

Grace Hiles

From: Kenneth Katkin
Sent: Thursday, November 10, 2016 5:51 PM
To: Steven Weiss; Alexis Miller; Brooke Buckley; Steven Finke; Kimberly McErlane; Jane Hammons; Andrea Watkins; Kirsten Schwarz; Blas Puente-Baldoceda; Mauricio Torres; Kurt Sander; Jaesook Gilbert; Young Kim; Donelle Dreese; Gary Newell; John Farrar; RACHELE VOGELPOHL; Sharlotte Neely; Kalyani Ankem; Linda Wermeling; Cory Scheadler; Michael Carrell; SHAWN NORDHEIM; Kathleen Fuegen; Tracey Bonner; Belle Zembrodt; Shannon Alexander; Hayley Ericksen; Kenneth Katkin
Cc: Michael Baranowski; Grace Hiles; Sue Ott Rowlands; Samantha Langley
Subject: Agenda for Nov 17 PCC Meeting (w/ attachments)
Attachments: Centers & Institutes - PCC Members Comments.docx; Centers & Institutes - Policy Proposal.pdf; Financial Conflict of Interest Disclosure For Research.pdf; Gag Order Case - 10-27-16 Order re Discovery.pdf; Gag Order Case - 11-03-16 Order Granting Motion for Partial Dismissal.pdf; IP Draft NKU IP Policy.docx; IP FAQs2.docx; IP Technology Commercialization Processes.docx; PCC minutes 11-3-2016.docx

PCC Members (2016-17)----

Attached please find the Agenda for next PCC Meeting, which will take place on Thurs Nov 17 at 3:15pm in Room SU 109.

The Agenda for Nov 17 begins with a voting item on the University's new policy proposal on Establishing, Reviewing, And Discontinuing Academic Centers & Institutes, which is currently out for public comment. The attached draft policy document associated with this item is also online at: http://policy.nku.edu/content/dam/policy/docs/a-through-z-policy-finder/CommentPeriod_EstablishingDiscReviewCenters.pdf. This is the same document that was previously distributed with the Agenda for our Oct 20 and Nov 3 meetings. If you have any additional suggestions for edits to this document, I would be grateful if you could get them to me in writing before the meeting. The second document associated with this item contains a compilation of all such comments that I have already received, which is a new document that has not been previously distributed.

Second on our Agenda is a voting item concerning the proposed new Intellectual Property policy for the University. Dr. Samantha Langley-Turnbaugh, VP for Graduate Education, Research, and Outreach, visited with PCC at our Nov 3 Meeting to discuss this item. The three attached documents associated with this item are the same documents that were previously distributed with the Agendas for our Oct 20 and Nov 3 meetings. To facilitate our discussion of this item, I plan to complete some written comments on this policy which I will distribute to PCC as soon as I can.

Third on our Agenda is a discussion item on a new proposed policy on Financial Conflict of Interest Disclosure For Research, which is currently out for public comment. At the Nov 17 Meeting, I will ask whether PCC would like to weigh in on this proposal.

Finally, although the item is no longer on our Agenda, at President Mearns' request I have attached Judge Bertelsman's two most recent orders in the Jane Doe case. Neither of these orders bears on the gag order issue that was the subject of our resolution, or on the underlying Title IX issue. During my Chair's report at the meeting, I will briefly summarize the contents of these two court orders.

Some additional items are listed on the Agenda, but I do not anticipate actually reaching any of them. I am merely listing them on the Agenda because they are open PCC items that will return to the Agenda in a near-future meeting.

Although we already have a busy docket, please let me know if you have any other items that you think PCC should consider taking up.

Best,
--Ken Katkin, PCC Chair (2016-17)
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Professional Concerns Committee Agenda for Nov 17, 2016

SU 109
3:15 pm

1. Call to Order, Adoption of Agenda
2. Approval of Minutes from PCC Meeting of Nov 03, 2016
3. Chair's Report and Announcements
4. Old Business
 - Voting Item: **Reviewing Centers & Institutes** (2 attachments)
 - Discussion Item: **Intellectual Property Policy** (3 attachments)
5. New Business
 - Discussion Item: **Financial Conflict of Interest Disclosure For Research** (1 attachment)
6. Old Business - For Future Meeting
 - Discussion Item: **Academic Freedom of Faculty Members**
 - Discussion Item: **Evaluation of Administrators**
 - Discussion Item: **Faculty Senate Role in NKU Policymaking Process** (no attachments)
 - Discussion Item: **NKU Information Security Policy**
8. Adjournment

**Professional Concerns Committee
Minutes for November 3, 2016**

**SU 109
3:15 pm**

Members in Attendance: K. McErlane, S. Alexander, K. Schwarz, K. Ankem, K. Katkin, J. Farrar, S. Weiss, Caroline Macke (Sub. for L. Wermeling), D. Dreese, Y. Kim, H. Ericksen, B. Buckley, M. Carrell, K. Sander, A. Miller, K. Fuegen, S. Neely, J. Hammons, Lynne Smith (Sub. for J. Gilbert), T. Bonner, B. Zembrodt, S. Finke, B. Puente-Baldoceda

Members Not in Attendance: G. Newell, A. Watkins, M. Torres

Guests: Provost Sue Ott Rowlands, Vice Provost Sam Langley

1. Call to Order. The meeting was called to order at 3:15.

2. Adoption of Agenda. Agenda was adopted

3. Approval of Minutes from PCC Meeting of Oct 20, 2016. The minutes were adopted.

4. Chair's Report and Announcements

At its October 24 Meeting, the Faculty Senate approved the PCC's Recommended Amendment to the provision of the NKU Faculty Handbook that deals with Human Subjects Research. The Senate also discussed PCC's proposed revisions to the handbook provisions on tuition waiver benefits for faculty members with non-recurring contracts. Argument over the level of detail to be included in the Handbook. We will wait and see what Faculty Senate will do at its next meeting on November 28.

K. Katkin has heard from several faculty members who are adversely affected by the new NKU policy that restricts the participation of emeritus faculty members on grant-funded or sponsored research. Although the comment window is closed, should we nonetheless recommend that the policy be revised? We may not have people to take over role of PI in the event of retirement. Is there a policy about post-docs as PIs? Another concern is that funding sources are available for retired faculty. Provost said we could make exceptions. She suggested that for the time being, faculty members send concerns to her to see if they have already been addressed.

Faculty Regent announced that the advancement office is being spun off to NKU foundation and will not be part of NKU. Does this affect priorities for funding and allocations? Will they have more say in spending priorities? Budget committee will look at that.

Faculty Senate President has applied for sabbatical. Elections for all officers will take place 15 minutes before the beginning of the January Faculty Senate meeting.

Benefits committee reported that applications for sabbaticals are down.

5. New Business

- Discussion Item: **Intellectual Property Policy** (3 attachments)

Guest: Dr. Samantha Langley-Turnbaugh, VP for Graduate Education, Research, and Outreach

K. Katkin reported that the current intellectual property is widely considered to be faculty-unfriendly and confusing. For that reason, at the request of PCC, the administration has been working on revisions to the policy. Dr. Langley visited PCC in Spring 2016 to solicit input. Dr. Langley also consulted intellectual property policies in effect at other institutions in the region. She then prepared the new draft policy, which has been vetted through University Counsel's office and NKU Foundation Board. Dr. Langley explained the changes were intended to provide:

1. Clearer document
2. More faculty friendly – royalty sharing
3. More friendly to student work

K. Katkin stated that he appreciated Dr. Langley's efforts to address faculty concerns and to draft a more faculty-friendly policy. However, with respect to copyrights, K. Katkin questioned whether the new draft policy is, in fact, any clearer or more faculty-friendly than the policy currently in effect. K. Katkin noted that the new policy appears to have been drafted with patent rights in mind, and that it did not seem well-tailored to copyrights, which are the intellectual property rights that most faculty members will be concerned about. Additional conversation ensued. PCC Members raised questions about what would be considered a substantial university contribution, copyrights vs. patents, etc. K. Katkin volunteered to work on more specific language, which Dr. Langley said she would be happy to review.

6. Old Business

- Voting Item: **NKU Seeks Gag Order** (3 attachments with hyperlinks).

On October 18, 2016, U.S. District Judge William Bertelsman ruled from the bench that he was denying the University's request to impose a gag order against our student Jane Doe. Two days later, on Oct 20, 2016, President Mearns addressed the PCC concerning this item. Following President Mearns's presentation, on Oct 20 the PCC took up this item, but postponed its vote until Nov 3.

On Oct 24, 2016, Judge Bertelsman's ruling denying the gag order was memorialized in a written Order which explained why the University's request lacked legal merit. This Order was distributed to PCC. In addition, at the request of Faculty Senate President M. Baranowski, a draft "Q & A" document was also distributed to PCC, for possible recommendation to Faculty Senate as a means of explaining any resolution that PCC might recommend.

PCC began by reviewing the language of the proposed resolution. To maintain parliamentary rules of order, a substitution motion was made and seconded to strike the executive committee proposal. The motion was approved with only one no. A motion was then made to merge the two proposed resolutions. It was seconded and approved. A motion was then made to replace *disapproves and disavows* with *respectfully disagrees* and to take out second *disrespectfully*. The motion was seconded, a vote was taken and the motion was approved. Finally, as amended, the revised proposal was approved with the following language.

Revised Proposal: Be it resolved that the Faculty Senate of Northern Kentucky University respectfully disagrees with the University's efforts to obtain a gag order to prohibit our student Jane Doe from talking with reporters about the university's response to her campus sexual assault and recommends that the University, in the future, not seek to prohibit students from talking with the media about matters having to do with the University and its policies.

The document with Q&A about the faculty senate gag order resolution was reviewed. A motion was made to delete the sections on retaliation and on timing. The motion was seconded and approved. As amended, the revised Q&A document was then approved.

The document dated Oct 20 and entitled "Revised Draft Resolution of Disapproval of NKU's Decision To Seek Judicial Gag Order Against NKU Student" was reviewed. This is the document that sets forth PCC's analysis of the NKU policy documents that set forth the ethical values pertinent to the gag order dispute. A motion was made to delete the section on retaliation, seconded, and approved. As amended, the revised document was then approved.

All of these documents will be forwarded to Faculty Senate for further action.

7. The meeting was adjourned at 5:15.

Respectfully, submitted,
Belle Zembrodt

RESOLUTION

To: Faculty Senate
From: PCC
Date: Nov 3, 2016
Re: Recommended Resolution of Faculty Disagreement with NKU's Decision To Seek Judicial Gag Order Against NKU Student

Proposed Faculty Senate Resolution (Voting Item):

Revised Proposal: Be it resolved that the Faculty Senate of Northern Kentucky University respectfully disagrees with the University's efforts to obtain a gag order to prohibit our student Jane Doe from talking with reporters about the university's response to her campus sexual assault and recommends that the University, in the future, not seek to prohibit students from talking with the media about matters having to do with the University and its policies.

BACKGROUND:

(Included for explanatory purposes, not to be voted by Faculty Senate).

On August 26, 2016, NKU asked a federal district court to enter a "gag order" against one of our students. During her first semester at NKU in Fall 2013, this student—known pseudonymously as "Jane Doe"—was sexually assaulted by another NKU student. She reported the incident to the university, which investigated her claim. Following a hearing that was conducted pursuant to established university policies, a three-person panel consisting of one faculty member, one staff member, and one student determined by a preponderance of the evidence that the male student had performed "nonconsensual sexual intercourse" on Jane Doe. At the panel's recommendation, the male student was suspended for one semester and ordered to stay away from Jane Doe. Jane Doe alleges that the male student did not subsequently stay away from Jane Doe, though the University denies this allegation.

Eventually, Jane Doe sued the university under Title IX of the Civil Rights Act of 1964, as amended. Jane Doe's lawsuit is currently pending in United States District Court. Before and since filing this lawsuit, both on-campus and off, Jane Doe and her attorney have talked about this lawsuit and the underlying events that led to it, and seemingly have sought to generate news coverage of the case. The case has been covered by the Cincinnati Enquirer, the Northern Kentucky Tribune, and The Northerner.

On August 26, 2016, in response to Jane Doe’s lawsuit, NKU asked the federal district court presiding over the case “to grant a gag order prohibiting [Jane Doe] from any further communication with the press regarding the merits or allegations of this case. . . .” The University told the court that without such a gag order, news coverage of Jane Doe’s statements would make it difficult to seat an unbiased jury in the case. The University also told the Court that it would be unfair to allow the plaintiff to talk about the case with reporters while the University believes that its own obligation to protect student privacy precludes it from doing so. On October 18, 2016, U.S. District Judge William O. Bertelsman denied the University’s request for a gag order against Jane Doe and her attorney, and also denied the University’s related motion to “seal” (i.e. keep secret) transcripts of depositions in the case. Judge Bertelsman’s decision was published in a written Order on October 24, 2016.

The Faculty Senate takes no view on the legal issues in the case or on the underlying facts, except to the extent those facts are summarized above. However, the Faculty Senate is gravely concerned that the University’s decision to seek a gag order against one of our students cannot be reconciled with some of the basic values of our university community.

Freedom of Speech

As amended by the Board of Regents in May 2016 following a long and inclusive vetting process, the [NKU Values & Ethical Responsibilities Statement](#) identifies the promotion of freedom of speech as one of our core ethical values. It provides:

University community members are expected to . . . [p]romote academic freedom, including the freedom to discuss relevant matters in the classroom, with fellow NKU community members, and with the public. . . . The freedom of speech of community members includes the freedom to express their views on matters having to do with their institution and its policies. This freedom should be accorded – and rights to it protected – because grounds for thinking an institutional policy desirable or undesirable must be heard and assessed if the community is to have confidence that its policies are appropriate.

In filing its request for this gag order, the university has sought to prevent Jane Doe from expressing her views on matters having to do with NKU and its policies. The Faculty Senate has grave concern that this action contravenes our ethical obligation to promote the individual freedom of NKU community members to discuss such relevant matters, both with fellow NKU community members and with the public.

