- and sisters-in-law, mothers- and fathers-in-law, sons- and daughters-in-law, uncles, aunts, nieces and nephews, and step relatives in the same relationships (see 16.9, Statement on Consensual Relationships).

<https://www.usatoday.com/story/news/nation/2015/01/26/faculty-votes-to-restrict-teacher-student-dating/22382637/>.

# Faculty votes to restrict teacher-student dating

**Anne Ryman, The Arizona Republic**

Published 10:00 p.m. ET Jan. 26, 2015

ASU struggling with question: Is it appropriate for faculty to date students, and, if so, under what circumstances?

PHOENIX — Arizona State University faculty voted Monday to [revise a policy on dating](#) between faculty and students, which might avoid more situations like Tasha Kunzi says she found herself in with a grad-school professor in 2010.

Kunzi's course work suffered after she ended a "personal relationship" with the professor, she claimed in a lawsuit filed in federal court.

He kept telephoning and texting her, according to the suit. He told colleagues in the School of Criminology and Criminal Justice about the relationship. The school assigned her clerical work, instead of research, and she found it difficult to complete her Ph.D. The harassment and retaliation forced her to withdraw from the doctoral program, she said.

The professor, Travis Pratt, denied the lawsuit's allegations, as did the Arizona Board of Regents and another party. Pratt and his attorney, Melissa Iyer Julian, declined to comment.

ASU gave Pratt a written admonishment in 2012 after the allegations by Kunzi, records show.

Last year, Pratt was dismissed on Valentine's Day after an alleged incident with another student.

He was fired for violating the university's amorous-relationship policy, according to ASU dismissal documents obtained under public-records request.

ASU's policy required him to disclose the relationship and immediately remove himself from a position of academic authority over the student. Pratt denied having an amorous relationship with the unnamed student, according to university documents.

Kunzi's federal lawsuit was settled out of court with Pratt, shortly after she asked the court to dismiss the regents and another party. The state paid Kunzi and her attorney \$44,000 last year, according to records.

Her allegations are among a series involving faculty-student relationships in recent years at ASU, including two recent alleged incidents at Barrett, the Honors College.

Those incidents have led to an effort to strengthen the policies.

On Monday, ASU's University Senate, which represents the faculty, voted on a proposal that will be more restrictive than the current policy, which now prohibits faculty from dating students in their classes or students they supervise or evaluate.

The policy approved by the faculty senate will broaden the ban to include any students whom an instructor can "reasonably be expected" to have academic or employment authority over. This could apply to entire departments or schools within the university.

The senate debated and asked questions for about 40 minutes before voting on the revision. It was approved 76-11. Four people abstained from a vote.

The revision now goes to ASU's legal counsel for review and then to the administration for approval.

The senate believes a ban on all faculty-student relationships would be too restrictive and difficult to enforce. The policy voted on Monday doesn't go that far. But it does warn faculty that, "such relationships should therefore be avoided."

ASU, in a statement, said the university's policies regarding faculty-staff relationships are "inadequate as written. The faculty senate should be commended for taking steps to strengthen those policies to ensure that faculty members and lecturers have only professional relationships with students."

Stephen Montoya, a Phoenix attorney who represented Kunzi in her lawsuit, called the revision a step in the right direction. But he said all students should be off-limits, unless the relationship started before the person enrolled at ASU. "There are plenty of adult women and adult men in the world. Go out with someone who is not a student, if you want to be a professor," said Montoya.

When professors date students, even if they are not in their class, "it creates impressions of unfairness, and it's just not the right thing to do," he said.

"There are plenty of adult women and adult men in the world. Go out with someone who is not a student, if you want to be a professor."

### **Pitfalls of dating**

Dating between college professors and students is rife with downsides, said Billie Dziech, a university professor and author of the 1990 book *The Lecherous Professor: Sexual Harassment on Campus*.

Young college students are away from home for the first time. They take more risks. They can be flattered when a professor takes an interest in them. But there's a huge imbalance of power that comes into play in a student-professor relationship, Dziech said.

The student may get advantages not available to other students, such as better grades or recommendations for jobs or internships.

If the relationship goes bad, things can quickly sour.

The student's reputation can be damaged if word gets out to other faculty. Graduate students may have the most to lose, Dziech said, because they rely on recommendations from professors to land teaching or research jobs.

