

MEMORANDUM

To: Faculty Senate
From: PCC
Date: April 19, 2019
Re: Proposed Amendments to Draft “Research Misconduct” Policy

At our meetings of April 4, 2019 and April 18, 2019, at the request of the Provost, the PCC deliberated on a proposed draft policy on “Research Misconduct.” This policy would replace the current NKU Faculty Handbook policy on Research Misconduct, which appears on Pages 103-108 of the 2018 NKU Faculty Handbook. The new policy is intended to incorporate certain language provided by the Provost’s Office, which is said to be needed to ensure that our handbook policy remains consistent with certain federal regulations that govern federally funded behavioral and biomedical research. In addition, the PCC added additional new language derived from:

- (1) A publication of the Office of Research Integrity of the US Department of Health and Human Services entitled *Avoiding Plagiarism, Self-plagiarism, and Other Questionable Writing Practices: A Guide to Ethical Writing* (2003, revised 2015), available online at <https://ori.hhs.gov/plagiarism-13>; and
- (2) The Investigative Report setting forth the General Findings Of the Investigation Into Papers by Shailendra Verma, Balasubramani Ramjee, Anju Ramjee, Louis Noyd, and Richard Snyder 1995-2001 prepared by the NKU Ad Hoc Investigative Committee on Research Misconduct (Thomas Kearns, Robert Kempton, and Matthew Shank), December 23, 2002, available online at <https://www.sendspace.com/pro/ykfsfx>; and
- (3) Our current NKU Faculty Handbook policy on Research Misconduct, which appears on Pages 103-108 of the current (2016) NKU Faculty Handbook, available online at <https://www.nku.edu/content/dam/academicaffairs/docs/pdf/Faculty%20Handbook%202018-2019%20Final.pdf>.

At its Meeting of April 18, 2019, PCC voted to recommend that the Faculty Senate recommend the replacement of the current NKU Faculty Handbook policy on Research Misconduct with the following new policy. The proposed new policy is compliant in all respects with federal regulations that apply to federally-funded biomedical and behavioral research.

16.7. SCIENTIFIC/RESEARCH MISCONDUCT

16.7.1. PREAMBLE AND POLICY STATEMENT

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

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

Research misconduct, as defined in Section 16.7.2., below, is not condoned at Northern Kentucky University and allegations of such misconduct will be investigated in accordance with the procedures described below. The policy and procedure discussed herein do not restrict or limit any legal options available to any of the parties through appropriate courts and/or administrative agencies. NKU must comply with federal regulations, and additional policies may apply to faculty engaged in federally sponsored research or submitting work to a federal agency.

16.7.2. DEFINITIONS

16.7.2.1. COMPLAINANT

Complainant means a person who in good faith makes an allegation of research misconduct.

16.7.2.2. GOOD FAITH

Good faith as applied to a complainant or witness, means having a belief in the truth of one's allegation or testimony that a reasonable person in the complainant's or witness's position could have based on the information known to the complainant or witness at the time. An allegation or cooperation with a research misconduct proceeding is not in good faith if made with knowing or reckless disregard for information that would negate the allegation or testimony. Good faith as applied to a committee member means cooperating with the research misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping an institution meet its responsibilities under this part. A committee member does not act in good faith if his/her acts or omissions on the committee are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the research misconduct proceeding.

16.7.2.3. INQUIRY

Inquiry means preliminary information-gathering and preliminary fact-finding.

16.7.2.4. INVESTIGATION

Investigation means the formal collection, examination, and evaluation of all relevant facts to determine whether research misconduct has occurred.

16.7.2.5. RESEARCH MISCONDUCT

The question of what constitutes a serious deviation from accepted scholarly practices must be resolved by applying the standards and norms of the particular academic discipline at issue.

Research “misconduct,” as used herein, is defined as:

- Fabrication, falsification, plagiarism including self-plagiarism, redundant or duplicate publications, or other serious deviations from those accepted practices in proposing, performing, or reviewing research, or in reporting results from research.
 - Fabrication is making up data or results and recording or reporting them.
 - Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
 - Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
 - Self-plagiarism occurs when some or all significant elements of a previous publication (e.g. text, data, and images) are reused in a new publication with ambiguous acknowledgement or no acknowledgement at all as to their prior dissemination. Self-plagiarism is most blatant when a previously published paper is later published again with very little or no modification.
 - Redundant or duplicate publications refers to publications in which a substantial portion of the work has already been published. It also includes the situation in which the work is either so similar to previously published material or so modest an extension of previously published work that it would not be viewed as significant were the previous publication acknowledged. In most academic disciplines, recycling of material in redundant or duplicate publications, without properly citing the prior work, is a serious deviation from accepted scholarly practices.
- Material failure to comply with federal requirements that are uniquely related to the conducting of research.
- Failure to comply with federal requirements for protection of researchers, human subjects, or the public, or for insuring the welfare of laboratory animals or
- Failure to meet other material legal requirements governing research.

Research misconduct does not include honest error or difference of opinion.

In cases of allegations involving activities submitted to or supported by a federal agency and definitions or procedures for research misconduct specified in the agency's regulations differ from those in this policy, the definitions and procedures in the agency's regulations will be used.

In cases of allegations involving activities not submitted to or supported by a federal agency, the definitions of research misconduct specified in this policy should be supplemented by (or

interpreted in light of) applicable substantive standards of the relevant research community or the academic discipline at issue.

16.7.2.6. RESEARCH RECORD

Research record means the record of data or results that embody the facts resulting from scientific inquiry, including but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and any documents and materials provided to federal agencies or institutional officials by a respondent in the course of the research misconduct proceeding.

16.7.2.7. RESPONDENT

Respondent means the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

16.7.2.8. RETALIATION

Retaliation for the purpose of this part means an adverse action taken against a complainant, witness, or committee member by an institution or one of its members in response to (a) a good faith allegation of research misconduct or (b) good faith cooperation with a research misconduct proceeding.

16.7.3. POLICIES

16.7.3.1. CONFIDENTIALITY

All parties involved in the inquiry and investigation shall strive to maintain confidentiality of information, respondents, complainants, and research subjects that may be identified from research records or evidence.

16.7.3.2. INTERIM ADMINISTRATIVE ACTION

As provided by federal regulations, at any stage in the process of inquiry, investigation, formal finding and disposition, NKU may take interim administrative action to protect the welfare of human or animal subjects of research, to prevent the inappropriate use of funds, or to protect the interest of students, colleagues, or the University. A suspension or restriction of activities does not in any way imply that research misconduct has taken place. This action will be temporary and used as an interim measure prior to the conclusion of the formal investigation.

16.7.3.3. EXTRAMURAL ASSURANCE AND REPORTING REQUIREMENTS

If applicable, NKU will fully and continually cooperate with the appropriate federal agency during its oversight review or any subsequent administrative hearings or appeals. This may include providing research records and evidence under the institution's control, custody, or possession and access to all persons within its authority necessary to develop a complete record of relevant evidence. If required by a funding agency, the Institutional Official (IO) or designee shall submit written assurance that the institution is in compliance with the agency's requirements for handling allegations of misconduct. If the research is supported by an extramural funding agency, the IO or designee is responsible for ensuring compliance with the applicable funding agency's reporting requirements.

16.7.3.4. STATUTE OF LIMITATION

There is no statute of limitation on investigations of research misconduct at Northern Kentucky University.

However, Federal agencies do not require assurance and reporting of research misconduct allegations made more than six (6) years after publication or submission of the final report on a project for which data was collected. Exceptions to the federal six (6) year limitation are as follows:

- 1) Subsequent use by the respondent by continuation or renewal of any incident of alleged research misconduct that occurred before the six (6) year limitation through the citation, republication or other use for the potential benefit of the respondent of the research record that is alleged to have been fabricated, falsified or plagiarized.
- 2) If the appropriate funding agency or the University in consultation with the funding agency, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public.

16.7.3.5. CONFLICT OF INTEREST

Individuals responsible for carrying out any part of the research misconduct proceeding must not have any real or apparent unresolved, personal, professional, or financial conflicts of interest with the complainant, respondent, or witnesses. Any conflict of interest must be disclosed.

A conflict of interest may include, but is not limited to, co-authorship on a paper or book, a professional or personal relationship, professional or personal relationship or antagonism, financial ties, or contact regarding possible employment with either the respondent or the complainant.

16.7.3.6 ABSENCE OF THE RESPONDENT OF THE ALLEGATION

Should the respondent leave NKU before the case is resolved, the dean, on behalf of NKU, when possible, shall continue the examination of the allegation and reach a conclusion. NKU shall cooperate with the process of another institution to resolve such questions to the extent possible under state and federal law.

16.7.3.7. RESTORING REPUTATION

The dean, or designee, or Provost shall undertake all practical and reasonable efforts to protect and restore the reputation of the individual(s) alleged to have engaged in research misconduct but against whom no finding of research misconduct has been made, if requested by the individual(s) as appropriate. The dean, or designee, or Provost shall undertake reasonable and practical efforts to protect or restore the position and reputation of the individual(s) who in good faith, made an allegation of research misconduct, if requested by the individual(s) and as appropriate. The dean, or designee, or Provost shall undertake reasonable and practical efforts to protect or restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against these individuals.

