

## Professional Concerns Committee

### Minutes for March 3, 2022

#### Virtual Meeting (on Zoom Conferencing Software), 3:30 pm

**Members in Attendance:** S. Alexander, W. Darnell, K. Fuegen, R. Gall, B. Green, P. Hare, J. Herman, K. Katkin, A. Miller, K. Munte, G. Newell, M. Providenti, H. Riffe, G. Sun, M. Whitson, M. Washington

**Guests in Attendance:** K. Ankem, J. Bloch, Hiles, A. Ndoye, P. McCartney

**Members Not in Attendance:** T. Cata, L. Dynan, N. Grant, J. Kaiser, B. Karrick, M. Nakamura, J. Washburn-Moses

---

#### 1. Call to Order, Adoption of the Agenda

- a) The meeting was called to order at 3:30pm. Two issues were raised after which the agenda was adopted unanimously without changes.
  - i. Update on hostile comments (included in Chair's Report).
  - ii. The Intellectual Property Policy discussion comments (included in Chair's Report).

#### 2. Approval of the minutes from the February 17, 2021 meeting

- a) Draft minutes from the February 17 meeting were approved without dissent.
- b) Acknowledgement that these are the best minutes one PCC member has seen on this committee in "many, many years"; thanks given to PCC Secretary.

#### 3. Chair's Report and Announcements

- a) Senate met on Monday.
  - i. President Vaidya is seeking nominations for university-wide student awards; deadline Friday. Students who graduated in December or will graduate in May are eligible.
  - ii. Provost Cecil reported that COVID case counts are around 10 per 100,000. What happens when we have extremely low case counts? When and how can we return to normal? WKU and Murray State have lifted their mask mandates. ECU lifted the mandate in non-instructional spaces. He solicited discussion from senators regarding the direction NKU should take. A couple senators argued in favor of keeping the mask mandate for the duration of the semester. Another senator argued that NKU should follow the lead of local public schools that have removed the mask mandate.  
-- An email from the President earlier today indicated masks would be optional on campus starting March 21.

- iii. The Provost indicated that NKU is looking to expand the Young Scholars Academy. The YSA enables high school students to earn A.A. degree while still in high school. This is a service to the region and recruiting tool. It is low cost to NKU: these students are taking seats in courses that have already been scheduled but are not full.
- iv. SBD workgroups are studying how to halt declines in student enrollment. Several initiatives:
  - 1. High impact practices workshop in last week of June (\$500 to attend + \$500 after incorporating HiP into course).
  - 2. Tripwires are impediments to students progressing. Proposal to revamp the way we work with students who owe us money.
  - 3. Co-curricular career maps help students decide when to join groups to help them get connected. Goes beyond when to take courses. Includes guided pathways (e.g., when to do internship).
  - 4. Eleven new advisors have been hired.
- v. Staff Congress is celebrating 40 years at NKU.
- vi. Faculty Senate President John Farrar reminded us that administrator evaluations are available until March 4. The Budget survey also closes March 4. He intends to host a forum for Faculty Senate and Academic Affairs to discuss topics of interest. Tentatively scheduled for April 1. Food and beverages provided.
- vii. John still seeking volunteers for Faculty Senate award. If you want to serve on the committee for the Faculty Senate award, contact John.
- viii. The Faculty Senate Award is given to a senior student who has demonstrated exceptional skills and productivity in an independent study project. An independent study project is defined as a faculty-supervised research or scholarly work that has as its goal the publication, presentation and/or exhibition of the results. The project should be conducted outside of a formal classroom and last at least one semester, preferably longer. The Faculty Senate sponsors this award.
- ix. The time has come for us to become more serious about evaluating teaching effectiveness in a better way. Student feedback is useful but should be only a part of the process. Use multiple measures, e.g., peer reviews, Chair visiting class.
- x. We are watching two bills in the KY legislature.
  - 1. HB 51 would “prohibit requiring facial coverings on property owned, leased, or operated by public postsecondary education institutions; provide exceptions for healthcare licensing board requirements imposed prior to January 1, 2020, and clinical research settings.” It has not been voted on by House. There are currently 10 amendments to this bill.
  - 2. SB 138 has passed Senate and is now in the House. SB 138 would place restrictions on how public school teachers teach

controversial topics (e.g., race stereotyping, gender stereotyping, religion).