The professor also can end up in trouble. He or she can face sexual-harassment complaints or even lawsuits over the alleged behavior if trying to continue the relationship after it ends.

University policy groups don't track how common it is for faculty to date students. Dziech said there's little research on the topic. Her theory is that higher education doesn't really want to know how often it goes on.

ASU officials, in response to a public-records request from *The Arizona Republic*, said they couldn't provide numbers on how many faculty members had their contracts terminated or not renewed as a result of romantic or sexual relationships with students.

"We don't keep a running tally of such incidents," the statement said.

At a faculty senate meeting last fall, ASU professor Cynthia Tompkins was asked by faculty what prompted the proposed University Senate revision. Tompkins chaired the committee that drafted the new policy.

"We can't share exact data," she told faculty members. "About 20 people have been dismissed. Others were let go; they were lecturers. The problems range. You have some happy events, people saying 'this is how I met my wife and we've had a lovely 40 years together,' to events, which are happening right now, with unwanted pregnancies."

### **Problems at Barrett, the Honors College**

Last May, the campus newspaper, *The State Press*, published a story about allegations of sexual misconduct involving instructors and students at Barrett, the Honors College.

The story detailed students who complained about faculty behavior and their concerns that the university's response fell short.

The story came a month after a blog posted by an advocacy group that was started by a former ASU student, Sun Devils Against Sexual Assault, carried similar allegations.

In July, the group's founder, Jasmine Lester, filed a complaint with the U.S. Department of Education on behalf of herself and a group of current and former students, asking the agency to expand a federal investigation already underway into how the university handles complaints of



sexual assault or harassment. Lester asked the agency to look into how ASU responds to sexual harassment involving faculty and students.

Two of the instructors named in her complaint no longer teach at Barrett. The university did not provide a reason for their non-renewals in letters sent to the instructors or redacted the reason before releasing the information to *The Republic*.

ASU President Michael Crow told *The State Press* editorial board in December 2013 that ASU takes allegations against professors in relationships with students seriously.

"So there have been professors in relationships with students and when we find out about it, they are all fired," Crow was quoted as saying. "So that's the sanction and so the sanction is very harsh."

Crow added the allegation has to be proven. "You have to find out that it's true," he was quoted as saying.

### **Other policies**

Universities deal with faculty-student relationships in one of three ways. A handful prohibit all relationships. Yale University bans teachers from having sexual or romantic relationships with any undergraduate students.

Some colleges discourage relationships, but don't ban them.

Far more common are policies, like ASU's, with limited bans. The other two state universities, University of Arizona and Northern Arizona University, have policies that are similar to ASU's.

Allison Vaillancourt, the UA's vice president of human resources, said there hasn't been a push at the UA to change the policy, which has been in place since 2007. She said a more restrictive policy, such as banning all relationships, wouldn't work well.

"We have students who are 18 and students who are 60 years old. Where's the cutoff? We respect people are adults here and, just like any other workplace, we want to have policies that promote good discretion and good decision making. An overly broad policy, I don't think, would be respectful."

ASU's faculty senate last fall rejected a proposal that would have banned romantic relationships between faculty and all students, unless the faculty member received an exception from the provost.

Faculty said such a policy would be too broad. They questioned what impact reporting a relationship with a student to the provost would have on an individual's career, such as efforts to get tenure.

The faculty senate rejected the proposal, 62-20.

Hugh Barnaby, an associate professor in engineering, opposed the change.

"I don't believe in it myself (dating students)," Barnaby said in an interview with *The Republic*.

"But I can imagine a circumstance where there is a female nursing student and math professor, and they are both mature enough to make decisions about their own relationship."

**Current policy:**

"Faculty members and graduate students with teaching responsibilities shall not have an amorous relationship with any student who is currently enrolled in a course being taught by the faculty member or graduate assistant or whose performance is currently being supervised or evaluated by the faculty member or graduate student."

**Revised policy approved by faculty:**

"Faculty and academic professionals are prohibited from engaging in a romantic or sexual relationship with a student over whom the faculty member or academic professional exercises, or can reasonably be expected to exercise, academic or employment authority or influence. Such authority or influence includes, but is not limited to, employment-related decisions such as hiring, evaluation or discipline, and academic-related decisions such as grading, transfers, evaluations, formal mentoring or advising, supervision of research, employment of a student as a research or teaching assistant, exercising substantial responsibility for honors or degrees, or considering academic disciplinary action involving the student."