16.7.3.8. FALSE ACCUSATIONS

Regardless of the outcome of an inquiry or investigation, it is the policy of the University that no individual who, in good faith, has reported apparent research misconduct shall be subject to retaliation by the University or by any member of the University community. However, if it is determined that the charges were brought against the respondent with malicious or dishonest intent such that the complainant had a clear understanding that they were probably untrue and that they were designed to harm the respondent, the dean may recommend to the provost that appropriate administrative action be taken against the complainant consistent with the University's governing and administrative regulations.

16.7.4. PROCEDURES

16.7.4.1. ALLEGATIONS OF RESEARCH MISCONDUCT

It is the policy of Northern Kentucky University to treat fairly both the complainant and the respondent. All allegations of research misconduct will be treated seriously and, to the extent possible, the confidentiality of those who submit allegations will be maintained.

Though allegations of research misconduct may be by any means of communication to an institutional or federal official, the allegation of misconduct shall initially be documented in writing by either the complainant or the person receiving the allegation. If the allegation is made through the Ethics and Compliance Helpline, the person receiving the allegation should document the allegation in writing. Any other person receiving an allegation of research misconduct should relay the information to the appropriate dean for preliminary inquiry. The Provost may receive reports of research misconduct in situations where the appropriate dean may have a conflict of interest.

Either before or when the institution notifies the respondent of the allegation, inquiry or investigation, the institution must promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments. Respondents may be given supervised access to the research records throughout the inquiry and/or investigation.

16.7.4.2. PRELIMINARY INQUIRY

The purpose of the preliminary inquiry is to conduct an initial review of evidence to determine if there are sufficient grounds to warrant a formal investigation of the charge of research misconduct. The preliminary inquiry will be conducted by the dean of the college in which the respondent faculty member is appointed. If the allegation of misconduct is brought against a dean, the provost will appoint another dean to conduct the preliminary inquiry. The dean will notify university legal counsel and the provost regarding the nature of the allegations. University counsel shall determine whether the research at issue is governed by any federal legal regulations, and shall instruct the dean to ensure that the preliminary inquiry is conducted in compliance with any applicable regulations. When deemed necessary, the dean may select one or two other individuals to assist in the preliminary inquiry. Any such individuals should

have no real or apparent conflict of interest related to the case in question. A conflict of interest may include, but is not limited to, co-authorship on a paper or book, professional or personal relationship or antagonism, financial ties, or contact regarding possible employment with either the respondent or the complainant.

The preliminary inquiry should begin with an informal discussion with the complainant to verify that the allegation should be classified as possible research misconduct. Within ten (10) business days after this discussion with the complainant, the dean shall begin an informal discussion with the respondent regarding the allegations. If federal or state regulations so require, the dean shall also present the respondent with a letter that states: the nature of the allegations; the focus of the inquiry; an invitation to the respondent to provide comments and other relevant information to the dean; other relevant information; and a statement that the respondent has the right to be represented by an attorney.

The preliminary inquiry should be completed within sixty (60) days of receipt of the written allegation of misconduct. If the preliminary inquiry determines that there are not sufficient grounds within the context of the definition of misconduct for a formal investigation, the respondent and the complainant will be sent letters informing them of the results. All records will be sent to the office of the provost.

A formal investigation will be found to be warranted if:

- a. A reasonable basis for concluding that the allegation falls within the definition of research misconduct; and
- b. Preliminary information-gathering and preliminary fact-finding from the inquiry indicates the allegation may have substance

If the preliminary inquiry determines that there are sufficient grounds for a formal investigation within the context of the definition of misconduct, the respondent and the complainant will be sent letters informing them of this decision. The letter to the respondent may include (or be deemed) the “draft preliminary inquiry report.” The letter to the respondent (i.e., “the draft preliminary inquiry report”) must include, but is not limited to, the following:

- The name and position of the respondent(s);
- That a formal investigation is to be conducted;
- Information pertaining to federal agencies involved including funding numbers, grant applications, contracts, etc., if applicable;
- The nature of the allegation, including a summary of all evidence that currently exists and the right to review it;
- The basis for recommending that the alleged actions warrant an investigation;
- That the respondent will have an opportunity to respond to the charges; and
- That the respondent has the right to be represented by an attorney.

The respondent shall have the opportunity to respond to this letter, in writing, within thirty (30) calendar days of the date on which the respondent receives it. The draft preliminary inquiry report, combined with any comments received from the respondent, shall constitute the preliminary inquiry report.

In the event a formal investigation is deemed to be warranted, the dean shall inform the following individuals and/or organizations: university legal counsel, chairs of any departments that may be involved, the provost, and appropriate regulatory bodies. As

required by law or regulation, University counsel shall notify appropriate government agencies when a formal investigation is convened.

If a formal investigation is judged to be unwarranted and it is determined that the charges were brought against the respondent with malicious or dishonest intent such that the complainant had a clear understanding that they were probably untrue and that they were designed to harm the respondent, the dean may recommend to the provost that appropriate administrative action be taken against the complainant. Such appropriate administrative action shall be consistent with the University's governing and administrative regulations.

Any records produced during the preliminary inquiry stage, including the preliminary inquiry report, must be maintained by University Counsel for at least seven (7) years and, upon request, be provided to the applicable government agencies.

16.7.4.3. FORMAL INVESTIGATION

Before any formal investigation commences, the respondent(s) and any involved collaborators must be notified by written statement of allegations that an investigation is to be conducted. The written statement shall:

- Include a copy of the preliminary inquiry report, which includes information on the nature of the allegations and the focus of the investigation, and inform those being investigated of the opportunity to provide comments and other relevant information to the dean
- Inform the respondent(s), prior to beginning the investigation, of his or her right to be represented by an attorney in preparing and/or giving his or her response in this and all subsequent phases of the investigation.
- Give the respondent a copy of or refer to the institution's policies and procedures related to research misconduct.
- Indicate there can be no actions that are, or could be perceived as, retaliatory against the investigation committee members, witnesses, or the person who raised an allegation or is thought to have raised an allegation.

The dean shall appoint an Investigative Body (IB) with three or more members to initiate an investigation thirty (30) calendar days after receipt of the preliminary inquiry report. IB members must be tenured faculty members with sufficient expertise in the area of investigation to insure a sound base from which to evaluate the nature of the charges. One member of the IB may be from outside the University if necessary to insure an accurate and knowledgeable evaluation of the evidence. All IB members must be free of real or apparent conflicts of interest regarding the investigation. The dean shall document the rationale for selecting IB members based on their expertise and impartiality. All IB members shall be required to sign a statement that they will maintain the confidentiality of the investigation, and that they have no interest that would conflict with those of the respondent, the complainant, the University, or the sponsoring agency for the research. Prior to the beginning of the formal investigation, the respondent shall be given the opportunity to object in writing to the appointment of any member of the IB, based on conflict of interest. If the member is appointed to the IB despite the respondent's objection, this fact shall be noted in the IB's final report.

The IB shall conduct a formal examination and evaluation of all relevant facts to determine if the allegations of misconduct are valid. In order to maintain the integrity of the review

process and avoid any appearance of institutional influence over the panel's deliberations or decision-making, the IB shall be insulated from any administrative influence and any *ex parte* communications with the parties. The IB shall seek the advice of university counsel and may engage in, but is not limited to, the following investigative procedures:

- Interviewing witnesses;
- Sequestering and examining research data (both published and unpublished) and other evidence;
- Seeking expert counsel both inside and outside the University; and
- Conducting a hearing in which the respondent may respond to the charges, call witnesses, and question the complainant.

The IB shall pursue diligently all significant issues and leads discovered that are determined relevant to the investigation. A written summary or transcript of each interview conducted must be completed. A copy of the interview summary or transcript shall be provided to the interviewed party for comment.

The investigation must be completed within 120 days of beginning it, including conducting the investigation, preparing the report findings, providing the draft report for comment, and, if applicable, sending the final report to the appropriate federal agency. If a federal agency is to be involved, the IB must notify the Provost, who will facilitate arrangements for the report to be sent. If the IB is unable to complete the investigation in time, a written request for extension that includes an explanation for the delay shall be submitted to and approved by the Provost and be included in the investigation record. Except: if no federal or state regulation requires the investigation to be completed within 120 days, then the timeline for a particular investigation shall automatically be extended until the IB completes the investigation, without any need for written request of extension.

A finding of research misconduct requires that acts constitute research misconduct as defined above and that:

- 1) There is a significant departure from accepted practices of the relevant research community;
- 2) The misconduct is committed intentionally, or knowingly, or recklessly; and
- 3) The allegation is proven by a preponderance of evidence.

The IB shall prepare a draft Investigation Report. The draft report will be sent to all respondents, and all respondents shall be afforded the opportunity to comment upon the draft report and have the comments included in the formal record of the investigation. Any comments shall be submitted in writing within thirty (30) calendar days of the date on which the respondents received the draft report. The IB shall review all respondents' comments prior to issuing the final Investigation Report.