- xi. Faculty Advocate Phil McCartney is concerned about changes to the values and ethical responsibilities policy. He is seeking a closer connection between faculty handbook statements on teaching effectiveness and the way we evaluate teaching effectiveness.
- xii. TEEC Chair Chris Lawrence is compiling a list of institutions that have transitioned away from Student Evaluations of Instruction (SEIs). He has reached out to CPE and SACS to determine whether SEIs are necessary. Is it required that students provide feedback? Does the feedback need to be part of RPT decisions? USC may be a model (combination of peer review and individual reflection).  
-- Chris did not explicitly address removing hostile language or discriminatory comments from SEIs. The last news on this topic is that TEEC was still interviewing vendors about the possibility of removing comments. No additional update.

b) Update in PCC Action Items

- i. K. Fuegen filed comments summarizing PCC's discussion of the Draft revision to Intellectual Property policy: Patents and Inventions. Two issues were highlighted: 1) the rights of students, and 2) net royalties.

This committee felt that the policy lacked nuance regarding the rights that students retain. It was unclear whether students retain rights to their inventions. K. Fuegen wrote that the policy should clearly state that students own their work. The student should not have to request that the University release its rights in the invention.

The policy implied that enrolling in a "research intensive" course constituted significant use of University resources. K. Fuegen suggested that students enrolled in research intensive courses could still retain rights to their invention if the research is student-driven. However, if a student contributes to faculty-led research, then the faculty member is the Innovator and the student does not own the invention.

The committee felt that proposed changes to revenue sharing would discourage innovation. Under existing policy, the Innovator keeps 100% if the revenue generated is less than \$5,000. Under the proposed policy, the Innovator would keep only 60%. The remaining 40% would belong to the NKU Research Foundation. There was sentiment that most revenue generated by NKU Innovators is likely to be in low amounts. K. Fuegen stated that the Innovator should keep all of the net royalties when net revenue is low.

K. Fuegen also suggested adding the following statement to the section

on the University's rights and obligations: "The University shall annually provide a report to the College with which the Innovator is affiliated detailing marketing activities for the innovation and any funds received in association with the innovation." Such a statement would promote transparency and accountability.

DISCUSSION:

1. IP POLICY:

-- The content of the comment on IP is good but there is concern about the process of submitting PCC comments to the administration through the policy comment page and not to Senate. Possibly contrary to Faculty Senate Constitution and the statement on Collegial Governance. The Senate should vote on the matter. This policy could lead to a Handbook change and needs to go through Senate.

-- We need to consider is the comment period has a limited time and we need to participate. The goal is to provide feedback for revisions.

-- The draft of the policy will return to PCC.

-- We should submit feedback to Senate and slow down the process. In this case there is no rush. If there were a rush to push through changes to an existing policy, we should resist those changes.

-- There are no impending Handbook changes.

2. MASKING:

-- Are there any firm guidelines for the reinstatement of a mask requirement on campus if conditions change? Or is it arbitrary?

-- The COVID committee has looked at measures such as cases per 100,000 in the region, number of hospitalizations, transmission rate, etc. Presumably, we'll use the same criteria in the future.

-- The committee is looking into establishing clear guidelines.

4. Unfinished Business: Discussion of proposed revision to values and ethical responsibilities policy

a) The draft revision includes three new sections: reporting suspected ethical or compliance violations (VIII), whistleblower protection (IX), and investigating reported alleged illegal or dishonest activity (X).

b) Does the policy convey the University's commitment to ethical behavior by *all* members of the university community? Are whistleblowers afforded sufficient protection? Could interactions interpreted as non-collegial represent a violation of this policy?

BACKGROUND:

We acknowledge understanding the ethics policy annually. Is it clear how whistleblowers are protected? Is it clear how violations are investigated? Do you trust the policy will be enforced fairly in regards to power differentials?

Section IX on whistleblowers – no mention about “illegal” or “dishonest” activity before this section. The policy is really about values and ethical responsibilities. We could eliminate the language “illegal” and “dishonest.” A whistleblower could be defined as someone who “acts in good faith to report violations of the policy.”