Relatedly, the NKU [Code of Student Rights and Responsibilities](#) also recognizes NKU’s obligation to ensure that our students enjoy the freedom of speech, both on and off campus. As approved by the NKU Board of Regents on November 21, 2012, the Code’s Preamble provides:

The Code of Student Rights and Responsibilities is designed to ensure that Northern Kentucky University students shall enjoy intellectual freedom, fair and legal treatment, the freedom of speech both on and off campus, freedom of press, the right of peaceable assembly, the right to petition for redress of grievances, the right to a fair hearing of charges made against one, and the right to responsible participation in the university community. Rights imply responsibilities; therefore members of the University community must show both initiative and restraint. The Code is designed neither to be exhaustive nor to encompass all possible relationships between students and the institution. This document is endorsed by the Student Government Association, Faculty Senate, Staff Congress and University Administration, and approved by the Northern Kentucky University Board of Regents. The Code is not rigid or unchangeable. As the relationship between students and the University continues to grow, it may be necessary to modify the Code.

The Faculty Senate believes that the university's decision to seek a judicial gag order is intended improperly to interfere with the right of an NKU student, Jane Doe, to enjoy "the freedom of speech both on and off campus."

Transparency and Accountability

NKU's Mission Statement identifies transparency and accountability as key components of "institutional excellence," which is another of our community's core values. Like the [NKU Values & Ethical Responsibilities Statement](#), the University's Mission Statement is the product of a long and inclusive vetting process that involved every campus constituency. The Mission Statement is included within the university publication entitled "[Fuel The Flame](#)," which further elaborates on the University's aspirations and values. One of NKU's goals and values is "Institutional Excellence." In [Fuel The Flame](#), "Institutional Excellence" is defined as follows:

Institutional excellence lays the foundation for student success. Our ability to achieve our vision rests with faculty who are passionate about **student-centered learning** and staff and administrators who are dedicated to providing outstanding service and leadership. In order to sustain and nurture this valuable resource, we will take aggressive steps to secure our financial future, improve effectiveness across all dimensions of our work, and **hold ourselves accountable to the public and others who invest in our future.**

The Faculty Senate questions whether the university's effort to suppress public discussion of our response to a campus sexual assault properly holds ourselves accountable to the public and others who invest in our future. Moreover, the Faculty Senate also questions whether the effort to silence Jane Doe reflects the passion for student-centered learning that is extolled in our Mission Statement.

DOCUMENTS APPENDIX

The full text of the [NKU Values & Ethical Responsibilities Statement](#) is online at:

<<http://policy.nku.edu/content/dam/policy/docs/a-through-z-policy-finder/ValuesandEthicalResponsibilities.pdf>>.

The full text of the NKU [Code of Student Rights and Responsibilities](#) is online at:

<<http://scra.nku.edu/Infostudents/Infostudents.html>>.

The full text of the “[Fuel the Flame](#)” document is online at:

<<http://fueltheflame.nku.edu/goals.html>>.

The full-text of NKU’s “**Motion To Enter Gag Order**,” which was filed in United States District Court on Aug 26, 2016 is online at:

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

The full-text of Judge Bertelsman’s Order **denying** NKU’s “**Motion To Enter Gag Order**,” which was published on Oct 24, 2016 is online at:

< <https://www.scribd.com/document/328764045/Eng-NKU-2016-10-24-Memorandum-Opinion-and-Order>>.

The plaintiff’s original complaint that initiated the underlying Title IX lawsuit—and NKU’s response—both are available online at:

<<http://www.nkytribune.com/wp-content/uploads/2016/02/Doe-NKU-Complaint.pdf>>.

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

Judge Bertelsman’s Order to NKU to turn over documents about sexual assaults (dated Oct 27, 2016):

< <http://www.nkytribune.com/wp-content/uploads/2016/10/10-27-16-Doc.-112-Order.pdf>>.

Judge Bertelsman’s Order dismissing some of Jane Doe’s claims (dated Nov 3, 2016) is available online at:

<http://www.nkytribune.com/wp-content/uploads/2016/11/D.E.-115-Order-Granting-Motion-for-Partial-Dismissal-00754828xA9D25.pdf>

The following news articles report on NKU's request for a gag order, which was filed in United States District Court on Aug 26, 2016:

The Northerner:

<<http://www.thenortherner.com/news/2016/08/26/nku-seeks-gag-order-sexual-assault-lawsuit/>>.

<<http://www.thenortherner.com/feature-on-homepage/2016/10/19/judge-denies-gag-order-sexual-assault-lawsuit/>>.

The Cincinnati/Kentucky Enquirer:

<<http://www.cincinnati.com/story/news/your-watchdog/2016/08/26/nku-asks-gag-order-sex-assault-lawsuit/89425004/>>.

<<http://www.cincinnati.com/story/news/your-watchdog/2016/10/24/nku-gag-order-sexual-assault-lawsuit-denied-lawyers-sanctioned/92694368/>>

Northern Kentucky Tribune:

<<http://www.nkytribune.com/2016/08/northern-kentucky-university-files-motion-for-gag-order-in-doe-rape-case-cites-possible-juror-bias/>>.

<<http://www.nkytribune.com/2016/10/judge-sanctions-nku-awards-fees-for-issues-related-to-bothoffs-deposition-in-jane-doe-case/>>.

<<http://www.nkytribune.com/2016/10/judges-order-in-doe-vs-nku-court-tells-university-to-turn-over-all-documents-about-sexual-assaults-on-campus/>>.

<<http://www.nkytribune.com/2016/11/bertlesman-rules-for-dismissal-of-jane-does-suit-relative-to-current-nku-officials-as-individuals/>>.

Faculty Senate Gag Order Resolution: Q&A

Q: What is going on?

A: In Fall 2013, a female first-year student known pseudonymously as Jane Doe reported having been sexually assaulted by a fellow NKU student. Following an investigation and a hearing conducted pursuant to established university policies, a three-person panel consisting of one faculty member, one staff member, and one student determined by a preponderance of the evidence that the male student had performed “nonconsensual sexual intercourse” on Jane Doe. Dissatisfied with NKU’s subsequent follow-up to this finding, in January 2016 Jane Doe sued the university.

Jane Doe’s lawsuit, which remains pending, has been covered in the local press. On August 26, 2016, NKU asked the court “to grant a gag order prohibiting [Jane Doe] from any further communication with the press regarding the merits or allegations of this case. . . .” On October 18, 2016, U.S. District Judge William O. Bertelsman denied the University’s request for a gag order. The PCC believes that the University’s decision to seek a gag order against Jane Doe cannot be reconciled with some of the basic values of our university community.

Q: Does the Faculty Senate have jurisdiction to take up this issue?

A: Yes, the Faculty Senate Constitution authorizes us “to discuss all matters relating to the well being of the University” and to “evaluate university . . . practices and recommend such improvements as seem warranted.” In his remarks to PCC on Oct 20, 2016, President Mearns acknowledged the Senate’s right to comment on this matter, either through a formal resolution or through candid conversations.

Q: Why should the Senate care about this issue?

A: The Statement on Collegial Governance at NKU (set forth in Appendix C of the NKU Faculty Handbook) provides that “[a]ll colleagues in the system, regardless of their respective roles as faculty or administrators, have an obligation to honor and support the decisions reached through the collegial process.” The Faculty Senate thus has a responsibility to honor and support decisions that have been reached through the collegial process, and to insist that administrators do so, as well. On Oct 20, 2016, President Mearns told the PCC that he respects the role of the faculty in upholding the values and guiding principles of the university.

Q: What “decisions made through the collegial process” are we talking about?

A: In the PCC’s view, the University’s decision to seek a gag order against a student contravenes provisions of: (1) The [NKU Values & Ethical Responsibilities Statement](#), (2) the NKU [Code of Student Rights and Responsibilities](#), and (3) the University’s Mission Statement set forth in the publication entitled “[Fuel The Flame](#).” All three of these documents memorialize decisions that were reached by the faculty and the administration through the collegial process.

Q: Do those documents really say that the university should not seek a gag order against a student?

A: The above-mentioned documents identify NKU’s ethical and institutional values as follows:

- o **Freedom of Speech:** The [NKU Values & Ethical Responsibilities Statement](#) states that university community members must promote the freedom to express one’s views on matters having to do with our institution and its policies, both with fellow NKU community members and with the public. The NKU [Code of Student Rights and Responsibilities](#) likewise recognizes NKU’s obligation to ensure that our students enjoy the freedom of speech, both on and off campus.
- o **Transparency and Accountability:** NKU’s Mission Statement identifies transparency and accountability as key components of “institutional excellence,” which is another of our community’s core values. The [Fuel The Flame](#) document promises that in order to achieve institutional excellence, “we will take aggressive steps to . . . hold ourselves accountable to the public and others who invest in our future.”

After due deliberation, the PCC concluded that the university’s decision to seek a gag order was inconsistent with the statements of principle set forth in these documents.

Q: Isn’t a gag order needed to preserve the integrity of the judicial process in this case?

A: United States District Judge William Bertelsman ruled that a gag order is not needed to preserve the integrity of the judicial process in this case. Instead, Judge Bertelsman noted that “[t]he Court draws its jurors from twenty counties having a collective population of over 300,000. If a panel of forty jurors is called, in the Court’s experience, fewer than ten would have encountered any publicity concerning this case.”

Q: Isn't a gag order needed to protect the university against an adverse money judgment in the case?

A: NKU's insurance policy will cover the cost of any adverse money judgment in this case. But even if it wouldn't: in ruling that a gag order is not needed to preserve the integrity of the judicial process in this case, Judge Bertelsman found that the court was capable of ensuring that the outcome of the case would not be affected by media coverage.

Q: Isn't a gag order needed to protect the federal privacy rights of other students?

A: Judge Bertelsman ruled that a gag order is not needed to protect the federal privacy rights of other students. In fact, a university official also invoked the need to protect the federal privacy rights of our students when he refused to answer questions posed to him in a deposition. Judge Bertelsman ruled that that the claim of need was exaggerated and the refusal to answer was improper. He therefore ordered the university to pay the student's lawyer for time spent dealing with this claim.

Q: Does this mean that the names of NKU students (including innocent bystanders) will be published in the press in connection with reports of a campus sexual assault?

A: While denying the gag order, Judge Bertelsman reaffirmed that NKU's records that might be pertinent to the litigation "may be redacted to remove student's name and other identifying information." He also directed the parties to reach an agreement that will govern (and generally prohibit) disclosure of such information. Meanwhile, although this litigation has received some media attention, no NKU students have been identified in any of the press coverage—even though no gag order has ever been imposed.

Q: Isn't a gag order needed to protect the reputation of the university?

A: Holding ourselves accountable and transparent to the public is one of our core values. The university should protect its reputation by responding to public criticism, not by seeking to censor or suppress it.

Q: The Faculty Senate does not know the facts of this case. How can we comment on it?

A: Judge Bertelsman does know the facts of the case relevant to the university's request for a gag order. He found that those facts do not justify a gag order. In light of NKU's stated ethical values, it is difficult to imagine any set of facts that could fall short of meeting the legal standard for a gag order, but nonetheless justify suppressing a student's right to speak publicly about the university's response to her campus sexual assault under our own standards.

Q: The Faculty Senate is not a body of lawyers. How can we second-guess legal judgments that have been made by the university's lawyers?

A: The proposed Faculty Senate Resolution takes no view on any legal issues in the case. It simply expresses Senate's concern that the University's decision to seek a gag order against one of our students cannot be reconciled with some of the basic values of our university community. The Faculty Senate is fully competent to interpret the NKU policy documents that set forth our own community's basic values.

Q: But what if our ethical values conflict with the university's legal responsibilities?

A: Judge Bertelsman has ruled that NKU did not have any legal responsibility to seek a gag order against Jane Doe, or any legal right to obtain one.

Q: Is Jane Doe still a student at NKU?

A: Yes.

Q: Judge Bertelsman has already denied NKU's request for a gag order. He has also ordered NKU to pay some of the plaintiff's legal bills. Media coverage of NKU's request for a gag order has been uniformly negative. NKU has achieved no benefit from seeking a gag order. The University has probably learned its lesson. What does Faculty Senate hope to gain by piling on?

A: The Faculty Senate is the official representative body of the General Faculty of Northern Kentucky University. By issuing this resolution, the Faculty Senate hopes:

- to formally express the sense of the faculty that the university committed a serious wrong by seeking to prevent a student from speaking publicly about the university's response to her campus sexual assault;
- to fulfill the faculty's responsibility to promote and interpret the values set forth in the NKU Values & Ethical Responsibilities Statement and other campus policy documents promulgated through shared governance processes;
- to fulfill the special role of the faculty in protecting and promoting freedom of speech (and academic freedom) on campus, which includes an obligation to speak out against censorship;
- to defend students' rights;
- to avoid communicating through silence that the faculty condones the University's efforts to censor a student;
- to reduce the chances that the university will seek to censor the speech of students or faculty members in the future.

ESTABLISHING, REVIEWING, AND DISCONTINUING ACADEMIC CENTERS & INSTITUTES

POLICY NUMBER: RESERVED FOR FUTURE USE

POLICY TYPE: HYBRID - ACADEMIC/ADMIN

RESPONSIBLE OFFICIAL TITLE: VICE PROVOST FOR GRADUATE EDUCATION, RESEARCH, AND OUTREACH

RESPONSIBLE OFFICE: OFFICE OF THE VICE PROVOST FOR GRADUATE EDUCATION, RESEARCH, AND OUTREACH

EFFECTIVE DATE: UPON PRESIDENTIAL APPROVAL

NEXT REVIEW DATE: PRESIDENTIAL APPROVAL DATE PLUS FOUR YEARS

SUPERSEDES POLICY DATED: N/A

REQUIRES LEGAL/COMPLIANCE REVIEW:

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

REQUIRES I.T. POLICY COUNCIL REVIEW:

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

REQUIRES PROFESSIONAL CONCERNS COMMITTEE REVIEW:

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

REQUIRES HUMAN RESOURCES REVIEW:

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

REQUIRES BOARD OF REGENTS APPROVAL:

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

I. POLICY STATEMENT

Academic centers and institutes at Northern Kentucky University (NKU) are administrative units that are established to strengthen and enrich the University's core mission of teaching, research, and public service. Centers and institutes foster the interdisciplinary collaboration that provides enhanced opportunities for faculty, staff, and students and heightens the University's impact regionally and statewide. Centers and institutes are partnerships that maximize the capacities of NKU as a whole and reduce duplication within it. The University recognizes that academic centers/institutes require a commitment of resources (including faculty, staff and space). Therefore guidelines need to be explicit regarding the criteria for establishing centers and institutes, an understanding of the expectations regarding outcomes, the need for annual reports and periodic reviews, and mechanisms for discontinuing academic centers and institutes

II. ENTITIES AFFECTED

Describe the positions, units, departments, groups of people, or other constituencies to which the policy applies or has a material effect.