At the completion of the investigation, the IB shall submit its findings, comments from the respondents, and recommend institutional actions (also known as the Investigation Report) in writing to the dean who shall provide a copy to the respondents of the investigation, the Provost, Legal Counsel, and chair(s) of the affected department(s). The dean shall ensure that publishers and editors of journals are informed if manuscripts emanating from fraudulent research have been submitted or published.

The Investigation Report will include the following:

- 1) Description of the nature of the allegations of research misconduct
- 2) Description and documentation of federal financial support, if applicable (e.g., grant numbers, grant applications, contracts, etc.)
- 3) Institutional charge (e.g., description of specific allegations of research misconduct for consideration in the investigation)
- 4) Copy of the institutional policies and procedures under which the investigation was conducted
- 5) Research records and evidence. Identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody but not reviewed.
- 6) Statement of findings. For each separate allegation of research misconduct identified during the investigation, provide
 - a. A finding as to whether research misconduct did or did not occur as follows:
 - i. Identify whether research misconduct was falsification, fabrication, plagiarism, or other serious deviation from accepted practices and if it was intentional, knowing, or in reckless disregard;
 - ii. A finding that serious research irregularities have occurred, but that the irregularities are insufficient to constitute misconduct; or
 - iii. A finding that no research misconduct or research irregularities were committed.
 - b. A summary of the facts and the analysis that support the conclusion and consideration of the merits of any reasonable explanation by the respondent;
 - c. Information about the specific federal support affected, if applicable
 - d. Identification of any publications in need of correction or retraction;
 - e. Identification of the person(s) responsible for the misconduct; and
 - f. Listing of any current support or known grant proposal applications that the respondent has pending with federal agencies.
- 7) Comments. Include and consider any comments made by the respondent and complainant on the draft investigation report.

The investigation must be thorough and sufficiently documented including examination of all research records and evidence relevant to reaching a decision on the merits of the allegations. The IB must ensure that it maintains and provides all records from the investigation to the Provost. This is necessary so that they can be provided to any applicable federal agencies, which may request all relevant research records and records of the institution's research misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

16.7.4.4. DOCUMENTATION

At the conclusion of an allegation assessment, inquiry, or investigation, the dean shall forward all documentation pertaining to the allegation assessment, inquiry, or investigation to the Provost who shall arrange that the documentation be maintained for seven (7) years and ensure that documentation is provided to the appropriate federal agency upon request, if appropriate. Documentation to be maintained for federal agencies must include the following, as applicable:

- 1) Allegation assessment statement
- 2) Preliminary Inquiry final report

- 3) Formal Investigation Report, including a copy of the report, all attachments, and any appeals
- 4) Findings: statement whether or not the institution accepts the investigation's findings
- 5) Final institutional action: statement if the institution found research misconduct, and if so, who committed the misconduct
- 6) Institutional administrative actions: description of any pending or completed administrative actions against the respondents

The institution must notify the relevant federal agency (if applicable), if the institution plans to close out a case at the inquiry, investigation, or appeal stage on the basis that the respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason, except the closing of a case at the inquiry stage on the basis that an investigation is not warranted.

16.7.4.5. DISCIPLINARY ACTION

If the findings of the investigation substantiate allegations of research misconduct, the Provost, in consultation with Legal Counsel, shall determine appropriate administrative action, consistent with the University's governing and administrative regulations.

16.7.4.6. APPEAL

The respondent may appeal the decision of the investigative committee in writing to the provost. The respondent shall have thirty (30) days to file an appeal. A reinvestigation of the case will be warranted if one or more of the following conditions are judged by the provost to exist:

- Significant omission of new evidence that was not known or reasonably available at the time of the formal investigation;
- A member of the committee had a conflict of interest; or
- A member of the committee did not accurately interpret the evidence due to lack of expertise concerning the research topic.

The provost must rule within fifteen (15) days of receipt of the respondent's written appeal on whether or not an appeal is warranted. If the provost determines that an appeal is warranted, a new investigative committee will be appointed by the Provost to reexamine the case. The provost's ruling on the issue of appeal is final. The criteria for appointing members to the original investigative committee shall also apply to the qualifications of members of the new investigative committee. The procedures that applied to the original investigative committee will also apply to the new investigative committee. The new committee shall have one hundred twenty (120) days to complete the investigation. The decision of this review committee is final.

FAQ on the Research Misconduct Policy Proposal

Can You Briefly Summarize the PCC recommendation on research misconduct policy?

Yes. After study and deliberation that involved substantial back-and-forth with the NKU administration, in April 2019 the PCC voted to recommend a package of technical amendments to NKU Faculty Handbook Sec. 16.7 (NKU's current Research Misconduct Policy). The PCC-recommended amendments would bring the Handbook more clearly into conformity with applicable federal regulations, without changing the current scope of the policy's coverage.

If the PCC's recommendation doesn't materially change the current Faculty Handbook policy, then why has there been any controversy?

A controversy arose when the NKU administration asked the Senate to recommend two changes to existing policy. In the PCC's view, the changes sought by the administration would imprudently relax NKU's current standards of academic integrity, and would make it harder for the faculty to police certain forms and instances of academic misconduct that have, unfortunately, occurred at NKU. Because integrity is a core value at NKU, PCC could not recommend that our current standard of research integrity be relaxed.

Why shouldn't the Senate defer to the administration on such matters?

The NKU Faculty Senate exists to represent the faculty, not to represent the administration.¹ The Senate's role in shared governance requires it to "[e]valuate university policies, programs, and practices and recommend such improvements as seem warranted" to the faculty.² The Faculty Senate Constitution explicitly contemplates that the Senate will make recommendations with which the administration may disagree.³ It provides procedures for

¹ "The Faculty Senate is the official representative body of the General Faculty of Northern Kentucky University." NKU Faculty Senate Constitution Art. I.A. "The purposes of the Faculty Senate are to: (1) Provide a forum for the faculty to propose policy and to discuss all matters relating to the wellbeing of the University; and (2) Allow the faculty to participate effectively in the enactment of university policies." NKU Faculty Senate Constitution Art. I.B.

² NKU Faculty Senate Constitution Art. I.B.4. See also Statement of Collegial Governance at NKU Part B.1 ("Faculty bodies have primary responsibility for recommendations in [academic] matters . . . [including] policies which result in dismissal of tenured faculty, . . . and their recommendations should be implemented except for compelling reasons.").

³ See NKU Faculty Senate Constitution Art. I.C. ("As the representative of the General Faculty, the Senate shall be a counselor to the University president in matters of faculty concern. When the University president disagrees with a recommendation of the Senate, he/she may request the Senate to reconsider its decision at its next regular meeting or at a special meeting called for that purpose. The University president or his/her designee shall provide the Senate with the reasons for his/her disagreement. The Senate shall reconsider its decision, giving due weight to the University president's reasons. If the Senate and University president cannot agree, the University President, at the request of the Senate, shall report the Senate's views to the Board of Regents."). See also Statement of Collegial Governance at NKU Part B.1 ("Faculty bodies have primary responsibility for recommendations in [academic] matters, and their recommendations should be implemented except for

resolving such disagreements collegially, and in public.⁴ These procedures represent the essence of shared collegial governance. The capacity to give unwelcome advice to the administration is an essential attribute of the Faculty Senate that should not be diluted through self-censorship.

What are the actual points of disagreement between the administration and the PCC?

There are only two points of disagreement between the administration and the PCC. One disagreement concerns the scope of the definition of “research misconduct.” The other disagreement concerns a “statute of limitations.”

What’s the disagreement over the definition of “research misconduct”?

Section 16.7.2 of the NKU Faculty Handbook currently defines “research misconduct” to include “Fabrication, falsification, plagiarism, or other serious deviations from those accepted practices in proposing, carrying out, or reporting results from research.”

The Handbook language prohibiting “other serious deviations from those accepted practices” may sound vague. But at NKU, that language has been given authoritative interpretation in written reports issued by various investigating committees, all working under the supervision of the NKU Office of General Counsel. In an exemplary *NKU Investigative Report* prepared in 2002, the phrase “other serious deviations from those accepted practices” was defined to include “the recycling of material in redundant or duplicate publications, compounded by a failure to cite the prior work.”⁵

Under this definition, the term “Redundant or duplicate publications” was further defined to mean “publications in which a substantial portion of the work has already been published. It also includes the situation in which the work is either so similar to previously published material or so modest an extension of previously published work that it would not be viewed as significant were the previous publication acknowledged.”⁶

Also under this definition, the term “Failure to cite prior work” was further defined to refer to “papers that are presented as if the material were new when in fact the authors have

compelling reasons. Reasons for non-implementation of faculty recommendations should be clearly stated in writing. . . .”).

⁴ See id.