The Faculty Advocate was concerned about the sentence regarding retaliation against whistleblowers – that they must report retaliation to HR “immediately.” What if someone is blowing the whistle on someone in HR? What does “immediately” mean? There should be another person to report to.

How does NKU protect against retaliation? It is unclear. There is no explanation regarding how to protect against retaliation. The sentence on curtailment of protection is problematic – “... does not preclude the university from addressing performance or behavioral issues with employees as appropriate.” This is a very vague statement – what constitutes “appropriate”? This statement could be removed from the policy.

We could replace “illegal” and “dishonest” with “ethical or compliance violations.”

If there are going to be investigations, there needs to be procedures in place to conduct them. There are no identified procedures for this.

#### DISCUSSION:

-- We need to identify an umbrella of activities this policy addresses. If investigations have happened in the past, we need to identify what those procedures were.

-- We want to make sure the manner in which past investigations have happened wasn't “made up on the fly.” We want to ensure fairness. We want to go beyond identifying what part of the university conducts investigations and define a procedure for investigations.

-- There is a lot of language and direction on grievances related to tenure that could be a possible framework here.

-- The current policy in section VI says any adverse employment action should happen only pursuant to applicable university handbooks, policies, and procedures. The ethics policy might be used for things at less than the level of employment action. It is very important that anything involving employment action NOT include divisions of the university like HR. We shouldn't weaken tenure protections. These issues involve faculty committees that determine if

there is a basis to remove a tenured faculty member. HR is not capable of running such an investigation – the faculty is far more capable. Outsourcing investigations would lead to lower quality investigations and could weaken tenure.

-- While the investigations are outsourced – legal compliance, internal auditing, HR – actions regarding violations are pursuant to the Handbook, etc.

-- No action would be taken by a faculty committee unless the investigation is a high enough quality.

-- Faculty Advocate: The FA refers faculty with issue to the ethics policy – that has been useful. The proposed changes will make it less useful. Part of the problem is the term “whistleblower,” if the problem being reported isn’t “illegal” or “dishonest”—then the policy doesn’t apply and the person reporting the issue would not be a whistleblower. The existing policy without changes is better than the suggested revisions even with slightly modified language. How does the administration currently use the policy? The process is still internal to the university. Some department chairs have advised faculty to not go forward with complaints due to the power of the person the complaint is against. If there are people with that much power, what kind of retaliation could happen if someone were to make an allegation?

Historical Perspective: When this policy was first passed by the BoR it was done in a “closed session.” The faculty did not see this policy until years later. It came out to faculty around the time NKU was considering going Division 1 in athletics. The faculty did not rubber stamp the policy – significant changes had to be made. The changes required by the faculty made the policy more broadly applicable. With the suggested draft policy changes, faculty would need to get an attorney and sue or go to the media. That would not be good for the university. We don’t know the intent of those who proposed changes.

-- The changes were proposed by the internal auditor, not by legal counsel or the administration. The intent was to make clear what we are already doing. There is already anti-retaliation language in the Sexual Misconduct policy and Research Misconduct policy. The intent was for this policy to align with those.

-- Question to Faculty Advocate: Should the new sections be removed or is the problem with how the new sections are written?

-- The Faculty Advocate suggested adding that “the work of faculty needs to be evaluated on its true merit” in the same way the document already says the work of students needs to be. Example, what if the Department Chair oversees three disciplines and wants to get rid of one of them. Raises only go to those in the Chair’s discipline. This is not illegal or dishonest, but it is unethical, so a person who reports this activity is not a whistleblower under the policy as drafted. The ethics policy has been useful in cases like that. We need to reject the changes proposed in the draft policy.

-- University Counsel Joan Gates could be invited to the next meeting to clarify what this policy means. (This is supported by the Faculty Advocate.)

-- The correct language needs to be used. For action to be taken, it needs to be

clear that there is a “formal complaint.”

ACTION:

-- K. Fuegen will request that University Counsel Joan Gates attend the next PCC meeting.

**5. Adjournment**

- a) The meeting adjourned at 4:31pm.

Submitted,

M. Providenti, Secretary