Academic Affairs, including the Provost's Office, college deans, department chairs, center directors and staff; Administration & Finance; Advancement; Human Resources; Legal Affairs; Student Affairs

III. AUTHORITY

If applicable, please provide citations to any sources of authority for the policy. Examples include state or federal laws, Governing regulations, Board of Regents minutes, or an external accreditation agency.

[Click here to enter text.](#)

IV. DEFINITIONS

Define any terms within the policy that would help in the understanding or interpretation of the policy.

For the purposes of classification within NKU, the term institute may also refer to a unit with a broader scope of activity than a center and may indicate a unit that contains smaller centers as separate units within its administrative structure. It is expected that most institutes would involve faculty from multiple departments and schools/colleges. Centers and institutes endeavor to cross disciplinary and departmental lines in order to advance knowledge in new directions or provide services to new constituencies. Although centers and institutes do not have primary jurisdiction over academic curricula, they may offer courses in cooperation with academic units.

This policy excludes those Centers or Institutes that are physically located at NKU, but not funded by NKU.

A center or institute will identify its primary focus within the university mission: research, instruction or outreach.

- A research center or institute has research as its primary mission. Although classified as a research center, such a unit may also provide instruction, training, technical assistance, or public service programs. Although such units do not have jurisdiction over academic curricula, they may offer courses in cooperation with academic units.
- An outreach center or institute has public service or technical assistance as its primary mission. Research, instruction, and training activities may also be conducted as secondary components of the mission. Although such units do not have jurisdiction over academic curricula, they may offer courses in cooperation with academic units.
- An instructional center or institute has training or instruction as its primary mission. These units may also conduct research and public service activities. Although instructional centers and institutes do not have primary jurisdiction over academic curricula, they may offer courses in cooperation with academic units.

VII. PROCEDURES

*Describe the **MINIMUM ACTIONS** required to fulfill the policy's requirements. This section should **NOT INCLUDE** internal protocols, guidelines, optional or purely desirable actions.*

1. Center Oversight

At Northern Kentucky University, academic centers and institutes operate within the Division of Academic Affairs and are situated either as a college center/institute or as a center/institute reporting to the Provost or his/her designee. College level centers and institutes will report to the dean of the college or to a department chair within the department. In some instances, transdisciplinary centers/institutes may report to more than one dean or provost designee by virtue of a Stakeholders Committee. In these instances, a 'lead dean' will be appointed by the Provost to convene the Stakeholders Committee. The committee will provide oversight for the transdisciplinary center/institute and will advise the director on programmatic direction.

College-based centers and institutes (as well as those existing within the Office of the Provost) will have a director and an advisory board. Center and institute directors are responsible for the day-to-day programmatic, fiscal, and personnel decisions associated with the center and institute mission and core personnel. The center or institute director will coordinate programmatic activities, seek external funding where appropriate, convene periodic advisory board meetings, respond to assessment and administrative program review processes, and ensure the viability of the center or institute in meeting its objectives. The advisory board has advisory responsibilities to the center or institute and makes recommendations to the director on programmatic direction. The advisory board does not have the authority to make hiring offers to directors or other staff or to access, use, or otherwise control funds associated with the centers and institutes. Centers and institutes will address aspects of their management, such as the appointing and staggering terms of board members, through bylaws, Memoranda of Understanding (MOUs), or other governing documents.

Not later than the fourth year following the initial appointment, and not less frequently than every five years thereafter, each center or institute will undergo a program review, which will include elements of director performance. The Vice Provost for Graduate Education, Research and Outreach will maintain the schedule of center reviews, will initiate the program review, and will meet with the director and his/her supervisor(s) to discuss the outcome of the review. The director is then responsible for implementing the agreed-upon recommendations.

Final authority for the establishment of a center or institute rests with the NKU Board of Regents, upon recommendation of the President.

2. Establishment of a New Academic Center or Institute

The establishment of a new academic center or institute requires careful deliberation that includes a justification of need and the potential for making meaningful contribution. The center or institute should not duplicate activities already being performed elsewhere at NKU and should have a focus that is broader than the work of any one individual. Establishing a new center or institute is a two-phase process consisting of a pre-proposal and a full proposal.

To request authorization to establish a new center or institute, a pre-proposal must be submitted to the Vice Provost for Graduate Education, Research and Outreach. The pre-proposal should include the following information:

- Proposed name and type of center or institute (research, instructional, outreach)
- Relevance of the proposed center or institute to the mission of NKU, specifically how it will further the university's strategic plan
- Mission and goals of the proposed unit and an explanation of how the new unit will be uniquely positioned to meet these objectives
- Description of how the proposed unit might interact with and complement other centers, institutes, and units at NKU and within the commonwealth, and proposed relationships with other relevant units and potential partners
- List of the people and units involved (including the name of the proposed director, if known)
- Organizational structure, including the proposed composition of the advisory board
- Estimated funding needed to initiate and sustain the proposed center or institute for five years and potential sources of funding during that period
- Estimated space, facilities, and equipment needs and plans for meeting these needs
- Proposed timeline for establishing the center or institute

The pre-proposal must include a letter of endorsement from the responsible leader(s) of the proposed administrative location of the center or institute (e.g., dean for a college-level center, department chair and dean for a department-level center, vice provost or vice president for a university-level center).

The Provost, in consultation with the Vice Provost, will review the pre-proposal and communicate a decision regarding permission to submit a formal proposal to the faculty/staff wishing to plan and the leadership of the unit(s) where the new center or institute would be established. An expected timeline for completion of the full proposal will be determined at this time. The planning period will have a maximum duration of two years. If a full proposal is not presented within two years, a new pre-proposal must be submitted. Should the pre-proposal be denied, the Vice Provost will provide a written response detailing reasons for the lack of support.

When planning is complete, the faculty/staff proposing the new academic center or institute will submit a formal proposal to the Vice Provost for Graduate Education, Research and Outreach. The minimum required documentation for the proposal to establish includes:

- A name for the proposed center or institute that appropriately reflects the unit's mission and scope, and is not similar to the name of an existing unit
- The name and contact information for the tenured faculty member(s) who will provide leadership to the center/institute, and a brief description of qualifications
- A list of all participating or affiliated faculty who have confirmed their interest and commitment to actively participate in the establishment of the new center or institute. Rank, department affiliation, expected contribution, and contact information for each participating faculty member must be included in the full proposal.
- Description of the organizational structure, including reporting lines; staffing; description of the membership and function of advisory boards; and an organizational chart showing both the unit's relationship to existing campus units and the internal organization of the unit. Confirmation that all impacted units are familiar with the plan and supportive of the proposal, in the form of letters of support, must be included.
- A mission statement that clearly describes the purpose for establishing the center or institute. An explanation as to how the mission is unique and distinct from other units already established on campus should be included.
- Goals for the new center or institute. What does the center/institute expect to accomplish? The outcomes should be clear and their impact should be measurable. Clearly justify how the center/institute will enhance NKU's reputation.
- The anticipated benefit of the unit's work to the research, instructional, or outreach programs at NKU, and, if inter-institutional arrangements are involved, the anticipated benefit to the participating institutions.
- Description of space, facilities, and equipment needs for the next five years and how those needs will be met.
- A description of how the center will involve and support undergraduate and/or graduate students.
- A five-year budget detailing personnel and non-personnel costs and sources of revenue. Are the necessary funds available? If funds are not already available explain and justify the source of additional funds that will be required to operate the proposed center or institute. Clearly delineate the resources that will be necessary for the sustainability of the center/institute and plans for obtaining them.
- A description of how the achievement of the unit's mission, goals, and objectives will be measured, documented, and assessed.

The Provost, in consultation with the Vice Provost, will assess the request, focusing on the degree to which the proposed center will contribute to the University's mission, objectives and strategic plan; the

proposed budget; and the degree to which sufficient funding can be secured to support the proposed center. The Provost will determine whether to (1) approve the request to establish and forward it to the President for approval or (2) deny the request and communicate that decision to those submitting the proposal. If the Provost recommends that the center or institute be established and the President approves the Provost's recommendation, the President will forward the recommendation to the Board of Regents for final approval.

3. Academic Center or Institute Governance

Once final approval has been granted for the establishment of a new academic center or institute, a charter must be created and approved by the Vice Provost for Graduate Education, Research and Outreach. The official charter will be kept on file in the Vice Provost's office, which will also maintain the schedule for periodic reviews.

4. Termination or Realignment of Academic Centers or Institutes

A center or institute may be discontinued for a variety of reasons, including: financial viability; lack of fit with departmental, college, or institutional missions or objectives; insufficient contributions in terms of mission-driven activity; lack of faculty support.

Any center/institute that has not been reviewed within five years will be automatically discontinued.

The administrative officer to whom the center or institute reports, in collaboration with the center director, will develop a plan for phasing out the unit to allow for orderly termination or transfer of contractual obligations and an effort to find alternative employment for full-time staff. The phase-out period may not be for more than one year after the end of the academic year in which final approval is given to discontinue the center or institute.

The director will provide written notice of intent to terminate or realign an academic center or institute, with copies to appropriate deans and department chairs, to the Vice Provost.

VIII. REPORTING REQUIREMENTS

Describe any required reports related to the policy. Include the position title of the official or name of the department responsible for furnishing the report, and the internal and external bodies to which the report must be provided.

Each center or institute must submit an annual report (based on a template provided) that documents accomplishments and productivity, including funding obtained during the year and a current budget. As well, an updated list of the participating faculty, staff, and advisory board members must be provided, along with an annually updated charter. The report should be submitted to the Vice Provost with copies to the appropriate dean(s), department chair(s), and the Provost. Annual reports are due no later than June 1 each year.

Active centers and institutes will undergo periodic reviews to ensure ongoing alignment with departmental, college and/or institutional missions and resources, success in accomplishing stated objectives, and sound fiscal status and practices. A center or institute must undergo a major evaluation or review at least once every five (5) years. A major review may occur sooner at the discretion of the Provost. Additional or more frequent major evaluations may be necessary if mandated by the center's charter, bylaws, or funding agency.

The purpose of the self-evaluation is to collect data related to the center's goals and objectives, with specific attention to purpose for establishing the center and the accountability plan. Continuation of the center must be justified in order for the center to continue to operate. The self-study should be organized as follows:

- Mission, goals, and objectives, and their relationship to those of the university.
- Degree to which the center's mission, goals, and activities are unique or duplicated elsewhere on campus.
- Key accomplishments (related to goals and objectives) in the past five years in research, instruction, and/or public service and engagement (publications, external funding, outreach services, university/community partnerships, etc.).
 1. External funding data should include – proposals and awards including sponsor, amount requested, and amount funded, PIs and co-PIs and time period
 2. Include full citations of scholarly work
- How and to what extent the center promotes transdisciplinary work
- The ways in which the center/institute has enhanced the scholarly reputation of NKU. This should include a listing of conferences/workshops hosted, keynote addresses and invited presentations, public service, etc.
- Client feedback as appropriate to the mission of the center or institute
- Organizational structure; number and types of personnel; list of affiliated faculty, their position and roles
- Undergraduate and graduate student involved in center/institute projects including their source of support
- Summary budget data for past five years, including amount and sources of funding, changes in funding over the years, number and types of grants and contracts, and administrative costs (see attached sample template)
- Responsible fiscal oversight as determined by the financial audit and professional evaluation that demonstrate that the center or institute is being managed properly
- Vision for the future of the center or institute for the next five years, including program improvement plans. Include a bulleted list of any issues/challenges affecting the center/institutes ability to achieve its objectives in the coming years.
- List of potential external reviewers

The external reviewers report will include an overview of the strengths and weaknesses of the center/institute and will address the following:

- Degree to which the mission of the program is realistic, feasible, and capable of meeting the needs of the university and wider community
- Extent to which the center's mission, goals, and activities are unique or duplicated elsewhere on campus or within NKU
- Degree of success in achieving mission and reaching desired outcomes; adequacy of programs and initiatives in fulfilling research, instruction, and/or public service missions and meeting the needs of constituents and stakeholders
- Quality of the student experience and success in career placement (if applicable).
- Effectiveness of leadership, organizational structure, and administrative resources.
- Quality of institutional relationships
- Adequacy of funding and facilities
- Feasibility of the program's plans for the future
- Recommendations for improving academic and administrative effectiveness

The steps in the review process are provided below:

- The Vice Provost for Graduate Education, Research and Outreach (VPGERO) provides the dean(s) with a list of centers and institutes under his/her area of responsibility that are scheduled for review in the upcoming year. The VPGERO also provides general guidelines for the review process and the required format for the report.
- The VPGERO discusses goals and expected outcomes of the review process with each dean(s).
- Each center/institute is notified of the upcoming review, reporting requirements, and a deadline for report submission.
- The center/institute submits a draft of the report by the specified deadline to the dean(s) and VPGERO for comment before generating a final report. (Note: requests for more information or revision to the report may occur at any step of the review process.)
- The center/institute submits the final report by the specified deadline to the dean(s) and VPGERO.
- VPGERO will select at least three persons (internal or external) with expertise in the field presented by the center under review to review the report and deliver recommendations to the VPGERO.
- The dean(s), VPGERO and Provost discuss the report and consider what steps should follow the review. These alternatives can include:
 - Continuance without Conditions. A recommendation to continue the center/institute without conditions. The next review would be scheduled in five years.
 - Continuance with Recommended Changes or Actions. A recommendation to continue the center/institute with specific provisions (e.g., specified follow-up actions, abbreviated review period, reorganization, consultant visit, etc.).
 - Discontinuance. A recommendation to discontinue the center/institute.
- The Provost, in consultation with the President, makes the final decision and communicates it to the VPGERO, the dean(s), chair(s) and director.

IX. EXCEPTIONS

Describe when exceptions are allowed, the process by which exceptions are granted, and the title of the university official authorized to grant the exception.

In rare instances and on a case-by-case basis, a non-academic center or institute may be created in a division outside of Academic Affairs as defined by the NKU Organizational chart. Such units require the approval of the President. For more information, please contact the Senior Vice President for Administration and Finance.

