Ohio Administrative Code

Rule 3342-10-05 University policy regarding faculty participation in companies commericalizing university research.

Effective: October 15, 2016

(A) Purpose. Faculty are encouraged to develop discoveries and inventions with commercial potential; however, they should do so with due regard to the broader teaching and research mission of the university. Faculty should not allow their interest in a financial opportunity arising out of their research efforts to influence their teaching or research, or to interfere with their relationships with other faculty. Specifically, research assignments for students must be selected solely on the basis of the students' interests and academic development. Faculty should respect and promote the cooperative nature of the academic environment by sharing information and participating in joint research efforts with their colleagues.

(B) Eligibility. This policy applies only to faculty who: (1) create intellectual property owned by the university; and (2) desire to hold an interest, whether vested or not, in a firm, corporation, or other association (hereinafter "company") to which the board of trustees has assigned, licensed, transferred, or sold the university's interests in discoveries or inventions made or created by that faculty or in patents issued to that faculty commercializing their research. This policy serves as exceptions to the Ohio ethics law and related statutes (Chapter 102. and sections 2921.42 and 2921.43 of the Revised Code), which might otherwise apply. Matters outside the scope of these rules will be subject to such laws to the extent applicable.

(C) Procedures and guidelines.

(1) Faculty responsibilities. While faculty are permitted by these rules to engage in specified private business activities relating to their institutional positions, they continue to be responsible for the performance of all their teaching, research and service obligations. Authorized private business activities must not be allowed to interfere with the performance of any of their institutional responsibilities and must be undertaken in accordance with university rule 3342-6-23 of the Administrative Code and pursuant to formal consulting and conflict of interest management plans between the faculty, company and Kent state university, which plan must be approved by the vice president for research and sponsored programs.

(2) Reporting business activities. Prior to requesting participation in the commercialization of university technology, private business activities that may relate to a faculty member's scope of employment shall be reported in writing to the vice president for research and sponsored programs.

(3) Determining applicability of guidelines. Decisions concerning the relationship between a faculty member's private business activities and his or her scope of employment shall be made by the vice president for research and sponsored programs. The faculty member may appeal the decision of the vice president for research and sponsored programs to the provost. The decision of the provost will be final.

(4) Activities not related to research. Private business activities that are not subject to these rules because they are unrelated to the faculty member's scope of employment may be subject to other institutional policies on outside enterprises (rule 3342-6-24 of the Administrative Code), conflicts of interest and commitment (rules 3342-3-01.6 and 3342-6-23 of the Administrative Code), and patents and copyrights (rule 3342-5-09.1 of the Administrative Code).

(5) Approval process. A faculty member who wishes to participate in the commercialization of technology must first obtain approval from his or her department chair or school director and academic dean as appropriate. The faculty member, in consultation with his/her academic dean, chair or director, shall develop and present to the vice president for research and sponsored programs, a plan to manage, reduce or eliminate conflict of interest or commitment arising out of the faculty member's business activity. The vice president for research and sponsored programs shall refer the proposed plan to the university patent and copyright board, which will advise the vice president for research and sponsored programs as to the acceptability of the plan. Faculty may not enter into any agreements relating to their proposed business activities until the plan has received final written approval from the vice president of research and sponsored programs.

(6) Responsibilities of academic deans, chairs and/or directors. Academic deans, department chairs and directors have the responsibility of ensuring that faculty participating in approved business activities continue to perform all of their teaching, research and service obligations. Academic deans, department chairs and directors are also responsible for enforcing the university rules 3342-3-07.1 and 3342-6-23 of the Administrative Code and for reviewing and making a recommendation as to the

propriety of business activities reported by their faculty in written disclosures required by those policies.

(7) Annual review. Prior to the start of each academic year, the vice president for research and sponsored programs, in consultation with the academic dean, department chair or director will conduct an assessment of the employee performance under conflict of interest management plan.

(a) The academic dean, department chair or director will provide a written assessment of the employee's performance of their teaching, research and service obligations as outlined in the conflict of interest management plan.

(b) A review of the company's performance focused on the achievement of milestones set forth in the plan including but not limited to the reduction of management responsibilities for the employee, the dilution of employee equity interests, patents filed, etc., will be a part of the annual assessment.

(c) The vice president for research and sponsored programs shall consult with the patent and copyright board at its next regularly scheduled meeting for advice and counsel in the assessment of the performance of the faculty member to meet his/her obligations under the conflict of interest management plan.

(d) Failure to meet the goals outlined in the conflict of interest management plan will result in defined actions prescribed by the vice president for research and sponsored programs in consultation with the academic dean, department chair or director that may include but are not limited to revisions in the management plan, changes in the sponsored research or licensing agreements, or other remedies to ensure that faculty meet commitments to Kent state university.

(8) Agreements with start-up companies. A "start up" company is defined as a legal entity in the early stages of commercializing intellectual property or technology licensed by the university.

