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### 2015 January 26 - Faculty Senate Agenda and Minutes

Faculty Senate, East Tennessee State University

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## Faculty Senate Agenda

January 26, 2015

Culp Center, Forum (Room 311)

- I. Old Business
  - a. Approval of Minutes for November 17, 2014
  - b. Approval of Minutes for December 1, 2014
- II. Information presentation  
Kathleen Moore, Director of Sustainability
- III. New business (Action Item)  
Motion to adopt change to faculty handbook section “Procedures for Termination for Adequate Cause” to align with TBR policy.
- IV. Updates
  - a. Senior Staff
  - b. Committee updates
    - i. SAI
    - ii. Faculty Development
    - iii. Faculty Club
- V. Discussion of January 15 Faculty Meeting
- VI. Announcements/Other Business
  - a. State of University Address  
3:00 p.m. Friday, January 30, 2014  
Brown Hall
  - b. ???
- VII. Adjournment

**2014-2015 Faculty Senate  
MINUTES—January 26, 2015**

Faculty Senate—East Tennessee State University

UPCOMING MEETING:	FOLLOWING MEETING:
February 9, 2015, 2:45 pm Meeting Room 6, Culp Center	February 23, 2015, 2:45 p.m. Forum, Culp Center

*Present:* Leila Al-Imad, Fred Alsop, Robert Beeler, Patrick Brown, Doug Burgess, Randy Byington, Kathy Campbell, Dorothy Drinkard-Hawkshawe, Joyce Duncan, Susan Epps, Lon Felker, Bill Flora, Virginia Foley, Nick Hagemeyer, Tammy Hayes, Helene Holbrook, Karin Keith, Guangya Li, Anthony Masino, Tim McDowell, Bea Owens, Timir Paul, Jonathon Peterson, Kerry Proctor-Williams, Thomas Schacht, Melissa Shafer, Kathryn Sharp, April Stidham, Kim Summey, Jim Thigpen, Paul Trogen, Craig Turner, Jennifer Vanover-Hall, Liang Wang, Robert White.

*Excused:* Lee Glenn, Jill Hayter, Ken Kellogg, Dharendra Kumar, Jerome Mwinyelle, Peter Panus, Eric Sellers.

*Absent:* Beth Baily, Sharon Campbell, Daryl Carter, Bill Hemphill, Tod Jablonski, Koyamangalath Krishnan, Mary Ann Littleton, Fred Mackara, Judy Rice, Deborah Ricker, Darshan Shah, Taylor Stevenson, Bill Stone, Ahmad Watted.

CALL TO ORDER: President Foley called the meeting to order at 2:53pm.

President Foley announced that the scheduled presenter for the meeting, Kathleen Moore, has the flu. She will try to reschedule her for the February 9<sup>th</sup> meeting in Culp Meeting Room Six.

President Foley shared updates from the two senior staff meetings in January.

January 5<sup>th</sup>:

- ETSU's 'Day on the Hill' in Nashville is scheduled for February 9<sup>th</sup>. Participants will have lunch with legislators and showcase ETSU.
- Athletics is working on a new strategic plan.
- President Noland announced that ETSU is hosting the Tennessee Valley Corridor in May. He and Congressman Roe will be the hosts.
- Dr. Collins announced that ETSU's state audit was complete. There were no findings. President Noland said that in his five years in West Virginia and his time here, he has never heard of an audit that went that smoothly.
- Mary Jordan announced that the hiring of new advisors is in progress and ARC is being renovated to accommodate them.

January 26<sup>th</sup>:

- President Noland talked briefly about the legislative session. The special session going on this week is focused on Healthcare and that if the Legislature adopts Governor Haslam's recommendations, there will be benefit to ETSU. He said the rest of the session would focus primarily on K-12 education.

- President Noland is continuing work with the Legislature on support for the Fossil Site, particularly the welcome center and the museum.
- President Noland shared that a student committed suicide off-campus during the first week of classes. There has been some talk on social media that the suicide happened on campus and that ETSU is covering it up. He said that was not the case.
- With regard to OIT, Dr. Samples chaired a committee that was looking at technology across campus and charges with making on how OIT should be structured and function. The committee recommended that it really needed to have a customer service orientation. They recommended an advisory board to support OIT and a CIO that reports directly to the president and sits on Academic Council. President Noland is looking at a major structural change that would merge OIT and E-learning and bring things together for a holistic approach. He also wants to hear from faculty about OIT. If anyone has thoughts about what should be done, send him an email.

President Foley requested approval of minutes for November 17, 2014 and for December 1, 2014. Senator Byington moved to accept both sets of minutes. Senator Brown seconded. The minutes were approved without dissent.