⁵ **Investigative Report Setting forth the General Findings Of the Investigation Into Papers by Shailendra Verma, Balasubramani Ramjee, Anju Ramjee, Louis Noyd, and Richard Snyder 1995-2001**, prepared by the NKU Ad Hoc Investigative Committee on Research Misconduct (Thomas Kearns, Robert Kempton, and Matthew Shank), at 5 (Dec. 23, 2002), online at <<https://www.sendspace.com/pro/ykfsfx>>;

⁶ Ibid.

previously published much of the body of the work before. An extension or recycling of previous work must be viewed as such, not as a new and original contribution.”⁷

In the PCC recommendation, these existing NKU definitions are retained, but now would be recited directly in the main text of the Faculty Handbook.

Why shouldn't NKU faculty members be allowed to recycle their scholarly work in redundant or duplicate publications without citing the prior work?

The *2002 NKU Investigative Report* answers this question as follows:

Readers of proceedings and journal articles have a right to know what is new and original in the work in question and how the work is related to previously published material. This requires fair attribution of prior work, including work by the same authors. Because evaluation of faculty members at the University depends in part on an evaluation of their scholarly activity, the obligation to disclose debts to prior work to readers is especially important for those at the University who evaluate performance. Department committees that make decisions on reappointment, promotion, and tenure; chairs that make these same decisions and also decisions about salaries and merit raises; and higher administrators who do the same – all are entitled to a fair understanding of the origins and nature of the scholarly work.⁸

The PCC concurs in these views. Accordingly, PCC does not consider it a “best practice” for NKU faculty members to recycle scholarly work in redundant or duplicate publications without citing the prior work, or to permit their colleagues to do so without consequence.

What was this 2002 Investigative Report about?

In 2002, five professors in the NKU Department of Finance were found to have co-authored and published 23 articles whose content overlapped significantly, over a period of nearly a decade. The faculty investigating committee described its findings as follows:

[The overlap between the papers was] not simply minor duplication of sentences or even an occasional paragraph. In some cases it amounts to essentially an entire paper being recycled. In every instance, the redundancy is accompanied by a failure to cite the prior and duplicated work. In fact, none of the twenty three papers cite any of the others. In almost every instance, very similar papers have been given quite distinct

⁷ ibid.

⁸ ibid. at 6. See also Michael R. Carroll & Sara Sidebottom, *Business School Ethical Dilemma: A Case Study*, 2 *Business Renaissance Quarterly* 91, 99 (Summer 2007) (noting that many journals have “explicit policies about duplicative or redundant publications which generally provide that by submitting a paper for review the authors certify that the work has not been previously published, accepted for publication, presented or submitted elsewhere”; such policies reflect “generally accepted expectations of academic submissions”).

titles, with no suggestion of the relationship between the papers. They have in most cases then been submitted to different outlets for presentation and publication. The Committee considers the packaging of this redundant material to be part of a deliberate and extended pattern of deceit, intended to present the papers in question as entirely new work. The Committee considers this particular deviation from accepted practices to be research misconduct. It will be reported as “deceitful duplication of material.”

In 2003, this committee’s conclusion was endorsed by the NKU General Counsel, Provost, President, and Board of Regents. Under the administration’s present proposal, in contrast, such conduct would no longer fall within NKU’s definition of “research misconduct.”

Are NKU students allowed to recycle the same academic work in more than one course without acknowledging the prior work?

No. An NKU student may not “[s]ubmit an examination, assignment, or graduation requirement that the student has or will submit for credit in another course, without express approval from the professors in each of the courses.”⁹ The PCC believes that NKU students should not be held to a higher standard of integrity in their coursework than NKU faculty members are held to in our scholarly and creative activity.

Should NKU’s policy reflect the variation in accepted practices across academic fields?

Yes. PCC recommends that the Handbook definition of “research misconduct” (Section 16.7.2.5) should state that “The question of what constitutes a serious deviation from accepted scholarly practices must be resolved by applying the standards and norms of the particular academic discipline at issue.” Research practices that are generally accepted within an NKU faculty member’s scholarly field cannot be deemed “misconduct” under this definition.

Got it. So what is the other controversy over a “statute of limitations”?

Under the current NKU Faculty Handbook, investigations may take place whenever evidence of misconduct is discovered and reported. The NKU administration, however, sought to introduce a “safe harbor,” in which misconduct generally would become immune from investigation if it remained undetected or unreported for six years. Because some forms of misconduct (such as plagiarism) may remain undetected for a long time but yet remain easy to prove when discovered, the PCC did not recommend setting any fixed “safe harbor” time period.

Is there some law that requires NKU to relax our current standards of research integrity?

No. For most NKU faculty members, the standards of integrity that govern scholarly and creative activity are established by academic/institutional norms and policies, not by laws

⁹ NKU Student Honor Code Sec. H.2.1.f, codified at NKU Code of Student Rights and Responsibilities Sec. V.H.2.1.f (2012), <<https://inside.nku.edu/scra/information/students/rights-responsibilities.html#policies>>.

or regulations.¹⁰ For NKU faculty members who perform federally-funded behavioral and biomedical research, however, the standards of research integrity also are governed, in part, by US Department of Health & Human Services (HHS) regulations (42 CFR Part 93). For such federally-funded research, these HHS regulations require NKU to investigate certain allegations concerning data fabrication, falsification, and plagiarism, and to deploy certain investigative procedures in so doing. To ensure that our Handbook remains in compliance with these regulations, all pertinent text provided by the Provost's office was incorporated into PCC's recommendation.

Importantly, however, the federal regulations set forth in 42 CFR Part 93 set only minimum permissible standards of integrity for federally-funded behavioral and biomedical research. Those HHS regulations do not prohibit institutions from setting higher standards. To the contrary, Section 102(d) of the HHS regulations explicitly states that the government "does not prohibit or otherwise limit how institutions handle allegations of misconduct that do not fall within this part's definition of research misconduct or that do not involve PHS support." 42 CFR § 93.102(d) (emphasis added).

In short, NKU is neither required nor prohibited by federal regulations to police any of the following forms of research misconduct:

- Misconduct in scholarly or creative activity that is not federally funded;
- Misconduct that remains undiscovered or unreported for six years (with exceptions);
- Recycling of material in redundant or duplicate publications, compounded by a failure to cite the prior work (i.e. "self-plagiarism"); or
- Other serious deviations from accepted practices.

With respect to each of these forms of research misconduct, NKU is free to adopt whatever substantive policy best suits NKU.

Is it *possible* for the PCC-recommended Handbook policy to conflict with federal law?

No. Section 16.7.2.5 of the new Handbook language recommended by PCC would provide:

In cases of allegations involving activities submitted to or supported by a federal agency where definitions or procedures for research misconduct specified in the agency's regulations differ from those in this policy, the definitions and procedures in the agency's regulations will be used.

By this language, the Handbook itself would require that federal laws and regulations must be adhered to in all instances in which they apply, including in instances where contrary

¹⁰ See **2002 Investigative Report** at 4 (finding it unnecessary to investigate any "failure to meet other material legal requirements governing research" because "No federal funding was involved for the research under investigation in this case").

Handbook provisions otherwise might apply. Accordingly, this language renders it impossible for the PCC-proposed Handbook language to conflict with any federal law or regulation.

The HHS regulations don't require NKU to investigate "self-plagiarism"? Doesn't this mean that HHS doesn't think "self-plagiarism" is all that bad?

Although applicable HHS regulations neither prohibit nor require institutions like NKU to police "self-plagiarism," the HHS Office of Research Integrity continues to characterize "self-plagiarism" as one of "the most serious negative consequences" of the present academic ecosystem. It observes:

As can be expected, and in the context of decreasing or, at best, stagnant funding for research, the current reward system produces a tremendous amount of pressure for scientists to generate as many publications as possible. Unfortunately, some of the most serious negative consequences of the present system, aside from fabrication, falsification and outright plagiarism, are the problems of duplicate publication and of other forms of redundancy. In the sciences, duplicate publication generally refers to the practice of submitting a paper with identical or near identical content to more than one journal, without alerting the editors or readers to the existence of its earlier published version.¹¹

The HHS Office of Research Integrity does not consider it a "best practice" for researchers to recycle scholarly work in redundant or duplicate publications without citing the prior work, or to permit their colleagues to do so without consequence.

Do NKU's accreditors want NKU to stop policing "self-plagiarism"?

No. In 2003, the NKU College of Business removed five faculty members from the classroom, mid-semester, after finding that those faculty members had engaged in a course of research misconduct, including fraudulent submission of duplicative or redundant publications. When provided with the faculty committee's investigative report, the College's accreditor concluded that in removing tenured faculty members for fraudulent submission of duplicative or redundant publications, "Northern Kentucky University acted appropriately and decisively to correct the internal research misconduct."¹²

¹¹ See, e.g., HHS Office of Research Integrity, **Avoiding Plagiarism, Self-plagiarism, and Other Questionable Writing Practices: A Guide to Ethical Writing** (2003, revised 2015), online at <<https://ori.hhs.gov/plagiarism-14>>.