XII. REFERENCES AND RELATED MATERIALS

REVISION HISTORY

Indicate any revisions to this policy using the table below. Include the type of revision and the month & year the revision was approved

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

Choose an item.

POLICY NAME

APPROVALS

HUMAN RESOURCES REVIEW

SENIOR DIRECTOR, HUMAN RESOURCES

Signature

Date

Lori Southwood

LEGAL & COMPLIANCE CONCURRENT REVIEW

COMPLIANCE OFFICER

Contact Division of Administration & Finance

9/22/2016

Dawn Bell-Gardiner

VICE PRESIDENT FOR LEGAL AFFAIRS/GENERAL COUNSEL, OR ASSOCIATE GENERAL COUNSEL

Contact Division of Administration & Finance

9/22/2016

Printed Name

AAC REVIEW

PROVOST AND EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

Signature

Date

Printed Name

PRE-COMMENT PERIOD EXECUTIVE TEAM REVIEW

PROVOST AND EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

Signature

Date

Printed Name

COMMENT PERIOD**POLICY COORDINATOR**

Signature

Date

Justin Duncan

PROFESSIONAL CONCERNS COMMITTEE REVIEW**CHAIR, PROFESSIONAL CONCERNS COMMITTEE**

Signature

Date

Ken Katkin

FACULTY SENATE**CHAIR, FACULTY SENATE**

Signature

Date

Ken Katkin

FINAL EXECUTIVE TEAM REVIEW**1. ACADEMIC & HYBRID POLICIES****PROVOST AND EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS**

Signature

Date

Sue Ott Rowlands

2. ALL POLICIES**SENIOR VICE PRESIDENT, ADMINISTRATION & FINANCE**

Signature

Date

Sue Hodges Moore

PRESIDENTIAL APPROVAL**PRESIDENT**

Signature

Date

PRESIDENT

Geoffrey S. Mearns

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

- ☐ This policy WAS NOT forwarded to the Board of Regents.
- ☐ This policy WAS forwarded to the Board of Regents.
- ☐ The Board of Regents approved this policy on ____/____/____.
- (Attach a copy of Board of Regents meeting minutes showing approval of policy.)
- ☐ The Board of Regents rejected this policy on ____/____/____.
- (Attach a copy of Board of Regents meeting minutes showing rejection of policy.)

POLICY COORDINATOR

Signature

Date

Printed Name

NORTHERN KENTUCKY NKU

Intellectual Property Policy

This intellectual property policy was approved on.....and replaces all previous Intellectual Property or Patent policies and revisions. It is effectiveas approved by the Board of Regents of Northern Kentucky University.

1. Introduction

Northern Kentucky NKU (NKU) is a public institution devoted to teaching, research, service and other scholarly activities. In the course of conducting their normal scholarly activities, NKU faculty, staff, other employees and students add to the knowledge base. Some of these activities are supported by NKU from its own resources and/or by contracts or grants with outside sponsors. NKU should disseminate such knowledge for the public good. In this context, facilitating the process whereby NKU creative and scholarly works may be put to public use and/or commercial application is an important aspect of the service mission of NKU. This document defines and established the respective rights, equities and obligations of NKU and its scholars and employees to any copyrightable or patentable materials, inventions or discoveries (hereinafter referred to as intellectual property), resulting from their work. Generally speaking, ownership of patentable work is vested in the NKU. Copyrightable works are subdivided into Traditional Works of Scholarship, ownership of which remains with the Creator of the work, and NKU Works, as to which the NKU retains ownership. The revenues from intellectual property owned by NKU are distributed according to the formula set out in this policy. The income that may result from this activity should be used to assist NKU and its employees by furthering their academic roles, as required by law and NKU policy.

2. Definitions

- A. **“Invention”** shall include but is not limited to any discovery, process, composition of matter, article of manufacture, know-how, design, model, technological development, biological material, strain, variety, culture of any organism, or portion, modification, translation, or extension of these items, which is or may be patentable or which may be commercially licensable, and any mark used in connection with these items.
- B. **“Patentable Intellectual Property”** describes inventions, discoveries, and manufacturing designs that have been conceived or reduced to practice, and are novel, useful, and non-obvious, and therefore likely to be subject to protection under United States patent law. It also includes, but it not limited to, the physical embodiments of intellectual effort, such as machines, devices, apparatus, instrumentation, computer programs, and biological materials.

- C. **“Copyrightable Intellectual Property”** describes original works of authorship that have been fixed in a tangible medium of expression, including books, articles, artwork, music, dramatic works, sound recordings, software, traditional or electronic correspondence, and instructional materials (including online instructional materials), that are likely to be subject to protection under United States copyright law.
- D. **“Creator”** shall include faculty (including part-time, visiting and lecturer appointments), visiting researchers, staff, administrators, students, volunteers, any groups or combinations thereof, and any others using funds, facilities or resources of NKU as the authors, creators, or inventors of Intellectual Property.
- E. **“Traditional Works of Scholarship”** are scholarly and creative works regardless of their form, which are created by academic appointees or students, and which have not been the subject of Exceptional NKU Support or external contracts or grants. Examples of Traditional Works of Scholarship include scholarly publications, journal articles, research bulletins, monographs, books, play scripts, theatrical productions, poems, works of music and art, instructional materials, and non-patentable software.
- F. **“Exceptional NKU Support”** is financial or other support (facilities, equipment, etc.) for research and teaching activities that exceeds the norm for a faculty member or student’s research or for teaching in his or her field or department. The term does not include the use of personal office space, local telephone, library resources and personal computer equipment. The following examples define exceptional NKU support when they are applied in support of a revenue producing work. It is the responsibility of the dean or equivalent supervisor in concert with the Vice Provost of Graduate Education, Research and Outreach to evaluate situations and determine whether exceptional NKU support has occurred. Faculty members or other employees have an obligation to notify their supervisor when they believe their work will involve more than incidental use.
- i. Extended use of time and energy by the creators in creation of a work that results in a reduction in the levels of teaching, scholarship or other NKU assigned activities.
 - ii. Greater than incidental use of NKU facilities such as laboratories, studios, specialized equipment, production facilities or specializing computing resources in direct support of the work in question.
 - iii. Specifically designated NKU funds to support the work’s creation, publication, or production
 - iv. Direct assignment or commission from NKU to undertake a creative project as part of the creator’s regular appointment
 - v. Significant use of funding from gifts to NKU to support the creation of the work
 - vi. Production of the works under specific terms of a sponsored research grant or contract.
 - vii. For Online Instruction, Exceptional NKU Support includes: provision of designated technical assistance, such as audio-visual department personnel or a qualified graduate assistant, to assist development of an online course, or provision of specialized software or hardware purchased for a particular online

project, or provision of other technical services commissioned from a third party to assist with a particular online project which exceeds normal NKU support for traditional courses, or commissioned by NKU by the provision of release time or other compensation to a faculty member as an adjustment to normal assigned duties for the purpose of creating an online course, which exceeds normal NKU support for traditional courses.

G. **“NKU Works”** are materials (including Online Instructional Materials) that:

- i. have been specifically commissioned by a NKU office, and, except as expressly provided otherwise in a written agreement, include recordings (whether audio, video, audiovisual, film, or other media) of performances, presentations, talks, course materials or other educational or extracurricular activities of NKU students, faculty, staff, visitors, and/or third parties, that are made by or at the request of NKU;
- ii. have been created by NKU employees who are not academic appointees;
- iii. have been developed with Exceptional NKU Support; or
- iv. constitute Externally Funded Works.

H. **“Externally Funded Works”** are copyrightable or patentable works resulting from funds given to the NKU by external sources.

3. What is Covered

Generally speaking, ownership of patentable or potentially patentable work is vested in NKU. Copyrightable works are subdivided into Traditional Works of Scholarship, ownership of which remains with the creator of the work, and NKU Works, as to which NKU retains ownership. Trademarks, service marks, symbols, designs, slogan, and seals used to identify the services of NKU are not subject to the provisions of this Intellectual Property Policy.

A. Patentable Intellectual Property

- i. NKU owns and shall have the sole right to determine the disposition of NKU Works and Patentable Intellectual Property under this Policy, including decisions concerning patent licensing and sale. Determination of those dispositions shall take into account the interests of NKU, the public, and the Creator.
- ii. Upon becoming subject to this policy, Creators will assign all right, title, and interest in NKU Works and Patentable Intellectual Property to NKU. Creators shall disclose promptly to NKU any potentially Patentable Intellectual Property on forms made available by NKU.
- iii. NKU shall assess all disclosures submitted to it in a timely fashion, normally within 60 days, to determine whether NKU should seek patent protection for the intellectual property. NKU shall promptly notify the Creator of the intellectual property of the results of its assessment.

- iv. Distribution of revenues derived from Patentable Intellectual Property shall be distributed to all Creators in accordance with Section 6 of this policy, unless legal requirements or contractual agreements require otherwise.

B. Traditional Works of Scholarship

- i. This policy recognizes the long standing custom and understanding that faculty members own copyright to their Traditional Works of Scholarship. A member of NKU is entitled to copyright from any such Traditional Works of Scholarship. Individual work so defined is automatically exempt from the formal review procedures of this policy.
- ii. NKU retains a nonexclusive, perpetual, royalty-free license to use Traditional Works of Scholarship for noncommercial purposes.

If a Creator is unsure if a specific Traditional Work may contain Intellectual Property that would not be exempted under the terms of this Policy, they may submit an Intellectual Property Research Disclosure Form and request an expedited review to reach a determination as such. Within 30 days of receipt, a written response shall be provided stating whether or not the Traditional Work also contains Intellectual Property that is required to be disclosed under the Policy.

- iii. On-line instructional materials are considered Traditional Works of Scholarship, unless they are –
 - a) specifically commissioned by NKU from a faculty member or any other person,
 - b) created using Exceptional NKU Support, or
 - c) created by non-faculty staff within the scope of their employment, in which case they are considered NKU Works. This policy only applies to the aspects of the materials that are separable from other protected intellectual property that is incorporated into or utilized by the online materials.

C. NKU Works

- i. NKU owns and retains all rights to use and commercialize NKU Works. NKU may assign its ownership rights to NKURF so that NKURF can manage the intellectual property. Creators hereby assign all right, title, and interest in NKU Works to NKU. NKU may choose to forego or modify its ownership of a NKU Work and associated rights, through a written agreement with the Creators of the work and/or NKURF.
- ii. In the absence of contractual or legal restrictions to the contrary, and with the exceptions noted below, NKU grants Creators who are academic appointees or students' non-exclusive rights to non-commercial use and distribution of NKU Works they have authored. The rights granted Creators under this subsection shall not extend to the following NKU Works: (a) recordings of performances, presentations, talks, or other educational or extracurricular activities by or involving Creators; or (b) software authored by Creators.

D. Externally Funded Works

Externally Funded Works shall be considered NKU Works for all purposes, except that the terms of their respective sponsorship agreements or applicable laws shall take priority over this policy.

Exceptions. NKU will not hold any ownership rights in Intellectual Property to the extent that:

- i. federal or state law provides that some party other than NKU holds one or more of such rights;
- ii. the Intellectual Property related to same was produced both outside the scope of the faculty or staff member's employment or Research, and without exceptional NKU support.
- iii. the Intellectual Property related to same is a Traditional Work, unless the Traditional Work was specifically commissioned by NKU;
- iv. the Intellectual Property was produced by gratis faculty, unless the Intellectual Property was produced utilizing Exceptional NKU Support or personnel of NKU, or specifically commissioned by NKU.

In the above situations (E.ii., E.iii., and E.iv.) the work shall be deemed the property of the Creator and may be registered for legal protection and/or commercialized by the Creator at the Creator's expense.

- v. **Public Domain Preference.** The Creator, or Creators acting collectively when there are more than one, is free to place an invention in the public domain for non-commercial, academic dissemination purposes if that would be in the best interest of technology transfer, and if doing so is not in violation of the terms of any agreements that supported or governed the work. NKU will not assert intellectual property rights when Creators have placed their inventions in the public domain, but NKU does expect that the Intellectual Property be disclosed along with the Creator's request that they be allowed to disseminate the Intellectual property by placing it in the public domain.

4. Who is Covered

- A. For all employees of NKU in any capacity, full time or part time, this policy is a condition of employment.
- B. Persons who create intellectual property using NKU resources in whole or part, whether or not they have an employment relationship, student relationship, or other relationships with NKU.
- C. Students who independently create Intellectual Property arising out of their participation in programs of study at NKU without the use of Exceptional NKU Support, and that do not result from their employment by NKU, will retain the legal rights thereto ("Student

Intellectual Property”). Intellectual Property created by students through the use of Exceptional NKU Support or in connection with their employment by NKU is owned by the NKU.

A student, as a condition of enrollment, grants a perpetual, royalty-free license to the NKU to reproduce and publicly distribute, on a noncommercial basis, Student Intellectual Property such as copies of student project reports, theses or dissertations, including any computer software developed as part of the student project, thesis or dissertation

5. Authority

- A. **Overall responsibility.** The overall responsibility of this policy is vested in the Vice Provost for Graduate Education, Research and Outreach. This will include operations at the NKU level and management of activity of NKURF as related to NKU Works and Patentable Intellectual Property. The Vice Provost for Graduate Education, Research and Outreach, in consultation with Legal Affairs, is authorized, subject to NKU’s contract policy, to enter contracts for the development of NKU Works or Patentable Intellectual Property. NKU Works or Patentable Intellectual Property assigned to NKURF shall be managed by NKURF on behalf of NKU according to the policies outlined in this document.
- B. **Responsibilities of the NKU/NKURF.** NKU, in conjunction with NKURF, will be responsible for determining the feasibility of commercializing NKU Works or Patentable Intellectual Property. If such property is deemed to have commercial value, NKU will assign its rights to the NKURF and the NKURF will have the legal and financial responsibility to carry the commercialization forward. All costs, including protecting and promoting copyright or patent applications, will be paid by NKU or the NKURF. The NKURF, in conjunction with NKU, will be responsible for making decisions regarding the marketing and/or licensing of all NKU Works or Patentable Intellectual Property. In general, all licenses will include a nonrefundable license fee, patent or copyright expense reimbursement, royalty and minimum royalty payments, and a requirement of diligence and march-in rights where the licensee does not perform adequately.