President Foley stated that there is an action item under New Business in the Agenda. Senator Byington moved to adopt a change to the faculty handbook section, "Procedures for Termination for Adequate Cause," that aligns ETSU policy with TBR policy. Senator Byington explained that at the last senate meeting we talked about changes related to the TBR procedure. Discussion ended with a recommendation to delete our current procedure from the faculty handbook and instead replace it with a link to the TBR procedure which was perceived to be more favorable to faculty over our current procedure. Senator Schacht seconded the motion. There were questions regarding the procedure to enact the change after our vote. President Foley explained that if the faculty senate approves the change, it then goes to the Academic Council. The Academic Council has to approve the change then the president signs off on it and the day the president signs off on it, that's the day the policy is followed. President Foley asked for all in favor to signify by saying aye. The motion passed with no dissent or abstentions.

President Foley asked for updates from the standing committees. She asked if the SAI committee had anything to report. Senator Sharp replied that the SAI committee has made a lot of progress and very soon will send an email of a draft of the assessment with revised, reorganized, and/or rephrased questions. It is a draft to take back to the colleges and get some feedback before the committee makes a final product. The other thing is that the committee would like to hear from instructors with a good SAI response rate on how they make that happen. Extra points seem to be the most successful enticement. She said they would like to get some ideas to increase response rates.

Senator Byington asked why folks are concerned with response rates. He said he would rather have legitimate responses than to have our previous system where people just marked bubbles randomly. President Foley replied that if you have a class and only three of your students respond, you don't get the information. She said she had a conversation with the SGA president because the SGA was also concerned about students not participating. The

students reported that they preferred pencil and paper. They liked taking class time to do it as it made one not postpone it. The students thought that it was important.

Senator Peterson suggested that if there was a way to link the SAI completion to D2L as an anonymous assignment so they could complete the SAI and it could go right to D2L gradebooks a percentage of the course grade it would solve the problem. Senator Masino stated that at another university they will not release the final grade until the SAI is completed. The grades are already turned in; the student just can't go online to see their grade until the SAI is filled out.

President Foley asked if there was a report from the Faculty Development Committee. Senator Brown replied that the last time he checked there were 138 responses to the survey about faculty support for continuing education and development. He said that the survey closes on the 31<sup>st</sup> of January. Once the survey closes the committee will meet and review the responses. He added that the committee is also looking at whether or not there is evidence to indicate where faculty development centers might actually improve either faculty morale or faculty performance. Once they have the data they will start making recommendations.

President Foley stated that Senator Glenn was unable to attend the senate meeting today and so an update on the faculty club will wait until his return.

President Foley said that she saw a lot of senators at the plenary faculty meeting on the 15<sup>th</sup>. She asked if there was any feedback regarding the meeting. Is this something we should do once a semester? What comments have we heard? Senator K. Campbell relayed that one of her colleagues started watching the streaming to determine whether to go over to the Culp. She watched a couple of minutes and decided to go over. When she saw what the meeting was, she stayed the whole time and thought it was wonderful. Senator Alsop said he was not sure we should limit this to once a semester. If things are piling up and there's a lot of interest in something that's going on, it would be good to call one. He added that president Noland seems to want to discuss things. President Foley stated that we will call it an Open Forum with the president sponsored by the faculty senate in the future; that might communicate more clearly what the experience is.

President Foley said that she attended Jackson Katz's presentation the night before. She said the Culp was packed and there was overflow in the Ballroom. Senator McDowell said that this was perhaps one of the only times he has seen the Culp Center full and overfilled. Students clearly turned out for the sponsoring groups: the student athletic groups, fraternities and sororities, gender studies groups, and some of the psychology classes. President Foley added that students were engaged and were listening and Katz was direct. It was a really good presentation.

Senator Schacht asked as a follow up to Dr. Katz's presentation, what is the current status of Sex Week. Senator Alsop replied that it was announced on media that students had raised a sufficient amount of money and it will happen.

President Foley reminded everyone of the State of the University address this Friday at 3:00pm in Brown Hall. Our next faculty senate meeting is on February 9<sup>th</sup> in Culp Meeting

Room 6. Dr. Bach is scheduled to come talk to senate on February 23<sup>rd</sup>. If there is an issue you would like for him to address, she asked to let her know at the next meeting.

Senator Schacht stated that he had new business. He said the first item has to do with procedure for promotion and tenure review. Currently, we have a multi-level review process and the way it works is that at each level, the review essentially begins over again from the ground level. There is a lot of redundancy built into that. He said in his department, the faculty and the chair in the department had a recommendation and the college committee came up a different recommendation based on applying its own criteria. Senator Schacht said he would like us to consider for a possible future proposal having the primary review occur at the departmental level. Then all reviews above that would do two basic things: one is resolve conflicts and two is to fix errors.

Senator McDowell said that he thinks it is a good suggestion. He said he has heard of a number of cases recently where the candidate was approved at the department and chair level and then disapproved for promotion or tenure at the college level.

Senator Burgess commented that over the years, one of the most common problems has been the college committee and occasionally deans not following the standard policy for the department.

Senator Byington said that he would need to check TBR policy to see if it was required, but he would advocate for eliminating the college P&T committee because our colleges are so diverse now. He said he is on the college committee to review promotion and tenure, and he doesn't know anything about Audiology or Speech Language Pathology. Nursing is the only College that is a relatively unified body of knowledge. Business and Technology have been combined. Arts and Sciences is very diverse.