*Source: ASU University Senate*

**From:** Jennifer Taylor  
**Sent:** Wednesday, March 07, 2018 9:58 AM  
**To:** Kenneth Katkin <katkink@nku.edu>  
**Cc:** Timothy Ferguson <fergusont2@nku.edu>  
**Subject:** FW: Acceptable Use Policy -- PCC Comments (Attached)  
**Importance:** High

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I have edited the Acceptable use policy per PCC's comments except for # 5

(5) On Page Three, the first bullet point below the header "Individual Responsibilities" begins with the words "Maintaining current operating system. . . ." Under the same header, the third bullet point begins with the words "Installing, using, scanning, . . . ." Both of these bullet points should be deleted, because the responsibility to install software, firmware, and virus protection lies with the University, and not with the individual user.

This change was not deemed appropriate because most faculty and staff on campus are administrators of the computers they use. This gives them the ability to make administrative changes to their systems. I recognize that IT technicians supply the software, virus protection, etc. however the statement is to protect university resources and data.

In response to PCC's question in # 7

(7) On Page Four, the third bullet point prohibits users from extending the network via services or devices. The PCC does not understand why this restriction is necessary or desirable.

NKU Networking states that these restrictions are necessary for the security of the network. Networking needs to have visibility into devices on the network and have the ability to manage the ports. Some devices could (and have in the past) create a network loop and change the topography causing a network outage for campus.

Please let me know if you have any additional questions or concerns.

Thank you,  
Jennifer Taylor  
Associate Director  
AC 514 – Northern Kentucky University  
Highland Heights, KY 41099  
859-572-1340  
[taylor@nku.edu](mailto:taylor@nku.edu)

## MEMORANDUM

To: Tim Ferguson, Chief Information Officer, NKU

From: Ken Katkin, Chair, Faculty Senate Professional Concerns Committee (PCC)

Re: PCC Comments in Response to NKU's "Acceptable Use Policy" Proposal

Date: Jan 23, 2018

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I am the Chair of the Professional Concerns Committee (PCC) of the NKU Faculty Senate. At its meetings of December 7, 2017 and January 18, 2018, the PCC discussed the proposed revisions to NKU's "Acceptable Use Policy" that have been released for public comment. On behalf of the PCC, I hereby offer the following comments on the draft Policy proposal entitled "Acceptable Use Policy."

(1) On Page Two, just above the header "Individual Rights," the generic phrase "Kentucky Public Records Law" should probably be replaced with the more specific phrase "Kentucky Open Records Act," which is the name of the Kentucky statute that governs access to public records.

(2) On Page Two or Three, in the list of "Individual Rights," an additional bullet point should be added that provides: "Individuals have the right to receive training that will facilitate compliance with all responsibilities and restrictions set forth in this policy."

(3) On Page Three, just below the header "Individual Responsibilities," the words "operational or copyrighted" should be deleted. The word "operational" is too vague to have any meaning. The word "copyrighted" could apply to substantially all content on all university computers, including faculty members' teaching materials or published articles—or even to Web content such as course descriptions or student handbooks that should be readily available to the public.

(4) On Page Three, just below the header "Individual Responsibilities," the second sentence (which begins with the words "Per Northern Kentucky University's Information Security Policy. . .") should be replaced with a sentence that simply states "Highly sensitive data must be stored in compliance with Northern Kentucky University's Information Security Policy," followed by a hyperlink. This change is needed because NKU's Information Security Policy will presently be changing. After the change, the detailed prescriptions in the present draft Acceptable Use policy may no longer reflect the revised Information Security Policy.

(5) On Page Three, the first bullet point below the header "Individual Responsibilities" begins with the words "Maintaining current operating system. . . ." Under the same header, the third bullet point begins with the words "Installing, using, scanning, . . . ." Both of these bullet points should be deleted, because the responsibility to install software, firmware, and virus protection lies with the University, and not with the individual user.