¹² AACSB Maintenance Accreditation Committee Letter (2003), *quoted in* Michael R. Carroll & Sara Sidebottom, Business School Ethical Dilemma: A Case Study, 2 **Business Renaissance Quarterly** 91, 106 (Summer 2007).

1.7.1 EMERITUS FACULTY AND HONORED RETIRED LECTURERS

Emeritus faculty are tenured faculty and administrators who hold faculty rank, who, upon retirement, and upon recommendation of the faculty of the department or program in which they hold tenure and upon the recommendations of the appropriate chair, dean, the provost, and the president of the University, have been conferred emeritus status by the Board of Regents. Such persons hold the title and rank held immediately prior to their retirement, followed by the title “emeritus.”

Honored Retired Lecturers are faculty who hold the rank of lecturer, lecturer II, or senior lecturer, who, upon retirement, and upon the recommendation of the faculty of the department or program in which the lecturer, and upon the recommendations of the appropriate chair, dean, the provost, and the president of the University, have been conferred honored retired status by the Board of Regents. Such persons hold the title of Honored Retired Lecturer.

2.11 EMERITUS FACULTY AND HONORED RETIRED LECTURER APPOINTMENTS

A department or program faculty may nominate a retiring faculty member for appointment to emeritus (for tenured faculty) or honored retired (for lecturers) status. In order to be nominated, the retiring person must hold academic rank. Normally, a person will have served the University for a long period in order to be appointed. Such a nomination will be given to the dean by the chair or director, forwarded to the provost, and then to the president. The dean and the provost may make their own recommendations about the appointment of the faculty member when forwarding the nomination. Emeritus and honored retired status may be conferred only by the Board of Regents, and then only upon recommendation by the president (see Section 7.1, Emeritus Faculty and Honored Retired Lecturers).

Commented [JF1]: Should there be a new section for Honored Retired Lecturer? 1.7.2 (and then renumber the rest of the sections in 1.7)

Commented [JF2]: Should we differentiate between NTTR and NTTT lecturers? Or, does long service to NKU suggest/require that they be NTTR?

Commented [JF3]: Should this just be senior lecturer? A lecturer is eligible for promotion to lecturer II after 5 years with a recommendation from the chair. A lecturer II is eligible for promotion after another 5 years with a recommendation from the chair. Senior lecturer suggests long service to NKU.

Commented [JF4]: Should this title reflect the rank? That is, Honored Retired Lecturer II and Honored Retired Senior Lecturer?

Commented [JF5]: Because it is not clear what the recommendation is. Is the recommendation in regards to the nomination only? Or, could a dean or provost be able recommend a faculty member for emeritus or honored retired status without a departmental nomination?

MEMORANDUM

To: Faculty Senate Executive Committee
Cc: Sue Ott Rowlands, Provost and Vice President for Academic Affairs
From: Matthew Zacate, Faculty Senate President
Re: Recommendation to consider Faculty Handbook changes to clarify RPT policies and procedures
Date: August 12, 2019

Over the past couple of years, a number of issues related to the reappointment, promotion, and tenure process have arisen. They highlight some shortcomings in descriptions of criteria and procedures contained in section 3 of the Faculty Policies and Procedures Handbook (*Faculty Handbook*). Below is a proposed set of changes to the *Faculty Handbook* based on my best efforts to incorporate direct suggestions for change or to address observations made by members of the faculty, department chairs, and deans. The change been indicated using the “Track Changes” feature of MS-Word. Some have been highlighted with comments to include explanation for the changes.

3. EVALUATION FOR REAPPOINTMENT, PROMOTION, AND TENURE

3.1. CRITERIA

In making evaluations required for reappointment, promotion, and tenure, three major categories of professional responsibility are to be used. These categories, in order of importance, are teaching effectiveness; scholarship and creative activity; and service to the University, the discipline/profession and the community.

All academic units must have specific guidelines concerning expectations for reappointment, promotion, and tenure, what materials may be considered in each review category, what constitutes appropriate documentation, and how materials will be evaluated. All guidelines must be approved by a majority of the tenured / tenure-track faculty within the affected unit(s), the Chair or School Director, the Dean, and the Provost. Upon final approval by the Provost, all faculty within the affected units(s) must be notified and guidelines must be made available. All new faculty will be given a copy of these guidelines at the time of their hiring.

3.1.1 TEACHING

Teaching includes all work that is intended primarily to enhance student learning. Assessment of teaching effectiveness should take into account documented student learning, contact hours, preparations, service learning, delivery method, and/or number of students.

3.1.2 SCHOLARSHIP AND CREATIVE ACTIVITY

Scholarship and creative activity includes all work that is related to the applicant’s academic discipline or current role at the University. To qualify as scholarship or creative activity, the activity should require a high level of discipline-related or interdisciplinary expertise, and meet the standards of the discipline for scholarly and creative activity. NKU values transdisciplinary scholarship, scholarship of teaching, and scholarship of engagement in addition to traditional scholarship and creative activity.

3.1.3 SERVICE TO THE UNIVERSITY, THE DISCIPLINE/PROFESSION, AND/OR THE COMMUNITY

Service includes all work that contributes to the effective operation, governance, and advancement of programs, departments, schools, colleges, the University, one’s discipline, and/or the community. Service also includes public engagement activities.

3.2. PROCEDURES FOR DECISIONS ON REAPPOINTMENT, PROMOTION, AND TENURE

As stated in Kentucky law, all persons involved in evaluation of personnel shall consider all information received and all deliberations as confidential unless disclosure is required by law.

3.2.1 TIME SCHEDULE

Each spring, the provost will issue a calendar listing deadlines for each step in the evaluation process for the coming academic year, a template for dossier preparation, and notification of any updates to the process.

3.2.2 INITIATION OF REQUEST

The applicant is responsible for initiating consideration by applying for reappointment, promotion, tenure, or a combination of them. A full-time administrator with academic rank may apply for tenure or promotion supported by documentation. The applicant will compile an RPT dossier, including a cover sheet provided by the provost’s office.

3.2.3. DEPARTMENTAL/SCHOOL COMMITTEE

Each department or school shall have a reappointment, promotion, and tenure (hereinafter, RPT) committee consisting of at least five **tenured** faculty members elected at a regular or special department or school faculty meeting. If the department or school has five or more **full-time** tenured members in the case of a tenure committee or five or more members of appropriate rank (a rank above the level of the applicant) in the case of a promotion committee, **available to serve**, then the committee shall be formed from faculty within the department or school. If the department or school has fewer than five **full-time**, tenured members in the case of a tenure

Commented [MZ1]: To allow faculty members in phased-retirement or in temporary part-time status to serve.

Commented [MZ2]: To account for the possibility that someone may not be able to serve because, for example, he/she is on sabbatical leave.

committee, or fewer than five members of appropriate rank in the case of a promotion committee, ~~available, then~~ those members, in consultation with the department chair or school director, shall prepare a list of ~~full-time~~, tenured faculty of appropriate rank from other departments or schools from which faculty will be appointed by the committee to fill out its membership. In choosing members from other departments or schools, preference shall be given to teaching faculty in departments or schools with affinity to the department or school.

The members of the committee shall elect their own chair. The committee chair shall notify the department chair or school director of committee membership within ten working days of election.

3.2.4. DEPARTMENTAL/SCHOOL COMMITTEE: ELIGIBILITY

All ~~full-time~~, tenure-track faculty in the department or school are eligible to vote to elect the committee membership. Only ~~full-time~~, tenured faculty may serve on the committee. The department chair or school director may not serve on the committee. Department chairs or school directors in other departments or schools ~~may serve on the committee provided that they are in a different college, and a~~ Assistant and associate deans with faculty appointments serving as administrators with reassigned time may serve on the committee ~~provided that they are serving as administrators in a different college.~~ Tenured faculty with appointments in more than one department/school or discipline may serve on the committee of any department/school or discipline in which they hold ~~an~~ appointment. Faculty on sabbatical or paid leave are eligible but not required to serve on the committee. Faculty on unpaid leave are not eligible to serve on the committee. ~~The Faculty Senate President will not serve on a department/school RPT committee unless there is fewer than five eligible faculty members available, in which case the Faculty Senate President can serve but will not chair the committee.~~

Upon agreement of RPT committee members, the department chair or school director, the appropriate dean, and the applicant, faculty external to the University and of suitable rank and tenure may serve on the committee. Persons holding full-time administrative appointments, as defined in Section 1.8.1 are not eligible to serve on the committee.

In departments or schools where no faculty members are eligible to serve on a needed RPT committee, the department or school faculty shall serve in place of the department or school committee members to elect suitable RPT committee members.

3.2.5. DEPARTMENT/SCHOOL COMMITTEE: DELIBERATIONS

A quorum of an RPT committee shall be four-fifths (4/5) of its members; a quorum is required in order for the committee to act.

Material considered by the RPT committee must include, but may not be limited to, the applicant's submissions. The committee may consider supplemental material ~~consistent with department/school guidelines~~ that will aid in ~~their-its~~ decision. If material not submitted by the applicant is considered, the applicant must be notified of this material. As part of ~~their-its~~ deliberations, the RPT committee may meet with the applicant when such a meeting aids in the committee's decision process.