The Creator of the Intellectual Property may request in writing that all NKU or NKURF rights in such NKU Works or Patentable Intellectual Property be reassigned to the Creator. To the extent the Intellectual Property is not subject to any restrictions, and provided that all other co- Creators, if any, of the subject NKU Works or Patentable Intellectual Property consent to the request, NKU or NKURF shall reasonably consider such a request. Any reassignment of the rights by NKU or the NKURF to the Creator shall be limited only to the substance disclosed in the original disclosure form officially on record with NKU and further subject to NKU reserving perpetual rights to use the subject Intellectual Property for any noncommercial purpose, such as research and other educational purposes, at no cost to NKU.

- C. **Responsibilities of the Creator.** In addition to the disclosure responsibilities set forth in Section B above, Creator will cooperate with NKU or its designee in its effort to evaluate and protect the commercial value of any NKU Works or Patentable Intellectual Property. This would include but not be limited to notifying the appropriate office of any third party interest in the property and assisting in the preparation of any legal documents required to protect the

NKU Works or Patentable Intellectual Property. The Creator will also work collaboratively with NKURF to determine the best course of action regarding the commercialization and marketing of the Intellectual Property. To ensure that NKU is aware of all such Intellectual Property, all those persons covered by this Policy are required to disclose to NKU any Intellectual Property, except those Traditional Works as defined in Section 2. When in doubt about whether or not Intellectual property may, in a reasonable opinion, have commercial value, the Creator should complete an Intellectual Property Research Disclosure Form and consult with the Office of Graduate Education, Research and Outreach about any commercial potential. Such disclosure shall occur either simultaneously with or prior to public disclosure.

- D. **Signatory Authority.** Unless otherwise designated in writing by the Vice Provost for Graduate Education, Research and Outreach, signature authority for subjects covered by this Policy shall rest solely in the Vice Provost for Graduate Education, Research and Outreach.
- E. **Intellectual Property Review Committee.** The Board of NKURF will serve as the Intellectual Property Review Committee. The Vice Provost for Graduate Education, Research and Outreach or designee will serve as the chairperson. The Board may consult with others as they see fit.

6. Revenue Distribution

A. **Royalties and Other Income.** All royalties and other income arising from NKU Works or Patentable Intellectual Property which has been assigned to NKURF shall be administered by the Vice Provost for Graduate Education, Research and Outreach on behalf of the NKURF in such a manner as it may be determined, provided that, unless otherwise agreed, no less than fifty percent (50%) of the total net proceeds (total income less expenses directly related to obtaining rights and royalties from such property) shall be paid or assigned to the Creator as income. The remainder is distributed as follows:

- 15 percent to GERO for supporting scholarly activities on campus
- 12.5 percent to the Creator's NKU department
- 12.5 percent to the Creator's NKU college
- 10 percent to NKURF

B. **Multiple creators.** In the case of multiple Creators, the Creators shall list what they believe to be the appropriate percentage contributions of each Creator at the time an Intellectual Property Research Disclosure Form is submitted. If the Creators cannot reach an agreement among themselves, the NKURF Board shall meet to evaluate the claims of all Creators and render a binding decision. The NKURF Board may rely on testimony from the Creator's Deans and Department Heads in so doing, but is not required to do so.

7. Dispute Resolution

Disputes arising over the application of this policy shall be brought to the attention of the Provost, who shall refer the matter to the NKURF Board. The committee will render a

determination in writing to the Provost within thirty (30) days of receiving the Creator's written appeal. The Committee's decision regarding disputes may be appealed in writing to the Provost within thirty (30) days of the Committee's decision. The decision of the Provost will be final.

8. Process of Disclosure

As a condition of employment or matriculation, all faculty, staff, other employees, and students of the NKU agree to comply with the policies of NKU. A copy of this Policy shall be available, electronically and in printed form, for all faculty, staff, other employees, and students. On request, a set of guidelines for reporting Intellectual Property will be made available to any faculty, staff, other employees, or student by the Office of Graduate Education, Research and Outreach.

- A. **Intellectual Property Research Disclosure Form.** Whenever a NKU faculty, staff, other employee, or student, operating under the scope of this Policy, creates or obtains research results that may have commercial value and do not fall within the scope of the exception of this Policy Section 3, the Creator shall notify the Vice Provost for Graduate Education, Research and Outreach in writing via an official Research Disclosure Form.
- i. If the Creator believes that the content of the Intellectual Property Research Disclosure Form falls within one of the exceptions of Section 3, the Creator shall mark the Intellectual Property Research Disclosure Form as such and request an expedited review.
 - ii. The Creator shall make available originals or copies of all documents and designs, including logs or research workbooks, as requested, that are necessary to support the value and scope of the Intellectual Property.
 - iii. Moreover, the Creator shall assist NKU or NKURF in obtaining and maintaining legal protection by disclosing essential information, signing applications and other necessary documents and assigning any rights to technology provided, however, that NKU or NKURF shall reimburse the Creator for any out-of-pocket expenses incurred by providing such assistance.
 - iv. Written Response. The Vice Provost for Graduate Education, Research and Outreach or designee shall provide a written communication to the Creator with notification of the date of receipt of the Intellectual Property Research Disclosure Form, and evaluate the merits of the Intellectual Property and the equities involved.

The decision shall convey one of three alternatives:

- a. **ELECTED.** If NKU or the NKURF Board finds potential commercial value in the Research Disclosure, NKU will notify the Creator that it has "ELECTED to Retain Title" and will move forward with marketing of the Research Disclosure. The Vice Provost for Graduate Education, Research and Outreach will apprise the Creator, in writing, of all marketing and development activities NKU has undertaken with respect to their Research Disclosure every six months. It is important to have a close working relationship between the creator and the GERO office. Creator's knowledge

of their research, and of companies active in related technologies, are key elements of the technical and market assessment for an invention and of the search for licensees. If the Creator is unsatisfied, they may appeal to the Intellectual Property Committee for a release of the invention as described in the Research Disclosure.

NKU has a contractual obligation to inform federal agencies of inventions within two months after they are disclosed to the Office of Graduate Education, Research and Outreach, to elect to retain title within two years, and to file a patent within one year of election.

If NKU elects to retain title, the creator will be eligible to apply for commercialization gap funds to further develop their intellectual property. Should budget considerations constrain fund availability faculty will be notified at the beginning of the academic year.

PENDING. NKU encourages full disclosure as early as possible in the development process. If the invention is not yet fully developed, the Vice Provost for Graduate Education, Research and Outreach or designee shall provide feedback and place the Research Disclosure in a "PENDING" status until further developments are disclosed. When a Research Disclosure is placed in PENDING status, the Office of Graduate Education, Research and Outreach shall work with the Creator to define what steps need to be taken to ready the Research Disclosure for re-evaluation. Once such steps are undertaken and new information is provided, the Office of Graduate Education, Research and Outreach shall re-activate the file and treat it as a new Research Disclosure.

- b. NON-ELECTED. If NKU or the NKURF Board finds there is not enough potential commercial value in the Research Disclosure to warrant further NKU investment, they will notify the Creator that the NKU has "Not Elected to Retain Title" and will either release title to the Federal Sponsor if so required, or offer to release title to the Creator upon receipt of their formal written request.

The Vice Provost for Graduate Education, Research and Outreach shall also notify the chairperson of the Creator's department and the appropriate dean or vice president:

- a) At the time of Research Disclosure that the disclosure of an Invention has been made; and
 - b) At the time of NOTICE TO CREATOR by providing a copy of such NOTICE and the decision therein conveyed.
- v. Release of Intellectual Property. If NKU or the NKURF Board elects to release some or all ownership rights to Creator, the Creator shall be free, subject to law and prior agreements, to proceed independently only with respect to the specific Invention disclosed.
- B. **Development of Technology.** Upon ELECTION of the Invention in the Intellectual Property Research Disclosure, the Office of Graduate Education, Research and Outreach shall make

every reasonable effort to develop the Intellectual Property. Costs for such development may be covered by grant (when allowable), departmental or central administration funds.

Development options include, but are not limited to:

- i. evaluating and processing the Invention through a patent application, or copyright registration filed by NKU or NKURF;
- ii. assigning the Intellectual Property to a patent management firm for evaluation and processing;
- iii. assigning or licensing* to a commercial firm; and
- iv. negotiating and recommending equity positions with company(s) willing to commercialize the Intellectual Property.

*The Creator(s) has first right of refusal to commercialize their invention.

9. Agreements

- A. Consulting: It is the responsibility of individual members of the NKU community to ensure that the terms of their consulting agreements with third parties do not conflict with this Policy or any of their other commitments to the NKU. Each individual should 1) make the nature of their obligations to the NKU clear to any third party for whom the individual expects to consult and 2) should inform such third parties that the NKU does have a formal Intellectual Property Policy, and further inform third parties that such Policy is available online at <http://xxxxxx>. More specifically, the scope of any consulting services should be expressly distinguished from the scope of research commitments at the NKU, and should not utilize any NKU facilities or resources without first negotiating appropriate compensation for such use with the NKU. In the case of conflict between requested consulting and NKU research commitments, individuals should work with the Office of Research, Grants and Contracts to establish an appropriate Sponsored Research Agreement. Rights to inventions arising from a business or industry sponsored research project should be prescribed in the sponsored research agreement.

FAQs

1. **If a faculty or staff member develops elaborate materials for teaching his course including electronic materials that require the university to supply substantial resources in order to produce the course (e.g. technology or multimedia support, special equipment or supplies), who owns the copyright on the classroom materials?**

When substantial university resources and supplies are allocated for course development, the university can claim ownership of the copyright. By planning ahead and developing a written agreement in advance of commencing work, an author may negotiate the terms of copyright ownership. This process starts between the author and the department head of the sponsoring unit. Agreement should be reached on who will own the copyright, which units or persons will receive income from offering the course, and how the course will be updated and revised.

2. **If a faculty member develops materials for teaching online for the University and receives assistance from the University in the form of instructional designers, computer technologists preparing learning objects, and significant help in preparing the course - who owns the copyright for the course?**

NKU owns the copyright if the materials are created with the use of substantial University resources which are specifically provided to support the production of copyrightable materials. However, the course authors can develop written agreements stipulating terms for copyright ownership, division of any net income from the course, use of materials, and plans for revisions.

In most cases, it's helpful for the faculty or staff members to create a written agreement spelling out their rights in advance of developing course materials if they will be utilizing significant university resources in designing and building course materials. These agreements allow the faculty or staff member to use the materials for educational purposes while at the same time protecting the University's investment and ability to continue to offer the course in the future.

3. **If a faculty or staff member designs a course or educational materials and is paid a stipend for developing the course or materials - who owns the copyright?**

If a faculty member is paid a stipend by the University for developing a course then NKU owns the copyright.

4. **Should I advertise the copyright on my original works?**

If a Creator holds the copyright to a work, it would be advisable to put the copyright notice on the work, which includes the copyright symbol, name of author, and year it was written, i.e., "© Pat Doe 2010". Though this is not necessary to secure copyright protection, it may deter others from copying it.

Registration of the copyright with the U.S. Copyright Office is a prerequisite to bringing suit for copyright infringement. If there is any concern that the work may be infringed, a

faculty member may want to register the copyright using the U.S. Copyright Office's online registration process <http://www.copyright.gov/eco/>.

5. What happens if substantial University resources are used to develop a course and there is no written agreement?

If substantial University resources are used to develop instructional materials and there is no written agreement, the University may claim ownership.

6. What is an invention disclosure?

The Invention Disclosure is a confidential document that fully documents your invention so that all options for commercialization may be evaluated and pursued. It is imperative that the entire document be completed and that the correct sponsor information be included on the disclosure. Failure to do so may severely hamper patenting and commercialization of the invention.

Written notice of the invention is forwarded to GERO and begins the formal process. Disclosure is made by completing the Intellectual Property Disclosure Form (available on the GERO webpage), and by including any supporting documentation with that form. The invention disclosure can be submitted electronically to the Office of Graduate Education, Research and Outreach in 405 UC.

7. What is the Bayh Dole Act and how does this govern my invention disclosure?

The U.S. Bayh-Dole Act of 1980 allows universities and other non-profit institutions to have ownership rights to discoveries resulting from federally funded research, provided certain obligations are met. These obligations include making efforts to protect (when appropriate) and commercialize the discoveries, providing attribution to the appropriate federal funding agency in all filed patent applications, submitting progress reports to the funding agency, giving preference to small businesses that demonstrate sufficient capability, and sharing any resulting revenues with the inventors. The Bayh-Dole Act is credited with stimulating interest in technology transfer activities and generating increasing research, technology commercialization, educational opportunities and economic development.

It is important to know that NKU is required to report all invention disclosures that were made using federal funds within 60 days of receipt of the disclosure. This notification is made to the sponsoring agency, and it is critical that information provided on the invention disclosure be accurate and thorough. This information is essential not only in the initial reporting requirements but will be rolled forward and reflected upon all patenting documents and activities. Failure to comply with these requirements may result in the government exercising its rights to march in (take control of the intellectual property); therefore, diligence and accuracy in reporting sponsorship should not be taken lightly.

The government sponsorship declaration that is required to appear on all patents is:

"This Invention was made with government support under (grant/contract) awarded by (Agency). The government has certain rights in this invention ".

8. When do I need to submit an Intellectual Property disclosure?

An intellectual property disclosure should be submitted before publicly presenting or publishing the details of an invention or putting the invention into use. Therefore, it is recommended that inventors disclose early so that proper action may be taken to protect the invention and its commercial value. It is best if inventors submit a disclosure between eight and 12 weeks before publication so that, if necessary, actions can be taken to protect both U.S. and foreign rights. Once publicly disclosed, an invention may not be patentable outside the United States, and disclosure may reduce, or even negate the commercial value of an invention. To be safe, inform GERO of any imminent or prior presentations that include the IP.

9. What is the information in the Intellectual Property Disclosure used for? Does the submission of an intellectual property disclosure lead to a patent application?

The intellectual property disclosure form is an internal NKU form used to provide a written record of your intellectual property. The information described herein will enable GERO to establish a record of the date of conception of the intellectual property for legal purposes. The information will be used to evaluate the technology for its commercialization potential, legally protect the intellectual property and to identify potential licensees and to comply with sponsor reporting requirement. Submission of an Intellectual Property Disclosure does not insure that a patent application will be filed. NKU reserves the right in its sole discretion to determine those inventions upon which it will seek patent protection. The NKURF Board will review all disclosures periodically and determine whether to protect the invention or not.