(6) On Page Three, the eighth bullet point below the header “Individual Responsibilities” begins with the words “Using only the access and privileges. . . .” In this bullet point, the following additional language should be added to clarify:

However, Incidental personal use of university technology resources is not prohibited by this policy. Incidental personal use is an accepted and appropriate benefit of being associated with NKU’s rich technology environment. Appropriate incidental personal use of technology resources does not result in any measurable cost to the university, and benefits the university by allowing personnel to avoid needless inconvenience. Incidental personal use must adhere to all applicable university policies. Under no circumstances may incidental personal use involve violations of the law, or interfere with the fulfillment of an employee's university responsibilities.

This language is adopted from language set forth in Indiana University’s Acceptable Use Policy, <<https://policies.iu.edu/policies/it-01-appropriate-use-it-resources/index.html>>, and in the policy of many other universities. It also reflects current salutary practice at NKU, as set forth on Pages 148-149 of the NKU Faculty Handbook (“the use of personal office space, local telephone, library resources and personal computer equipment incidental to outside activities . . . are permitted under the University’s Ethical Principles and Code of Conduct . . . and the Faculty Handbook”). This principle should be stated explicitly in our Acceptable Use policy.

(7) On Page Four, the third bullet point prohibits users from extending the network via services or devices. The PCC does not understand why this restriction is necessary or desirable.

(8) On Page Four, the sixth bullet point prohibits users from introducing viruses to the network. The word “intentionally” should be added as the first word of the bullet point, which would now begin with “Intentionally introduce. . . .”

(9) On Page Four, the third-from-last bullet point concerns copyright infringement. Its use of the word “per” seems to be a typographical error that may reverse the intended meaning of the provision. The phrase “per copyright law” should be replaced with the phrase “in violation of copyright law.”

(10) On Page Four, in the third sentence below the header “University Processes/Privacy,” the words “are considered university property” should be deleted. The sentence would thus read: “In addition, all documents created, stored, transmitted, or received on university computers and networks may be subject to monitoring by systems administrators.” Because Intellectual Property is governed by other policies that generally do NOT vest ownership of faculty members’ work in the University, it is inaccurate and undesirable to characterize the university’s right to surveil users’ files as a “property” interest in the contents of documents stored on university computers.

(11) On Page Four, in the second bullet-point, the words “bona fide” should be inserted before the word “investigation,” so that the bullet-point would now begin with the words: “In connection with a bona fide investigation by the university. . . .”

(12) On Page Five, following immediately following the header “University Rights,” the long sentence should be divided into two sentences as follows. First, before the list of bullet points, the sentence should simply read: “When compelled by court order. . . .” This list of bullet points should then follow those five words. After the list of bullet points, a concluding sentence should state: “In the absence of

a court order, any such actions shall be taken only after the area vice president appropriate to the circumstances makes a written determination that there is an urgent and compelling need to do so.” These changes would clarify that these actions may not be taken without a court order or VP determination, and to impress upon each individual VP the seriousness of granting such a determination.

(13) On Page Five, under the header “University Rights,” the first bullet-point governs “Compensated outside work.” A second sentence should be added to this bullet-point to clarify that: “Work completed in satisfaction of a faculty member’s obligation to produce teaching materials, scholarly or creative activity, or service to the community is not considered ‘outside work,’ even if such work is compensated.” This sentence is needed to clarify that faculty members may use NKU resources to write scholarly books, or commissioned journal articles, for example. These works are compensated by outside entities, but are part of the ordinary scholarly work that is expected from NKU faculty members.

(14) On Page Five, under the header “Enforcement: Misuse of Electronic Resources,” the final bullet point states that “civil and/or legal action may be initiated.” Because this provision is triggered by “violations of university policies” rather than by “violations of law,” this bullet point should be deleted or amended. The University would not be justified in bringing a civil or legal action in an instance where no law has been violated. For the same reason, the word “fines” should be deleted from the preceding and succeeding bullet points. Without prevailing in a civil action, the University has no authority to levy “fines” against its employees, and should not idly threaten to do so.

(15) On Pages Five and Six, under the header “Enforcement: Misuse of Electronic Resources,” 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, language should be added immediately following the list of bullet points at the top of Page Six—and before the three subsequent paragraphs—to clarify 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”).

(16) Throughout the document, a number of the hyperlinks are broken or incorrect. The PCC recommends that all hyperlinks be checked (and corrected as needed) before the policy is finalized.

Thank you for taking these comments into consideration.

Best,  
--Ken Katkin, PCC Chair (2015-16 & 2016-17)  
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