Commented [MZ3]: To avoid a potential conflict of interest for chairs, directors, and assistant/associate deans who report directly to the dean who would also evaluate the RPT candidates.

Commented [MZ4]: To avoid the possible appearance of a conflict of interest arising from the Faculty Senate President's greater access to the Provost.

Commented [MZ5]: It is important to put some parameters on what kind of supplemental information can be considered.

If an RPT committee requires clarification on any procedural matter, the committee should make this request to the respective department chair or school director. Committees should not ordinarily make requests to the dean, provost, university counsel, human resources, or any other university official or department.

3.2.6. DEPARTMENT/SCHOOL COMMITTEE: VOTING AND REPORTING

Each member of the committee shall have one vote. Each member is required to vote on each matter before the committee. A member who has not reviewed materials submitted by the applicant or fully participated in the committee discussion of the applicant cannot vote on that applicant. Nominally, each member of the committee including the chair shall have one vote for each applicant; however, a member who has not reviewed materials submitted by or fully participated in committee discussion about an applicant cannot vote on the recommendation of that applicant. Immediately before the vote of each candidate, the committee chair will determine the eligibility of each committee member to vote on the recommendation. The chair will make an announcement to the committee and take note of who is eligible to vote. Each eligible member present for the vote must vote on the recommendation; that is, abstention is not allowed. While a quorum must be present for the vote to take place, it is not necessary that 4 or more members participate in the vote.

Commented [MZ6]: This paragraph is terribly confusing. It has (at least) 3 conflicting ideas in conjunction with section 3.2.5: 4/5 must be present for a quorum, all members must vote, and only members who reviewed materials may vote.

The recommendation of the committee shall be reported in writing to the department chair or school director and must be characterized as either unanimous or non-unanimous. The recommendation of the committee will reflect the committee's deliberations and must be signed by all committee members who voted. In cases where the committee vote is not unanimous, support for both positive and negative votes must be included in the recommendation. In the case of a tie vote, the committee's recommendation will be deemed a positive recommendation. A copy of the recommendation will be given to the applicant. After receiving a negative recommendation from the committee, the applicant may elect within three business days to withdraw the application and terminate the RPT process.

3.2.7. CHAIR/DIRECTOR

No sooner than three business days after receipt of the committee recommendation, the department chair or school director shall make a recommendation to the dean in writing. The chair or director may consult with the department or school committee prior to making a recommendation, but not with committee members individually. As part of his or her deliberations, the department chair or school director may meet with the applicant to aid in his or her decision. The reasons for the department chair's or school director's recommendation, whether positive or negative, shall be included in the recommendation. The chair or school director may consider supplemental material consistent with department/school guidelines that will aid in his/her decision. If material not submitted by the applicant is considered, then this must be indicated in the recommendation. The department chair or school director shall forward his or her recommendation, the department or school committee's recommendation, and the applicant's file to the appropriate dean. A copy of the department chair's or school director's recommendation shall be given to the applicant and all members of the department or school committee.

Commented [MZ7]: It is important to put some parameters on what kind of supplemental information can be considered.

3.2.8 DEAN

After receipt of the department chair's or school director's recommendation and the department or school committee's recommendation, the dean shall make a recommendation to the provost in writing. The reasons for the dean's recommendation, whether positive or negative, shall be included in the written recommendation. The dean may consult with the department or school committee and/or the department chair or school director prior to making a recommendation, but not with individual committee members. As part of his or her deliberations, the dean may meet with the applicant to aid in his or her decision. The dean may consider supplemental material consistent with department/school guidelines that will aid in his/her decision. If material not submitted by the applicant is considered, then this must be indicated in the recommendation. The dean shall forward this recommendation, the department chair's or school director's recommendation, the department or school committee's recommendation, and the applicant's file to the provost. A copy of the dean's recommendation shall be given to the applicant, the department chair or school director, and all members of the department or school committee.

Commented [MZ8]: This sentence is added to affirm the dean's right to consider unsubmitted material.

Commented [MZ9]: It is important to put some parameters on what kind of supplemental information can be considered.

3.2.9. PROVOST

After receipt of the dean's recommendation, the department chair's or school director's recommendation, the department or school committee's recommendation, and the applicant's file, the provost shall make a written recommendation to the president. The reasons for the provost's recommendation, whether positive or negative, shall be included in the written recommendation. The provost may consult with the department or school committee, the department chair or school director, the dean, or with any combination of them, but not with individual committee members. As part of his or her deliberations, the provost may meet with the applicant to aid in his or her decision. The provost may consider supplemental material consistent with department/school guidelines that will aid in his/her decision. If material not submitted by the applicant is considered, then this must be indicated in the recommendation. A copy of the provost's recommendation shall be given to the applicant, the dean, the department chair or school director, and all members of the department committee.

Commented [MZ10]: It is important to put some parameters on what kind of supplemental information can be considered.

3.2.10. PRESIDENT

The president will forward the provost's recommendation to the Board of Regents.

3.2.11. BOARD OF REGENTS

Reappointment, promotion, and tenure may be granted only by the Board of Regents, and then only upon the recommendation forwarded by the president of the University. The Board shall act in accordance with statutory requirements and the bylaws of the Board of Regents

3.2.12. NOTICE OF NON-REAPPOINTMENT

Notice of non-reappointment of a probationary contract must be in writing, by the provost, and given:

- Not later than December 15 of the second academic year of service;
- At least 12 months before the expiration of an appointment after two or more years of service at the University.

3.2.13. FORMAL RECONSIDERATION AND APPEAL

In the case of a negative recommendation concerning reappointment, promotion, tenure, or any combination of them, the applicant has the right to a formal reconsideration only at the level of the initial negative recommendation. An “initial” negative recommendation is defined as the first negative recommendation given for a particular reason. If a negative recommendation is subsequently given at a higher level for a different reason, it shall be considered an initial negative recommendation for the purpose of formal reconsideration. When a negative recommendation is first made, the applicant shall be informed, in writing, of the right to request a formal reconsideration.

In order to exercise this right, the affected applicant must request the reconsideration in writing, with any ~~omitted~~ additional materials attached, within 10 University working days of receipt of notification of the negative recommendation by sending the request and additional materials to the chair of the department/school committee or the person who made the initial negative recommendation. Upon receipt ~~of such of the~~ request for reconsideration, the chair of the department-~~or~~/school committee or the person who made the initial negative recommendation must send a copy of the request for reconsideration to the Office of the Provost and Executive Vice President for Academic Affairs for the purpose of resetting the review calendar for the applicant. Then, the department-~~or~~/school committee or the person who made the initial negative recommendation shall complete the reconsideration within 10 university working days of having received the request for reconsideration. The applicant -and shall notify the applicants shall be notified, in writing, of the decision reached, and the letter of reconsideration with additional submitted material and the reconsideration decision will be forwarded to the individual responsible for the next level of review.

Commented [MZ11]: Reordered to make timing less confusing. The provost should be notified right away.

During the process of reconsideration, the calendar for the recommendation is extended, and the next level of recommendation shall not consider the applicant’s application until reconsideration is completed. Once the decision regarding formal reconsideration is reached, the process shall continue at the next level.

The procedures for the committee’s deliberations, voting, and reporting will be the same procedures as specified in Sections 3.2.5 and 3.2.6 of this Handbook.

In the event the Provost makes a negative recommendation on an application for reappointment, promotion, tenure, or any combination of them, the applicant may appeal using the procedures set forth in Section 14, Grievances. The appeal must be initiated by the applicant within 15 university working days from receipt of the provost’s notice.

3.2.14. WITHDRAWAL OF APPEAL

A faculty member may withdraw an appeal at any time by request in writing. In that event, no

further action may be taken concerning the appeal. In the case of denial of mandatory tenure, if an appeal from a negative recommendation or decision is withdrawn prior to a decision on the appeal, tenure cannot be recommended.

3.2.15. TIME

Unless otherwise specified in these procedures, whenever any recommendation or notice is to be given or conveyed, it shall be given or conveyed within 15 university working days of receipt of the file by the person who is to take action.

3. EVALUATION FOR REAPPOINTMENT, PROMOTION, AND TENURE

3.1. CRITERIA

In making evaluations required for reappointment, promotion, and tenure, three major categories of professional responsibility are to be used. These categories, in order of importance, are teaching effectiveness; scholarship and creative activity; and service to the University, the discipline/profession and the community.

All academic units must have specific guidelines concerning expectations for reappointment, promotion, and tenure, what materials may be considered in each review category, what constitutes appropriate documentation, and how materials will be evaluated. All guidelines must be approved by a majority of the tenured / tenure-track faculty within the affected unit(s), the Chair or School Director, the Dean, and the Provost. Upon final approval by the Provost, all faculty within the affected units(s) must be notified and guidelines must be made available. All new faculty will be given a copy of these guidelines at the time of their hiring.

3.1.1 TEACHING

Teaching includes all work that is intended primarily to enhance student learning. Assessment of teaching effectiveness should take into account documented student learning, contact hours, preparations, service learning, delivery method, and/or number of students.