10. How detailed should the description of the invention be?

As detailed as possible. Without adequate information, NKURF cannot perform a complete evaluation of the intellectual property's licensing potential, nor can we obtain an accurate legal opinion as to whether it is patentable.

11. Why are the dates of conception and disclosure important?

On March 16, 2013 the U.S. patent system switched to a "first-inventor-to-file." The dates of disclosure are important because in the U.S. an inventor has one year from the date of public disclosure in which to file a patent application. Once a year from the time of disclosure has passed, the invention cannot be patented. Also, note that most foreign countries have an "absolute novelty" requirement. This means that in most foreign jurisdictions, patent rights are lost once an invention has been publicly disclosed. The university does not often file for foreign patents due to their prohibitively high costs; however, we strongly encourage inventors to submit any intellectual property disclosure to GERO well before public disclosure so that we may keep this option open for a potential licensee.

12. What is considered a public disclosure of an invention?

Almost any disclosure without an obligation of secrecy may constitute a public disclosure. Public disclosure may include, but is not limited to, journal papers, conference abstracts/presentations, publications or descriptions online, and dissertations indexed at the library, that describe the basic ideas of the invention in enough detail that someone else would be able to make and use the invention. Talking about these ideas may also constitute disclosure, as does selling or offering for sale a prototype of the invention. In the U.S., the "public disclosure" must be in writing. However, do note that slides at meetings and poster sessions are considered "publications"--as is private correspondence, advertisements, etc.

If you want to discuss your invention with others outside of NKU you should have the person (or company) sign a nondisclosure agreement, agreeing to keep your invention in confidence, before you have the discussion. These agreements are available from the Office of Graduate Education, Research and Outreach.

13. Can I still publish my findings?

Yes, findings can still be published and disclosure to the GERO office does not alter your publication timetable. However, since publishing can affect the ability to obtain a patent, especially foreign ones, it is best to submit a disclosure prior to publishing or communicating your findings in a public forum.

14. If the intellectual property is disclosed either through a publication or an oral presentation before GERO files a patent application, are the patent rights lost?

Not the U.S. rights but definitely foreign rights. In the U.S. we have one year from the date of first publication (or public disclosure) in which to file for a patent.

15. Why is the relevant support information (contract/grant) important?

Under federal law, the University is required to report to the U.S. Government, inventions created under sponsored research with the U.S. Government. Non-Government sponsors may also have intellectual property clauses and obligations attached to such sponsorship with which OTC must comply.

16. What happens if the creation of a work predates the adoption of the new IP policy, and there are no written agreements concerning the ownership rights for it?

Prior patentable Intellectual Property or any other rights to prior Intellectual Property held by faculty, staff, other employees, or students are excluded from this Policy. Prior patentable Intellectual Property should be identified by the Creator and acknowledged by NKU in writing at the time of appointment or enrollment.

17. When can I expect to a phone call/meeting after I submit an intellectual property disclosure?

You will be contacted within a week by the OTT after you have submitted a disclosure. A telephone conversation or a meeting to discuss the details of the invention will be scheduled at that time.

18. What is the process for assessing an invention disclosure?

The NKURF board will conduct an initial screening of the intellectual property disclosure, conduct patent searches (as applicable) and analyze the market to determine the competitiveness of the disclosed technology and its commercialization potential. The NKURF Board may contact the inventors during this process to discuss details of the invention and potential IP strategies. Once a patenting decision has been reached, the VPGERO will communicate the decision to the inventors. The evaluation can take between 4-6 weeks to perform.

19. How do I know if my discovery is patentable?

In order to be considered patentable an invention must meet several requirements. These requirements are that the invention be:

- a) New (also known as the Novelty requirement): The invention must not be duplicative of "prior art" (inventions). Prior art may be an offer for sale, the use of the invention, or a publication or patent. A prior art search is done to determine whether there are issued patents, published articles or other published information capturing major features of the invention in question.
- b) Useful: The subject matter of the invention must have a useful purpose and be operative. An invention that is inoperative is not considered to be a useful invention. The utility of the invention must be disclosed in the patent application.
- c) Non-obvious: An invention must not be obvious to a person having ordinary skill in the art to which the invention pertains.

20. What is prior art?

According to the United States Patent and Trademark Office prior art includes, but is not limited to, previously patented inventions in the U.S. For example, a prior art search may also reveal other publicly disclosed inventions that are now in the public domain. A prior art search should be conducted to determine if your invention has been publicly disclosed, in any form, and thus is not patentable.

21. What's my role in the screening process?

Inventors typically meet with the NKURF board to discuss the invention and clarify aspects of the disclosure. Once a decision is made, the inventor will be contacted to discuss the outcome.

22. What's my role in patenting?

Inventors and GERO staff speak with the patent attorney during the patenting process. Also, inventors will need to review drafts of documents, sign assignments and other legal documentation. GERO staff will guide the inventors during the process.

23. What's my role in marketing?

Inventors are welcome to work closely with GERO staff to market their invention. There are many aspects of marketing that inventors may choose to be involved with, ranging from helping to transfer knowledge to recommending contacts that might be interested in licensing the inventor's technology. GERO staff also invite inventor feedback on licensing terms and work closely with inventors when crafting pre-licensing agreements such as material transfer and evaluation agreements.

24. What's my role in licensing?

Licensing is a primary function of the GERO office, in collaboration with the NKURF board; inventors will be informed of progress in licensing. Inventors often are closely connected to others in their field and may be consulted on the business terms of the license.

Further, the inventor's expertise is often critically important to transfer the technology and related know-how to the licensee. The University license places only nominal obligations on the part of the inventor to assist in the transfer of the licensed technology. When more than minimal time and effort is necessary, the licensee will negotiate a separate consulting arrangement with the inventor.

25. What if an industry partner funded my research and invention?

The Office of Research, Grants and Contracts will review the terms of the contract, send a copy of the disclosure to the company, determine the company's interest, and take action based on the company's decision.

26. What effect does a license have on my ability to do research?

You can still continue research using a licensed invention, even if it is exclusively licensed. The University retains the right to use a licensed invention in its academic research and teaching.

27. How is inventorship determined?

U.S. Patent law defines an inventor as an individual who contributes to at least one patent claim. If inventors are intentionally named to a patent erroneously or are omitted, the patent can be invalidated. Only those persons who made an inventive contribution to the claimed invention may be listed as inventors.

It is important to understand that during prosecution of the patent by the patent office, the claims may need to be revised by patent counsel. Therefore, the original inventors listed on the invention disclosure may change, depending upon which claims are allowed and who actually contributed to those allowed claims. The final indication of inventorship is determined when the patent issues. Since only those claims allowed will be reflected in the patent, only those individuals who counsel has determined contributed to the claims allowed by the patent office will be considered inventors.

Inventorship is not the same as authorship. An inventor, as stated above, is someone who contributes to the conception of the invention. For example, if someone merely demonstrated that the invention actually works or carries out tests that reduced the invention to practice, without making an inventive contribution to the conception of the discovery, then he or she is not an inventor. However, this individual may be included as an author on a research paper resulting from the work, along with all the other people who may have contributed in a similar manner to the work.

28. What is the timeline for: the patent process, the marketing, process, the licensing process, and the commercialization process?

The patent process will commence after the NKURF Board has reviewed the invention disclosure and conducted the necessary research that would recommend patent protection. It is important to understand that the timeline for patent prosecution at the United States Patent and Trademark Office can vary considerably, from a few months to many years, depending on the complexity of the patent, the field of invention, and the number of amendments or responses that must be filed or considered. The inventor will be a valuable resource in the patent protection process and can expect to be contacted by GERO staff and patent counsel to discuss details of the prosecution strategy.

The commercialization process, as expected, can also vary and is dependent upon many factors, including the stage of the invention development, the ability to find a suitable licensee, and market readiness or commercial potential of the invention. In some circumstances an invention that may be strong technically and market ready, will attract no potential licensees if they have settled upon another standard or technology.

Once an invention is licensed, it may take several years to see the first commercial product. This is largely dependent up on the field of the invention, with those made in life sciences having the longest timeline (5-10 years). Other fields have a shorter time to market. GERO staff will keep you informed of commercialization progress made by licensees of your invention.

29. What is the royalty sharing policy?

According to NKU Policy royalty is distributed as follows:

- 50% of the total net proceeds (total income less expenses directly related to obtaining rights and royalties from such property) shall be paid or assigned to the inventor as income
- 15 percent to GERO for supporting scholarly activities on campus
- 12.5 percent to the Creator's university department
- 12.5 percent to the Creator's university college
- 10 percent to NKURF

Under certain circumstances the above terms of income distribution may be replaced by other terms mutually agreed upon by the inventor(s), the organizational unit, the University, and the external sponsor or a potential business partner. However, any modification in the terms described above must be approved by the Vice Provost for Research and Graduate Studies.

30. What is the importance of % contribution of individual contributors and how does it relate to royalty income?

The % contribution determines the % of revenue share of royalty revenues. The revenues generated from the commercialization of the invention will be distributed to the contributors based on % contribution. If the blanks are not filled in the contributors'

share of Net Royalty income, if any, will be divided equally among all NKU contributors to the invention.

31. How does the university benefit from technology transfer? How do the inventors benefit?

The University and the inventor both benefit from technology transfer in similar ways. Engaging in technology transfer allows inventions made at the university to be moved to the market for the public benefit. This activity contributes to economic development and improves the quality of life by making available new technologies that address a need. Engaging in technology transfer encourages collaboration within the university, between academic institutions, with sponsoring agencies and with industry creating a community of innovation. Engaging in technology transfer also rewards the inventors and the university monetarily, recognizing their contributions. Income realized from technology commercialization are utilized to encourage further research and innovation.

How Does Technology Commercialization at NKU Work?

Background

Enacted on December 12, 1980, the [Bayh-Dole Act](#) (P.L. 96-517, Patent and Trademark Act Amendments of 1980) created a uniform patent policy among the many federal agencies that fund research, enabling small businesses and non-profit organizations, including universities, to retain title to inventions made under federally-funded research programs.

Major provisions of the Act include:

- Non-profits, including universities, and small businesses may elect to retain title to innovations developed under federally-funded research programs
- Universities are encouraged to collaborate with commercial concerns to promote the utilization of inventions arising from federal funding
- Universities are expected to file patents on inventions they elect to own
- Universities are expected to give licensing preference to small businesses

Northern Kentucky University supports creativity, innovation, commercialization, and entrepreneurship as essential components of our institution. The purpose of the intellectual property policy of NKU is to provide the necessary incentives and protection to encourage the development of new knowledge and its application and transfer for public benefit. The policy was developed with the goals of: enhancing and protecting the educational, research and service missions of NKU; optimizing the incentives for research and scholarship at NKU; bringing scholarship into use for the benefit of society; and protecting the interests of NKU faculty, staff and students.

What is intellectual property (IP)?

IP is the “tangible or intangible results of research, development, teaching, or other intellectual activity.” In other words, IP is any innovation or discovery conceived or developed by faculty, staff, or students using University resources, which is broadly defined as all use of employee or student time, equipment, supplies, or facilities and clinical practice. If you think you are working on a commercializable idea, the Northern Kentucky University Research Foundation (NKURF) Board would be happy to meet with you to discuss your idea and the commercialization potential.

What is technology transfer?

In its broadest sense, technology transfer is the transfer of knowledge, ideas, discoveries and innovations to the public. There are many ways to accomplish this, including publication, student graduation and employment, participation in scientific meetings, and collaboration with industry and licensing innovations. For our purposes, technology transfer is the evaluation, protection, marketing and licensing of intellectual property to start-ups and existing companies.

What do you do if you have an idea?

Creating an invention or a commercializable idea is a significant accomplishment. NKU wants to help you protect and enhance the value of that invention or idea to benefit both the inventor(s)

and Kentucky. If you have an idea for an invention that you would like to discuss with the NKURF to brainstorm next steps for development, patenting, commercialization or copyrighting, the first step is to complete the online Intellectual Property Research Disclosure Form at <https://.xxxxxxx>.

Step 1: Submit an Intellectual Property Research Disclosure Form Report

If you have any questions about this process, contact the Office of Graduate Education, Research and Outreach

Step 2: The disclosure meeting

The Intellectual Property Review Committee, the NKURF, composed of faculty, inventors, technology commercialization professionals and legal advisors, will meet with you for an informal, confidential discussion about the details and possible applications of your discovery or invention.

Important:

- Public disclosure immediately prevents you from obtaining most foreign patent rights and may impact your ability to obtain U.S. patent rights.
- Patents filed prior to public disclosure have a much stronger position.
- Commercialization of IP is a highly competitive enterprise. It is therefore critical that creators begin the disclosure process as soon as the possibility of an invention becomes evident. Delays give other an opportunity to establish claim, which may deprive a creator of his/her rightful recognition and compensation.

What constitutes a public disclosure?

Any non-confidential disclosure, which includes many routine academic activities:

- Published papers
- Presentations
- Open thesis defenses
- Seminars
- Campus talks
- Catalogued theses
- Conference abstracts
- Funded grant applications – unless redaction is requested upon submission
- Web posts
- Non-confidential collaborations
- Posters
- Performances and exhibitions

Step 3: The decision committee

Each intellectual property disclosure is evaluated for its commercialization potential -- whether the intellectual property has the potential to fill a market need -- and identifying opportunities and challenges. The commercialization potential is based on the strength of

the IP, the IP's stage of development and the estimated time and resources needed to market it. The university's Intellectual Property Review Committee determines if the university should invest in patenting or commercializing the technology. The board members recommend whether to file for IP protection or not. The final decision is made by the board's chair, the Vice Provost for Graduate Education, Research and Outreach.

The NKURF decision committee will assess your invention based on many factors, including:

- Patentability
- Market dynamics
- Licensing potential
- Public benefit

NKURF evaluates discoveries on an as needed basis and will notify you whether or not we decide to move forward with the process of patenting your intellectual property. We strive to make decisions quickly (within 30 days) so that patenting doesn't interfere with publication.

NKURF covers this cost for the patents we accept, as well as all other costs and legal fees. Patents typically cost between \$20,000 and \$40,000.