(a) Companies may not enter into any agreements with the university relating to the commercialization of a faculty member's research until final written approval from the vice president for research and sponsored programs is obtained.

(b) Faculty who wish to participate in a start-up company may discuss initial company formation matters with the vice president for research and sponsored programs; however, they should not participate in the ongoing negotiation of option and licensing terms between the company and vice president for research and sponsored programs.

(c) As soon as possible, third parties, such as company management and/or legal counsel should perform this function. A company wishing to obtain an exclusive license to the university technology may be required to provide the vice president for research and sponsored programs with a viable business plan including, at a minimum, the following:

(i) A capitalization plan addressing the acquisition of additional capital and the equity dilution of the faculty member's ownership interests;

(ii) A proposed management team; and

(iii) Milestones for capitalization, product development, and commercial sale.

(9) Use of university facilities. Institutional facilities, equipment and other resources may be used for research benefiting a company in which a faculty member has an interest only pursuant to a sponsored research agreement, facilities use agreement or other appropriate contractual arrangement in accordance with institutional policies.

(10) Management of start-up companies. Faculty for a limited period of time may hold management positions in start-up companies commercializing their research. While they may initially find it necessary to play a management role in a newly formed company, it is expected that their management responsibilities will decrease as the company develops. Professional management should be brought in at the earliest opportunity. Agreements between the university and faculty owned start-up companies will specify milestones for the reduction of these management responsibilities.

(11) Management positions in existing companies. A faculty member who acquires interest in a previously established company that contracts with the university to commercialize his or her research should not serve as a director, officer or employee of that company.

(12) Leave to pursue private business activities. Faculty should not allow their management activities with newly formed companies commercializing their research to consume a disproportionate amount of their professional attention. Faculty engaged in approved private business activities who are unable to perform all of their institutional responsibilities are encouraged to consider a full or partial leave of absence without pay. Professional improvement leave available under section 3345.28 of the Revised Code shall not be used for private business purposes.

(13) Student research within the university. Graduate and undergraduate students may use institutional facilities, equipment and other resources to perform research benefiting a company in which a faculty member has an interest only pursuant to a sponsored research agreement.

(14) Student employment with the company. Except as provided in paragraph (C)(15) of this rule, students may be employed by companies in which faculty members hold an interest. Prior to such employment, the student, the faculty member, the chair of the student's department, the chair of the graduate studies committee and a company representative must sign an agreement that clearly sets forth the roles, rights, and responsibilities of the respective relationships.

(15) Employment of students academically involved with faculty owners of the company. A student may not be employed by a company in which a faculty member has an interest if:

(a) The student is enrolled in a course taught by the faculty member;

(b) The faculty member is a member of the student's thesis or dissertation committee; or

(c) The faculty member is the student's advisor or the director of his or her thesis or dissertation research. Such students may perform research benefiting a faculty owned company only pursuant to a sponsored research agreement or formal internship agreement through the university.

(16) Contracts unrelated to technology development. Companies in which faculty hold an interest may enter into agreements with the university unrelated to research or technology development for the purchase, sale or rental of equipment, supplies, or services only to the extent not prohibited by Chapter 102. and sections 2921.42 and 2921.43 of the Revised Code.

(17) Investments by faculty not involved with development of the technology. Faculty who are not directly involved with research and development of technology licensed to a faculty owned start-up company may hold equity interests in that company only to the extent not prohibited by Chapter 102. and sections 2921.42 and 2921.43 of the Revised Code.

(18) Regulatory review boards. Institutional regulatory review boards, including for example, institutional review board and animal care and use committee, may be utilized for research benefiting a company in which a faculty or staff member has an interest only pursuant to institutional policies.

(19) Limitation of equity ownership. While significant faculty equity ownership may be inherent in a newly formed company, it is expected that faculty ownership interests, as a percentage of the total outstanding shares or membership interests of the company, will decrease as the company develops and attracts additional equity.

(a) Agreements between the university and faculty owned start-up companies shall specify milestones for the dilution of these equity interests. In most cases, the faculty's ownership interest should decrease to no more than twenty-five per cent of the total equity in the company.

(b) Failure to comply with or renegotiate these agreed-upon milestones may result in a renegotiation or in the company's inability to engage in sponsored research, employ students and the other commercialization agreements and/or activities allowed for under this policy.

(20) Principal investigators. Faculty may assume the role of principal investigator in sponsored research projects funded by companies in which they have an interest only pursuant to rules 3342-3-07 and 3342-3-07.1 of the Administrative Code.

(21) Intellectual property. Faculty participating in start-up companies approved pursuant to these guidelines continue to be bound by all institutional policies on patents and copyrights. New inventions and/or discoveries made as a result of a faculty member's research efforts for the company must be disclosed in writing to the vice president for research and sponsored programs. New inventions and/or discoveries developed by the faculty for the company will be owned by the university, unless the patent and copyright board determines that the invention or discovery is wholly

unrelated to the research and teaching responsibilities of the faculty member.