3.1.2 SCHOLARSHIP AND CREATIVE ACTIVITY

Scholarship and creative activity includes all work that is related to the applicant's academic discipline or current role at the University. To qualify as scholarship or creative activity, the activity should require a high level of discipline-related or interdisciplinary expertise, and meet the standards of the discipline for scholarly and creative activity. NKU values transdisciplinary scholarship, scholarship of teaching, and scholarship of engagement in addition to traditional scholarship and creative activity.

3.1.3 SERVICE TO THE UNIVERSITY, THE DISCIPLINE/PROFESSION, AND/OR THE COMMUNITY

Service includes all work that contributes to the effective operation, governance, and advancement of programs, departments, schools, colleges, the University, one's discipline, and/or the community. Service also includes public engagement activities.

3.2. PROCEDURES FOR DECISIONS ON REAPPOINTMENT, PROMOTION, AND TENURE

As stated in Kentucky law, all persons involved in evaluation of personnel shall consider all information received and all deliberations as confidential unless disclosure is required by law.

3.2.1 TIME SCHEDULE

Each spring, the provost will issue a calendar listing deadlines for each step in the evaluation process for the coming academic year, a template for dossier preparation, and notification of any updates to the process.

3.2.2 INITIATION OF REQUEST

The applicant is responsible for initiating consideration by applying for reappointment, promotion, tenure, or a combination of them. A full-time administrator with academic rank may apply for tenure or promotion supported by documentation. The applicant will compile an RPT dossier, including a cover sheet provided by the provost's office.

3.2.3. DEPARTMENTAL/SCHOOL COMMITTEE

Each department or school shall have a reappointment, promotion, and tenure (hereinafter, RPT) committee consisting of at least five faculty members elected at a regular or special department or school faculty meeting. If the department or school has five or more full-time tenured members in the case of a tenure committee or five or more members of appropriate rank (a rank above the level of the applicant) in the case of a promotion committee, then the committee shall be formed from faculty within the department or school. If the department or school has fewer than five full-time, tenured members in the case of a tenure committee, or fewer than five members of appropriate rank in the case of a promotion committee, those members, in consultation with the department chair or school director, shall prepare a list of full-time, tenured faculty of appropriate rank from other departments or schools from which faculty will be appointed by the committee to fill out its membership. In choosing members from other departments or schools, preference shall be given to teaching faculty in departments or schools with affinity to the department or school.

The members of the committee shall elect their own chair. The committee chair shall notify the department chair or school director of committee membership within ten working days of election.

3.2.4. DEPARTMENTAL/SCHOOL COMMITTEE: ELIGIBILITY

All full-time, tenure-track faculty in the department or school are eligible to vote to elect the committee membership. Only full-time, tenured faculty may serve on the committee. The department chair or school director may not serve on the committee. Department chairs or school directors in other departments or schools, and assistant and associate deans with faculty

appointments serving as administrators with reassigned time may serve on the committee. Tenured faculty with appointments in more than one department/school or discipline may serve on the committee of any department/school or discipline in which they hold appointment. Faculty on sabbatical or paid leave are eligible but not required to serve on the committee. Faculty on unpaid leave are not eligible to serve on the committee.

Upon agreement of RPT committee members, the department chair or school director, the appropriate dean, and the applicant, faculty external to the University and of suitable rank and tenure may serve on the committee. Persons holding full-time administrative appointments, as defined in Section 1.8.1 are not eligible to serve on the committee.

In departments or schools where no faculty members are eligible to serve on a needed RPT committee, the department or school faculty shall serve in place of the department or school committee members to elect suitable RPT committee members.

3.2.5. DEPARTMENT/SCHOOL COMMITTEE: DELIBERATIONS

A quorum of an RPT committee shall be four-fifths (4/5) of its members; a quorum is required in order for the committee to act.

Material considered by the RPT committee must include, but may not be limited to, the applicant's submissions. The committee may consider supplemental material that will aid in their decision. If material not submitted by the applicant is considered, the applicant must be notified of this material. As part of their deliberations, the RPT committee may meet with the applicant when such a meeting aids in the committee's decision process.

If an RPT committee requires clarification on any procedural matter, the committee should make this request to the respective department chair or school director. Committees should not ordinarily make requests to the dean, provost, university counsel, human resources, or any other university official or department.

3.2.6. DEPARTMENT/SCHOOL COMMITTEE: VOTING AND REPORTING

Each member of the committee shall have one vote. Each member is required to vote on each matter before the committee. A member who has not reviewed materials submitted by the applicant or fully participated in the committee discussion of the applicant cannot vote on that applicant.

The recommendation of the committee shall be reported in writing to the department chair or school director and must be characterized as either unanimous or non-unanimous. The recommendation of the committee will reflect the committee's deliberations and must be signed by all committee members. In cases where the committee vote is not unanimous, support for both positive and negative votes must be included in the recommendation. In the case of a tie vote, the committee's recommendation will be deemed a positive recommendation. A copy of the

recommendation will be given to the applicant. After receiving a negative recommendation from the committee, the applicant may elect within three business days to withdraw the application and terminate the RPT process.

3.2.7. CHAIR/DIRECTOR

No sooner than three business days after receipt of the committee recommendation, the department chair or school director shall make a recommendation to the dean in writing. The chair or director may consult with the department or school committee prior to making a recommendation, but not with committee members individually. As part of his or her deliberations, the department chair or school director may meet with the applicant to aid in his or her decision. The reasons for the department chair's or school director's recommendation, whether positive or negative, shall be included in the recommendation. The department chair or school director shall forward his or her recommendation, the department or school committee's recommendation, and the applicant's file to the appropriate dean. A copy of the department chair's or school director's recommendation shall be given to the applicant and all members of the department or school committee.

3.2.8 DEAN

After receipt of the department chair's or school director's recommendation and the department or school committee's recommendation, the dean shall make a recommendation to the provost in writing. The reasons for the dean's recommendation, whether positive or negative, shall be included in the written recommendation. The dean may consult with the department or school committee and/or the department chair or school director prior to making a recommendation, but not with individual committee members. As part of his or her deliberations, the dean may meet with the applicant to aid in his or her decision. The dean shall forward this recommendation, the department chair's or school director's recommendation, the department or school committee's recommendation, and the applicant's file to the provost. A copy of the dean's recommendation shall be given to the applicant, the department chair or school director, and all members of the department or school committee.

3.2.9. PROVOST

After receipt of the dean's recommendation, the department chair's or school director's recommendation, the department or school committee's recommendation, and the applicant's file, the provost shall make a written recommendation to the president. The reasons for the provost's recommendation, whether positive or negative, shall be included in the written recommendation. The provost may consult with the department or school committee, the department chair or school director, the dean, or with any combination of them, but not with individual committee members. As part of his or her deliberations, the provost may meet with the applicant to aid in his or her decision. A copy of the provost's recommendation shall be given to the applicant, the dean, the department chair or school director, and all members of the department committee.

3.2.10. PRESIDENT

The president will forward the provost's recommendation to the Board of Regents.

3.2.11. BOARD OF REGENTS

Reappointment, promotion, and tenure may be granted only by the Board of Regents, and then only upon the recommendation forwarded by the president of the University. The Board shall act in accordance with statutory requirements and the bylaws of the Board of Regents

3.2.12. NOTICE OF NON-REAPPOINTMENT

Notice of non-reappointment of a probationary contract must be in writing, by the provost, and given:

- Not later than December 15 of the second academic year of service;
- At least 12 months before the expiration of an appointment after two or more years of service at the University.

3.2.13. FORMAL RECONSIDERATION AND APPEAL

In the case of a negative recommendation concerning reappointment, promotion, tenure, or any combination of them, the applicant has the right to a formal reconsideration only at the level of the initial negative recommendation. An “initial” negative recommendation is defined as the first negative recommendation given for a particular reason. If a negative recommendation is subsequently given at a higher level for a different reason, it shall be considered an initial negative recommendation for the purpose of formal reconsideration. When a negative recommendation is first made, the applicant shall be informed, in writing, of the right to request a formal reconsideration.

In order to exercise this right, the affected applicant must request the reconsideration in writing, with any omitted materials attached, within 10 University working days of receipt of notification of the negative recommendation. Upon receipt of such a request for reconsideration, the department or school committee or the person who made the initial negative recommendation shall complete the reconsideration within 10 university working days and shall notify the applicant, in writing, of the decision reached. The department or school committee must send a copy of the request for reconsideration to the Office of the Provost and Executive Vice President for Academic Affairs for the purpose of resetting the review calendar for the applicant.

During the process of reconsideration, the calendar for the recommendation is extended, and the next level of recommendation shall not consider the applicant’s application until reconsideration is completed. Once the decision regarding formal reconsideration is reached, the process shall continue at the next level.

The procedures for the committee's deliberations, voting, and reporting will be the same procedures as specified in Sections 3.2.5 and 3.2.6 of this Handbook.