Step 4: The equity review

The Office of the Vice Provost for Graduate Education, Research and Outreach will perform an equity review to identify funding sources that may have contractual intellectual property obligations.

Step 5: The memorandum agreement

If your intellectual property is accepted, the Creator(s) and NKURF enter into a memorandum agreement that defines the relationship between you and NKURF. You agree to assign ownership of the intellectual property to NKURF and to work in partnership with NKURF during the patenting and/or licensing process. In return, NKURF agrees to share royalty income with you. It is important to have a close working relationship between the Creator and the GERO office. Creator's knowledge of their research, and of companies active in related technologies, are key elements of the technical and market assessment for an invention and of the search for licensees.

Step 6: Patenting your invention

A patent attorney will work with you to draft a patent application, if relevant. If the intellectual property is not considered for IP protection, the researcher may continue to work on it and file a new research disclosure in the future. The first step is usually a provisional patent application. Provisional applications are abandoned within one year of filing unless they are converted to a regular U.S. application. Two or three iterations are usually required to obtain allowance of the regular patent application. The process can take 2-4 years.

Step 7: Marketing

When appropriate, our office actively markets the intellectual property identified through the evaluation using your network, our contact network and market reports to identify potential licensees

Step 8: Licensing

If an existing company expresses interest in finding out more about the invention, the Intellectual Property Review Committee starts the discussion. Once a potential licensee is identified, our office will negotiate a license agreement with mutually agreeable business terms. The license allows the companies to use the invention in exchange for a license fee and royalties to the university.

Step 9: Commercializing Your Invention

After a license agreement is executed our office ensures that the company is in compliance with the commercialization obligations and with the payment terms to the university. Any license fee and/or royalty payments received for commercializing an invention will be shared:

- 50 percent to the Creator (with multiple NKU Creators, sharing depends on the agreed percentage listed in the invention disclosure)
- 15 percent to GERO for supporting scholarly activities on campus
- 12.5 percent to the Creator's university department
- 12.5 percent to the Creator's university college
- 10 percent to NKURF

Our office also supports the creation of a start-up company by the inventor and will assist in transferring the technology to the company through favorable license terms.

Other items:

Nondisclosure Agreements

In order to protect unpublished results of your intellectual property while you are in the process of discussing a potential collaboration with an institute or a company, we make sure that such information is shared under a valid nondisclosure agreement (NDA). An NDA outlines the nature and conditions for sharing the information between the university and a third party. Information that is shared (orally, or in writing as a conference abstract or online or by email) without a valid NDA is considered public disclosure of information and is not considered confidential under an NDA. NKU researchers also have an obligation to protect a third party's confidential information as well, under a mutual NDA.

Material Transfer Agreements (MTA)

If research materials related to biological, chemical or engineering protocols are exchanged or transferred between researchers outside of NKU, an MTA should be executed. An MTA outlines the nature and conditions for sharing the research materials between NKU and a third party, which could be a company, a research institute or a university. Materials that are not unique to the university and are readily available from other commercial sources generally do not need an MTA.

The common issues with NDAs and MTAs and sponsored research agreements are restrictions on publications, free licenses, assignment of future inventions and creations under the agreement and general legal provisions. Our office works to protect your research results and your ability to publish by negotiating mutually amenable terms through these agreements with the third parties.

FINANCIAL CONFLICT OF INTEREST DISCLOSURE FOR RESEARCH

POLICY NUMBER: RESERVED FOR FUTURE USE

POLICY TYPE: HYBRID - ACADEMIC/ADMIN

RESPONSIBLE OFFICIAL TITLE: DIRECTOR, OFFICE OF RESEARCH, GRANTS, AND CONTRACTS

RESPONSIBLE OFFICE: OFFICE OF RESEARCH, GRANTS, AND CONTRACTS

EFFECTIVE DATE: 6/27/2016

NEXT REVIEW DATE: N/A

EXPIRATION DATE (FOR INTERIM POLICIES): 1/27/2017

SUPERSEDES POLICY DATED: N/A

REQUIRES LEGAL/COMPLIANCE REVIEW:

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

REQUIRES I.T. POLICY COUNCIL REVIEW:

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

REQUIRES PROFESSIONAL CONCERNS COMMITTEE REVIEW:

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

REQUIRES FACULTY SENATE APPROVAL:

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

REQUIRES HUMAN RESOURCES REVIEW:

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

REQUIRES BOARD OF REGENTS APPROVAL:

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

I. POLICY STATEMENT

Northern Kentucky University has a responsibility to identify, manage, reduce, and/or eliminate research conflicts of interest and/or conflicting financial interests related to research. It is the purpose of this policy to define such conflicts, identify those individuals who must report such conflicts, clarify the potential for such conflicts, and delineate the proper procedures for reviewing and addressing all conflicts of interest. As of August 24, 2012, all institutions accepting federal funding from a grant, cooperative agreement or contract from a Public Health Service (PHS) agency are required to implement and adhere to an Institutional Research Financial Conflict of Interest policy.

II. ENTITIES AFFECTED

This NKU Institutional policy applies to all researchers/Investigators funded by Public Health Services (PHS) and National Science Foundation (NSF) at NKU.

III. AUTHORITY

This policy implements federal requirements pertaining to "Objectivity in Research for which Public Health Service (PHS) Funding is Sought" promulgated by the U.S. Public Health Service, which includes the National Institutes of Health (NIH), and which are published in 42 CFR Part 50 and 45 CFR Part 94. This policy also implements federal requirements contained in the National Science Foundation's (NSF) "Investigator Financial Disclosure Policy".

IV. DEFINITIONS

Among the definitions listed at 42 CFR 50.603 are eight key definitions that you must know in order to understand the Financial Conflict of Interest (FCOI) regulation. They are Institution, Investigator, Institutional Responsibilities, Financial Interest, Financial Conflict of Interest, Manage, and Significant Financial Interest.

Institution refers to any domestic or foreign, public or private, entity or organization (excluding a Federal agency) that is applying for or that receives PHS/NSF and other federal agency research funding.

Institutional Responsibilities means an Investigator's professional responsibilities on behalf of the Institution, and as defined by the Institution, including, but not limited to, activities such as research, research consultation, teaching, professional practice, institutional committee memberships, and service on panels such as Institutional Review Boards or Data and Safety Monitoring Boards.

Investigator as defined by NKU, means the Principal Investigator, Project Director, and any other person, regardless of title or position, who is responsible for or involved in the design, conduct, or reporting of research who are funded by PHS or NSF. This may include collaborators or consultants

Financial Interest means anything of monetary value, whether or not the value is readily ascertainable.

Financial Conflict of Interest (FCOI) means a significant financial interest that could directly and significantly affect the design, conduct, or reporting of research.

Manage means taking action to address a financial conflict of interest, which can include reducing or eliminating the financial conflict of interest, to ensure, to the extent possible, that the design, conduct, and reporting of research will be free from bias.

Significant Financial Interest (SFI) is defined by the regulation as:

A. A financial interest consisting of one or more of the following interests of the Investigator (and those of the Investigator's spouse and dependent children) that reasonably appears to be related to the Investigator's institutional responsibilities:

1. With regard to any publicly traded entity, a significant financial interest exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds \$5,000. For purposes of this definition, remuneration includes salary and any payment for services not otherwise identified as salary (e.g., consulting fees, honoraria, paid authorship); equity interest includes any stock, stock option, or other ownership interest, as determined through reference to public prices or other reasonable measures of fair market value;

2. With regard to any non-publicly traded entity, a significant financial interest exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure, when aggregated, exceeds \$5,000, or when the Investigator (or the Investigator's spouse or dependent children) holds any equity interest (e.g., stock, stock option, or other ownership interest); or

3. Intellectual property rights and interests (e.g., patents, copyrights), upon receipt of income related to such rights and interests.

B. Investigators also must disclose the occurrence of any reimbursed or sponsored travel (i.e., that which is paid on behalf of the Investigator and not reimbursed to the Investigator so that the exact monetary value may not be readily available), related to their institutional responsibilities; provided, however, that this disclosure requirement does not apply to travel that is reimbursed or sponsored by a federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education. The Institution's FCOI policy will specify the details of this disclosure, which will include, at a minimum, the purpose of the trip, the identity of the sponsor/organizer, the destination, and the duration. In accordance with the Institution's FCOI policy, the institutional official(s) will determine if further information is needed, including a determination or disclosure of monetary value, in order to determine whether the travel constitutes an FCOI with the PHS-funded research.

A Significant Financial Interest (SFI) of the Investigator's spouse, dependent children, or persons who share financial interests of which could reasonably influence professional responsibilities is required to be included in the initial disclosure prior to submission for funding.

Note: The term significant financial interest does not include the following types of financial interests: salary, royalties, or other remuneration paid by the Institution to the Investigator if the Investigator is currently employed or otherwise appointed by the Institution, including intellectual property rights assigned to the Institution and agreements to share in royalties related to such rights; any ownership interest in the Institution held by the Investigator, if the Institution is a commercial or for-profit organization; income from investment vehicles, such as mutual funds and retirement accounts, as long as the Investigator does not directly control the investment decisions made in these vehicles; income from seminars, lectures, or teaching engagements sponsored by a federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education; or income from service on advisory committees or review panels for a federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education.

V. RESPONSIBILITIES

Provost and Executive Vice President for Academic Affairs: Institutional Official Responsible for maintaining University compliance.

Director of the Office of Research, Grants and Contracts (RGC), Research Compliance Manager in RGC: Responsible for enforcing NKU research policy procedures to maintain Investigator compliance.

VI. PROCEDURES

Per Federal regulations; all universities accepting federally sponsored research funds must, at a minimum, enforce a University FCOI policy that requires all Investigators, which include *faculty, staff, and students* conducting research to:

- Complete a Financial Conflict of Interest Disclosure form (FCID) at the time of proposal submission, annually, and as Investigator financial situations change.

- Complete required FCOI training in the CITI training database prior to the expenditure of funds and every four years thereafter.
- When necessary: Adhere to reporting requirements should there be a significant financial conflict of interest, with an approved Management Plan.

See the [Northern Kentucky University Office of Research, Grants, and Contracts](#) website for procedures and forms related to this policy.

VII. REPORTING REQUIREMENTS

When a Research Financial Conflict of Interest is deemed “significant”, the Institutional Official shall be responsible for reporting requirements in accordance with each funding agency. Reporting requirements vary with agencies. Typically, reporting requirements include reporting at initial disclosure, and then annually until completion of the project. Additionally, Institutions are required to maintain all Research Financial Conflict of Interest program enforcement data to be available upon request for audit from funding agencies.

VIII. TRAINING

Pursuant to Federal regulations, the Institutional Official or designee, shall inform each Investigator about this regulation and of his/her responsibilities to comply. Prior to engaging in research at NKU, each Investigator shall complete training regarding the disclosure of significant financial interests and the management, reduction or elimination of financial conflicts of interest related to research. Training shall be repeated at least every four years or when (a) this regulation is substantially revised; (b) an Investigator is new to the University; or (c) if an Investigator is determined to not be in compliance with this regulation.

See the [Northern Kentucky University Office of Research, Grants, and Contracts](#) website for specific procedures related to training for this policy.

IX. COMMUNICATIONS

This policy should be communicated to the Provost, all Vice Provosts, all Deans, all Chairs, all faculty, staff, and students who supervise or are directly involved in research or programmatic projects sponsored by outside funders.

X. REFERENCES AND RELATED MATERIALS

REFERENCES & FORMS

See the [Northern Kentucky University Office of Research, Grants, and Contracts](#) website for procedures and forms related to this policy.

RELATED POLICIES

[Department of Health and Human Services “Objectivity in Research for which Public Health Service \(PHS\) Funding is Sought” promulgated by the U.S. Public Health Service 42 CFR Part 50 and 45 CFR Part 94](#)

[National Institutes of Health Financial Conflict of Interest Policy](#)

[National Science Foundation’s \(NSF\) “Investigator Financial Disclosure” Policy](#)

REVISION HISTORY

Indicate any revisions to this policy using the table below. Include the type of revision and the month & year the revision was approved

REVISION TYPE	MONTH/YEAR APPROVED
New Policy	7/2016
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	

FINANCIAL CONFLICT OF INTEREST DISCLOSURE FOR RESEARCH

APPROVALS

1. ACADEMIC & HYBRID POLICIES

PROVOST & EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

Signature

Date

Printed Name

2. ALL POLICIES

SENIOR VICE PRESIDENT FOR ADMINISTRATION & FINANCE

Signature

Date

Printed Name

PRESIDENTIAL APPROVAL

PRESIDENT

Signature

Date

Geoffrey S. Mearns

Printed Name

BOARD OF REGENTS APPROVAL

BOARD OF REGENTS (IF FORWARDED BY PRESIDENT)

☐ This policy WAS NOT forwarded to the Board of Regents.

☐ This policy WAS forwarded to the Board of Regents.

☐ The Board of Regents approved this policy on ____/____/____.

(Attach a copy of Board of Regents meeting minutes showing approval of policy.)

☐ The Board of Regents rejected this policy on ____/____/____.

(Attach a copy of Board of Regents meeting minutes showing rejection of policy.)

POLICY COORDINATOR

Signature

Date

Printed Name

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON**

CIVIL ACTION NO. 2:16-CV-28 (WOB-JGW)

JANE DOE

PLAINTIFF

VS.

ORDER

**NORTHERN KENTUCKY
UNIVERSITY, ET AL.**

DEFENDANTS

The Court conducted a hearing on October 18, 2016, regarding the production of documents, which defendants assert are education records governed by the Family Education Rights and Privacy Act ("FERPA"). Defendants further assert that they are prohibited from producing the documents without prior, written consent of current or former students. Defendants have withheld information and invoked FERPA when it is not applicable to the information requested, including during a deposition.

Plaintiff requested all documents evidencing any sexual assault, rape, and/or unwanted advances that occurred on campus and in offsite living quarters in the last seven years, to which defendants objected on the basis of FERPA. Other than plaintiff's records, plaintiff has only received documents concerning one other student and an administrative hearing pertaining to sexual misconduct.