In the event the Provost makes a negative recommendation on an application for reappointment, promotion, tenure, or any combination of them, the applicant may appeal using the procedures set forth in Section 14, Grievances. The appeal must be initiated by the applicant within 15 university working days from receipt of the provost's notice.

3.2.14. WITHDRAWAL OF APPEAL

A faculty member may withdraw an appeal at any time by request in writing. In that event, no further action may be taken concerning the appeal. In the case of denial of mandatory tenure, if an appeal from a negative recommendation or decision is withdrawn prior to a decision on the appeal, tenure cannot be recommended.

3.2.15. TIME

Unless otherwise specified in these procedures, whenever any recommendation or notice is to be given or conveyed, it shall be given or conveyed within 15 university working days of receipt of the file by the person who is to take action.

4. REAPPOINTMENT

4.1. ELIGIBILITY

A person who is making satisfactory progress toward grant of tenure is eligible for reappointment. A person who is making less than satisfactory progress toward grant of tenure may be terminated or may be reappointed to continued probation.

4.2. QUALIFICATION

A person seeking reappointment must present evidence of satisfactory progress in teaching effectiveness, scholarly and creative activity, and institutional and public service consistent with Section 3, Evaluation, of this Handbook.

4.3. PROCEDURES

The criteria and procedures in Section 3, Evaluation, apply to applications for reappointment.

7. APPOINTMENT, REAPPOINTMENT, PROMOTION, AND TENURE FOR LIBRARIANS

7.1 DISTINCT RESPONSIBILITIES

Librarians have responsibilities different from those of other faculty; they work on 12-month contracts and devote specified hours each week to their professional assignments in the libraries. Therefore, certain modifications have been made in criteria used in evaluation for reappointment, promotion, and tenure.

7.2. FACULTY STATUS AND RANK

Librarians at NKU have faculty status and rank (see Section 1.6, Librarians). The master's degree in library science is the appropriate terminal degree and is necessary for appointment to a library faculty position.

7.3. POLICIES AND PROCEDURES

The policies and procedures for faculty presented in this Handbook apply to librarians as modified in this Section 7. Effective performance on the job replaces the teaching effectiveness category. The Steely Library and Chase Law Library are considered to be departments with regard to implementation of the reappointment, promotion, and tenure process. The director of the Steely Library serves as department chair. The director of the Steely Library will forward reappointment, promotion, and tenure recommendations to the provost. The director of Chase Law Library serves in the functions of department chair and reports to the dean of the College of Law.

7.4. RANKS FOR LIBRARIANS

Library faculty may be appointed to these ranks:

- Instructor of library services,
- Assistant professor of library services,
- Associate professor of library services, or
- Professor of library services.

(See Section 1.9, Qualifications for Appointment to Rank.)

7.5. CRITERIA FOR EFFECTIVE PERFORMANCE

Effective performance requires:

- Meeting the responsibilities of the assigned positions successfully and effectively
- Demonstrated successful job performance in:
 - Innovation and initiative

- Ability to determine and assign work priorities and/or staff duties
- Ability to handle increased and new responsibilities
- Integrating the area of responsibility with the library as a whole by showing:
 - Understanding of overall library operations
 - Commitment to the library's goals of education and service
 - Knowledge of new developments in library science and technology
 - Willingness to use suggestions, criticism, and evaluations to improve performance
- It is the responsibility of every librarian with faculty rank to know the various policies of the University, as set forth in this Handbook or as otherwise published. A failure to comply with a written university policy that has resulted in disciplinary sanction of the library faculty member may constitute unprofessional conduct and consequently may be relevant to evaluations related to reappointment, promotion, and tenure, or to performance review.

7.6. CRITERIA FOR REAPPOINTMENT, PROMOTION, AND TENURE

Librarians are evaluated for reappointment, promotion, and tenure on the basis of a continuing record of achievement and evidence of professional development. A strong performance is mandatory and of primary importance (see Section 7.5, above). It is expected that librarians will also meet the library's standards of scholarly and creative activity and institutional and public service. For librarians, scholarly and creative activity may also include activity in education, e.g. offering formal classroom instruction, conducting workshops, conferences, or other informal educational activities; consultation; and professional committee work.

8. PERFORMANCE REVIEW

8.1 PURPOSE AND APPLICABILITY

The purpose of the annual performance review is to assess the quality of faculty performance during that year and to measure attainment of the goals and objectives set for the year. This process applies to full-time, tenure-track faculty and to full-time, non-tenure-track renewable faculty (see Section 1.3 regarding applicability to renewable faculty).

8.2. CRITERIA

The criteria for evaluation set forth in Section 3.1, Criteria, and in the departmental, college, and Steely RPT guidelines shall be the criteria upon which a performance review is based. Any judgment, by a chair or director, that the overall performance of a tenured faculty member is unsatisfactory for the review period will be based upon and consistent with the statement of expectations for adequate performance approved by the faculty member's department or program.

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8.3. PROCEDURES

Performance reviews occur during the spring semester. The period evaluated is the prior January 1 through December 31 calendar year.

The chair or director, in consultation with the department or program faculty, will set the date for the faculty member's performance review. The performance review should be completed no later than April 1 and no earlier than one week after receipt by all faculty in a department or program of fall semester student evaluations. Prior to that date the faculty member will prepare a written statement of his/her performance, including a statement of goals and objectives for the coming year. The chair or director will meet with the faculty member to discuss the performance, assess attainment of goals and objectives, and set goals and objectives for the coming year. The chair or director will be responsible for preparing a document summarizing the performance evaluation, goals and objectives assessment, and goals and objectives set for the coming year. Both parties will sign the document to verify that the review has occurred. If differences of opinion exist, they shall make every effort to resolve them. If the content of the summary is unsatisfactory to the faculty member, the faculty member is responsible for providing a written addendum stating the difference(s) of opinion. All performance review documents, including the faculty member's original written performance statement, shall become a part of the faculty member's personnel file maintained in the department or program; a copy must be given to the faculty member, to the dean, and to the provost.

The faculty member may use his/her copy of the performance evaluation to support applications for reappointment, promotion, tenure, or any combination of them, or in grievance procedures. Otherwise, the chair or director, dean, and provost must keep the contents confidential. In the event that a post-tenure review is triggered, the faculty member's annual performance review materials from the two most recent reviews, including the chairperson's own evaluation letters, will be made accessible to the P-TR committee and can be used in evaluating that individual's performance and must remain confidential.

If circumstances change during the year, the faculty member and chair or director may agree to amend the goals and objectives for that year.

8.4. APPEAL PROCEDURES

A faculty member convinced that misevaluation is damaging his/her professional status or advancement may pursue one of the complaint processes as set forth in Section 14, Grievances.



MEMORANDUM

To: Faculty Senate Executive Committee
Cc: Sue Ott Rowlands, Provost and Vice President for Academic Affairs
From: Matthew Zacate, Faculty Senate President
Re: Recommendation to review section 8 of the Faculty Handbook
Date: August 19, 2019

It has been brought to my attention that section 8 of the Faculty Policies and Procedures Handbook (*Faculty Handbook*) may need updating in order to ensure that all members of the faculty know that they are evaluated annually as part of the annual performance review process. In addition, I have had conversations in recent years that suggest to me that the use of the terms *program* and *program director* in section 8 may lead faculty members to believe incorrectly that academic program directors are involved in the annual performance review process. To begin addressing these issues, I have included some proposed wording changes that describe more accurately the performance review process that is used currently at NKU. I believe that it is only necessary to change sub-sections 8.1 and 8.2 (added text in red and green and deleted text in red, strike-through).

8. PERFORMANCE REVIEW

8.1 PURPOSE AND APPLICABILITY

The purpose of the annual performance review is to assess the quality of faculty performance during that year and to measure attainment of the goals and objectives set for the year. ~~This process applies to full-time, tenure-track faculty and to full-time, non-tenure-track renewable faculty all faculty (see Section 1.3 regarding applicability to renewable faculty).~~ All faculty members undergo an annual performance review. (Additional information for non-tenure-track renewable faculty can be found in Section 1.3.)

Faculty members in a department are evaluated by the department chair. Faculty members of a school are evaluated by the school director. Faculty members of Stealy Library and colleges without departments or schools are evaluated by the corresponding dean. A faculty member who does not have an appointment in a department, school, or college is evaluated by the program director of his/her unit.

8.2. CRITERIA



The criteria for evaluation set forth in ~~Section 3.1, Criteria, and~~ in ~~the~~ departmental/school, college, ~~and~~ Steely Library ~~RPT~~, and program guidelines shall be the criteria upon which a performance review is based for all faculty except part-time, temporary faculty. Tenured and tenure-track faculty are evaluated using additional criteria as set forth in Section 3.1. The criteria used to evaluate part-time, temporary faculty are given on the Part-Time Faculty Evaluation Form, which can be obtained from the office of Academic Affairs. Any judgment, by a chair or director, that the overall performance of a tenured faculty member is unsatisfactory for the review period will be based upon and consistent with the statement of expectations for adequate performance approved by the faculty member's department/school or program.