Having heard from the parties, and being advised,

IT IS ORDERED AS FOLLOWS:

1. This Order shall govern both the production and withholding of "education records" as that term is defined under FERPA. Nothing herein shall prevent plaintiff from challenging the status of any documents requested as "education records" under FERPA or seeking the production of such records in their unredacted form.
2. Plaintiff seeks all documents evidencing any sexual assault, rape, and/or unwanted advances that occurred on campus and in offsite living quarters in the last seven years, and the Court now **ORDERS** the production of such documents.
3. This Order shall also govern the conduct of depositions conducted in this matter.
4. Information that a person obtained through personal knowledge or observation, or has heard orally from others, is not protected under FERPA. This is true even if education records exist which contain that information.
5. Defendants shall produce all documents and education records relating to any allegations of sexual assault, sexual misconduct, rape, and/or unwanted advances that occurred on campus and in offsite living quarters in the last seven years, including, but not limited to, the following:

- a. All documents relating to an incident occurring on or about February, 2015 involving members of the men's basketball team;
 - b. All documents relating to an incident occurring on or about March, 2016 involving members of the men's basketball team;
 - c. All documents constituting a transcript from any hearing relating to an incident of sexual misconduct and any disciplinary action taken as a result of that hearing, whether based on the Code of Student Conduct or any student athlete code of conduct, written or unwritten.
 - d. All documents relating to any such allegation for which: (1) an administrative hearing was not conducted; or (2) an administrative panel found that it was more likely than not that the former or current student was not guilty of the charges.
6. The term "document" includes documents of all types described or referenced in Fed. R. Civ. P. 34, including but not limited to any document or folder relating to electronic and/or hard copies of electronic mail (whether located on tapes, disks, or other storage mechanisms) and including, but not limited to, messages or communications located on backups, individual PC hard drives, personal digital assistants (or PDAs), smart

phones (including text messages), laptop computers, or home computers linked into defendants' e-mail system by modem or otherwise. The term "document" includes all emails and correspondence by and between employees and/or students, with names redacted. Email will be produced in native format if not redacted.

7. Defendants shall produce such records, subject to redaction of students' personally identifiable information and consistent with rules of procedure and General Orders 04-01 and 08-01 of this Court, and subject to the following "notice/objection" period in compliance with FERPA:

- a. Defendants shall be provided five (5) business days from the date of entry of this Order to make reasonable efforts to send notice to such students using the form letter attached hereto as Exhibit A.
- b. A hard copy of the notice letter, with the name and address of the non-party current or former student redacted, shall be provided to counsel for plaintiff;
- c. The affected student shall have ten (10) calendar days from the date of such notice in which to seek protective action with the Court in advance of defendants' production. In the event the tenth day falls on a Saturday, Sunday, or federal holiday, the affected

student shall have until the next calendar day when the Court is open in which to file any objection.

d. In the event no objection is made, defendants shall produce the subject records within five (5) business days following the expiration of such notice period.

e. In the event objection is made, defendants shall produce the subject records in accordance with the ruling of the Court within five (5) business days following the date of the ruling.

8. In the event that defendants withhold documents on the basis that the documents are education records and protected under FERPA, defendants shall provide to plaintiff a FERPA log, describing the content of the documents being withheld with sufficient specificity to enable plaintiff to challenge defendants' characterization of the documents.
9. No party shall instruct a witness not to answer a question in any deposition on the basis of FERPA. In the event a party believes an objection is appropriate on the basis of FERPA, the party shall follow the procedures under Fed. R. Civ. P. 30(d)(3).
10. This Order does not constitute a waiver of any other objection a party may have on grounds of relevance or other applicable law. Likewise, no party waives any objections to admissibility that they may otherwise have. Nothing about

this Order or any document production made pursuant to this Order shall be construed as a waiver of any party's rights or obligations to decline disclosure of material to third parties under federal or state law.

11. Any education records provided shall be used by all counsel solely for use in this litigation and shall be copied only as necessary for these purposes. Counsel shall secure any such records or information in a manner sufficient to prevent any unauthorized viewing or use of the records or information, consistent with all applicable law and this Order.
12. Nothing about this Order shall prevent any party from using documents produced pursuant to this Order in connection with any trial, hearing, deposition or other public proceeding in this case. Further, nothing about this Order shall be construed to restrict the parties' counsel from making inquiries of witnesses or potential witnesses regarding the subject matter of the documents produced.
13. Nothing about this Order shall prevent plaintiff from seeking an Order of the Court to obtain the identity of a person whose name has been redacted so that plaintiff can call such person as a witness at any trial in this matter.
14. Upon termination of this litigation, the originals and all copies of any education records provided to parties or counsel shall be destroyed, with their destruction being certified in

writing to the source, is requested. The destruction of documents is not required of court personnel and does not relate to documents in the court's record.

This 27th day of October, 2016.



Signed By:

William O. Bertelsman WOB

United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON**

CIVIL ACTION NO. 2:16-CV-28 (WOB-JGW)

JANE DOE

PLAINTIFF

VS.

MEMORANDUM OPINION AND ORDER

**NORTHERN KENTUCKY
UNIVERSITY, ET AL.**

DEFENDANTS

This matter is before the Court on the motion by defendants Northern Kentucky University, Geoffrey S. Mearns, Kathleen Roberts, and Ann James for partial dismissal of plaintiff's First Amended Complaint ("FAC"). (Doc. 82)

The Court finds oral argument unnecessary to resolve the motion.

Substantive Due Process

Defendants move to dismiss Count II of the FAC, which alleges constitutional violations under 42 U.S.C § 1983 for violation of plaintiff's "substantive due process right to bodily integrity" and her "liberty interest." (FAC, Doc. 62, ¶¶ 121-28).¹

In this context, establishing a "substantive due process" claim requires proof that a defendant has taken action which "can be characterized as arbitrary, or conscious shocking, in a

¹ NKU is immune from this count because it is entitled to immunity under the Eleventh Amendment. Therefore, this discussion applies only to the individual defendants.

constitutional sense.” *Handy-Clay v. City of Memphis*, 695 F.3d 531, 547 (6th Cir. 2012) (citation and internal quotation omitted). Such characterization “applies to “only the most egregious official conduct, . . . conduct that is so brutal and offensive that it [does] not comport with traditional ideas of fair play and decency.” *Id.* at 547-48. Legions of cases support these criteria. *See, e.g., County of Sacramento v. Lewis*, 523 U.S. 833, 847-48 (1998); *Breithaupt v. Abram*, 352 U.S. 432, 435-36 (1957); *Rochin v. California*, 342 U.S. 165, 169-73 (1952).

Although the FAC alleges generally that such standards were violated by the individual defendants, the facts set forth to support such conclusion fall far short of meeting the constitutional standard. The FAC alleges that the University as an entity and the individual defendants failed to implement sanctions imposed on the accused student designed to keep him from encountering plaintiff on campus. No allegations are made that the student physically harassed or injured plaintiff during these encounters. Even when school officials fail to prevent verbal abuse, it has been held that the stringent standards for a substantive due process violation have not been met. *See, e.g., Marcum v. Bd. of Educ. of Bloom-Carroll Local Sch. Dist.*, 727 F.Supp.2d 657, 673 (S.D. Ohio 2010).

As *Marcum* further points out, however, plaintiff can recover under Title IX if such allegations are proved. The Title IX

standards are not nearly as rigorous as the substantive due process standards. Proof of deliberate indifference under Title IX “requires only that a single school administrator with authority to take corrective action had actual knowledge of [the events sued upon].” *Stiles v. Grainger County*, 819 F.3d 834, 848 (6th Cir. 2016) (rejecting Title IX and substantive due process claims against school for failure to prevent student-on-student bullying) (citation omitted).²

Qualified Immunity

The Court further holds that, even if the above substantive due process standards were met, the individual defendants are entitled to qualified immunity.

“Qualified immunity” is a doctrine created by the Supreme Court of the United States to provide an exemption from liability for those public officials for inadvertently violating someone’s constitutional rights. Only individual defendants, rather than governmental entities, such as cities and counties, can assert the defense of qualified immunity.

Even if a constitutional right has been violated, an individual defendant is entitled to qualified immunity if the right was not “clearly established.” *Smith v. City of Wyoming*, 821 F.3d 697, 708 (6th Cir. 2016) (citation omitted). The qualified

² NKU is not immune from the Title IX claim.

immunity analysis is a particularized one, that is, the court must consider all the facts and circumstances surrounding the event sued upon from the point of view of a reasonable person in the same situation as the defendant. *Id.* at 709-10. If such reasonable person would not have realized that his or her actions violated a constitutional right of the plaintiff, the defendant is entitled to qualified immunity. *Id.* at 712.

An individual defendant sued under 42 U.S.C. § 1983 may raise the defense of qualified immunity at the pleading stage, as the movants here have done, although it is more typically raised at the summary judgment stage. *See Moldowan v. City of Warren*, 578 F.3d 351, 369 (6th Cir. 2009). Whenever raised, the Court is admonished to resolve the issue as soon as possible. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). When the defense is raised at the pleading stage the Court is "required to determine – prior to permitting further discovery – whether [Plaintiff's] complaint alleged the violation of a constitutional right at all, and if so, whether that right was clearly established at the time of the alleged violation." *Skousen v. Brighton High Sch.*, 305 F.3d 520, 527 (6th Cir. 2002) (extended discussion).

Applying these principles here, the Court finds that the individual defendants are entitled to qualified immunity, even if it were ultimately held that the FAC sufficiently alleges that plaintiff's constitutional rights were violated. Reasonable

persons in their positions would not have realized that their actions, as alleged in the FAC, would have violated plaintiff's substantive due process right to bodily integrity. It is not clearly established that this right could be violated absent physical contact. See, e.g., *Doe v. Big Walnut Local Sch. Dist. Bd. Of Educ.*, 837 F.Supp.2d 742, 751-52 (S.D. Ohio 2011) (holding that the fundamental right to bodily integrity does not extend to "verbal taunting" or bullying).

Plaintiff admits in her brief that no court has held that such a claim may be maintained absent allegations of physical contact. Although a case directly in point may not exist, "existing precedent must have placed the statutory or constitutional question confronted by the official *beyond debate*." *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2023 (2014) (internal quotations and citation omitted) (emphasis added). As stated, no such precedent has been cited by plaintiff or found by the Court, much less establishing the principle advocated by plaintiff "beyond debate."

Therefore, the moving defendants are entitled to qualified immunity on the substantive due process claim.³

³ Defendant Kachurek did not join in the other defendants' motion for partial dismissal and did not file his own motion to dismiss. Therefore, the Court's rulings will be applicable to only the moving defendants. If Kachurek wishes to have claims against him dismissed, he should file an appropriate motion.

First Amendment Claim - Count V

Similarly, the FAC fails to allege facts showing a violation by Mearns of plaintiff's First Amendment right to peaceable assembly and free speech. The allegations are that plaintiff was engaging in a peaceable demonstration to protest the University's failure to protect female students from sexual violence and harassment. She further alleges that the NKU police brought a police dog to the demonstration.

Notably, plaintiff does not allege that the demonstration was broken up, or that anyone was arrested or attacked in the course of the demonstration.

These facts do not constitute a First Amendment violation, or, if they do, defendants would be entitled to qualified immunity under the principles discussed above.

Plaintiff also alleges that Kachurek wrote an e-mail stating the rules governing campus demonstrations. (FAC ¶ 102, 141). It is not alleged, however, that the e-mail deterred plaintiff from participating in the demonstration or otherwise impugned her freedom of expression. Nor is it alleged that the email stated anything that was not correct.

As to defendant Mearns, plaintiff alleges that he stated in an email of his own that Kachurek's e-mail was "well-intended."

(FAC ¶ 149). This email was sent after the demonstration. To say that someone's action was "well intended" implies that it was probably ill-advised, even though it may have been "well intended."

Therefore, the Court finds that neither e-mail violated plaintiff's First Amendment rights or, if it did, defendant Mearns is entitled to qualified immunity.

Breach of Contract

Count VII of the FAC alleges a claim for breach of contract against defendants based on NKU's Code of Student Rights and Responsibilities.

The Court doubts that the student code constitutes a contract at all, but it need not reach that issue because this claim fails for other reasons. As to the individual defendants, it is "fundamental that an officer of a corporation will not be individually bound when contracting as an agent of that corporation within the scope of his employment." *Potter v Chaney*, 290 S.W.2d 44, 46 (Ky. 1956) (citation omitted). Cases cited by plaintiff creating an exception to this rule are inapplicable because no individual defendant gave any personal guarantee or expressly agreed to be individually liable under the code.

As to NKU itself, the claim is barred by the Eleventh Amendment. See *Experimental Holdings, Inc. v. Farris*, 503 F.3d 514, 520-21 (6th Cir. 2007) (citing *Pennhurst State Sch. v. Halderman*, 465 U.S. 89, 117-21 (1984)).

While plaintiff argues that such immunity was waived by NKU's removal of this case under *Lapides v. Bd. Of Regents*, 535 U.S. 613 (2002), that argument is misplaced. Here, plaintiff has a valid federal claim against NKU – Title IX – and it did not waive its immunity in state court prior to removal. *Lapides* thus does not apply. See *Kentucky Mist Moonshine, Inc. v. Univ. of Kentucky*, Civil Action No. 5:15-385-DCR, at *5 (E.D. Ky. June 23, 2016) (rejecting argument that UK waived its Eleventh Immunity by removing case to federal court) (Reeves, J.).

Therefore, Count VII will be dismissed as to the moving defendants.

THEREFORE, THE COURT BEING ADVISED, IT IS ORDERED AS FOLLOWS:

1. Defendants' NKU, Mearns, Roberts, and James's motion to dismiss Counts II and V (Doc. 82) be, and is hereby, **GRANTED**, and said Counts are now dismissed as to those defendants. Count V remains pending as to defendant Kachurek;
2. Section 1983 and common law claims against defendant Northern Kentucky University, be, and are hereby, **DISMISSED** as barred by the Eleventh Amendment. It is noted that the Title IX claims remain;

3. Count VII of the FAC is dismissed as to the moving defendants, but remains pending as to defendant Kachurek;
4. The state defamation claim against defendant Kachurek (Count VI) remains, pending further orders of the Court; and
5. Count VIII seeking punitive damages against all defendants be, and is hereby, **DISMISSED**, except for the punitive damages sought in the defamation claim against defendant Kachurek.

This 3rd day of November, 2016.



Signed By:

William O. Bertelsman *WOB*

United States District Judge