Senator Burgess said that he understands what Senator Byington is saying but disagrees. He would like to see the college committee remain. Its job is to make sure all procedures were followed.

Senator Alsop said that in recent years departments were required to develop their own criteria so that its clear to the faculty committees within the department what the criteria are and what has been agreed to. Those criteria get approved at the dean's level. Once that's happened, there is a set of guidelines that nobody else needs to interpret. There should not have to be a check and balance from another committee.

Senator Hawkshawe agreed. If the departments have their own separate criteria, and the college committee usually looks at the department's criteria and makes a decision based on the department's criteria.

President Foley asked if we want to form an ad hoc committee to look at this. Senator Schacht said that his goal for today was simply to put it on the table, not ask for any action.

Senator Schacht continued that he has two more ideas. The second one has to do with committees meeting with no rules. It arises from the assumption that once you are anointed to a faculty position, you automatically know how to operate on a committee that is charged with resolving a dispute or adjudicating some matter. It was shared with him by officials from AAUP who said that an institution in St. Louis does not allow any faculty member to sit on a adjudicative committee unless they have gone through a due process training program and AAUP sends one of their staff members once a year to the university to run that training program for faculty. He said that he did not know if we need to go that far, but he does think that it is time that we look at setting out some general rules for how committees should operate. For example, perhaps there should be some common standards for how committees deal with the question of what evidence they're going to consider. Likewise, we should have some clear standards for when people should not serve on a committee and should recuse themselves. We also don't have any standards for what a committee has to say in its final report.

Senator Schacht continued that the third idea is related to the notion of rules. He said that he doesn't think we do as good of a job as we could in terms of orienting faculty as to how things work, even how their own departments work. It would be really nice if when a new faculty member came into the department, we could point them to a document and say here is the organizational chart for the department. Here is our committee structure and charge and membership of each committee. Here's where all the minutes for that committee are stored. Here are all of the department's specific policies. Currently there are some departments that have really taken the notion of departmental bylaws and made very productive use of it. Other departments don't have departmental bylaws. This body has an opportunity to look at this question and consider the possibility of creating a general expectation that every department will have its own set of bylaws. The department can make of them what it wants. The senate could have a list of suggested topics to cover. A generic template. To say departments can operate without this kind of information being easily available to faculty is a recipe for anarchy.

Senator Alsop added that the departmental bylaws aren't just useful for existing faculty and new faculty. It can become crucial when you get a new chair who knows nothing about the culture or tradition of a department. He said that Biology began to put theirs together at the faculty retreat when they were basically between chairs. It was a great time and great motivation to say where does this department want to go?

President Foley stated that she would note those three things as items for further discussion. Senator Brown moved to adjourn; Senator Epps seconded.

ADJOURNMENT: The meeting was adjourned at 3:42 p.m.

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*Please notify Senator Melissa Shafer ([shaferm@etsu.edu](mailto:shaferm@etsu.edu) or 9-5837, Faculty Senate Secretary, 2014-2015, of any changes or corrections to the minutes. Web Page is maintained by Senator Doug Burgess ([burgess@etsu.edu](mailto:burgess@etsu.edu) or x96691).*

**A Senate committee's review of ETSU's Faculty Handbook's section on Termination of Tenure for Adequate Cause found that the ETSU procedure is not aligned with that of TBR (memo of committee's findings attached as a separate document). As a result of this review, the Senate has approved the following change to the Faculty Handbook. This change removes the ETSU procedure and, as in many instances in the Handbook, links to the most current Board policy.**

## **Termination for Adequate Cause**

A faculty member with tenure or a faculty member on a tenure-track appointment prior to the end of the term of appointment may be terminated for adequate cause, which includes the following:

- a. Incompetence or dishonesty in teaching or research.
- b. Willful failure to perform the duties and responsibilities for which the faculty member was employed or refusal or continued failure to comply with the policies of the Board, the university or the department, or to carry out specific assignments, when such policies or assignments are reasonable and non-discriminatory.
- c. Conviction of a felony or a crime involving moral turpitude.
- d. Improper use of narcotics or intoxicants, which substantially impairs the faculty member's fulfillment of his/her departmental and university duties and responsibilities.
- e. Capricious disregard of accepted standards of professional conduct.
- f. Falsification of information on an employment application or other information concerning qualifications for a position.
- g. Failure to maintain the level of professional excellence and ability demonstrated by other members of the faculty in the department or academic program unit of the university.

### **Procedures for Termination for Adequate Cause**

Termination of a faculty member with a tenure appointment or a tenure-track appointment prior to the end of the annual specified term of the appointment, shall [follow the procedure outlined in ~~be subject to~~ TBR Policy 5:02:03:60 \(Academic Tenure for Universities\) section IV, subsection I.](#)

[Refer to the TBR procedure found at](#)

<https://policies.tbr.edu/policies/academic-tenure-universities#Termination-for-Adequate-Cause>

[the following procedures:](#)

~~The proposed termination will be preceded by discussion between the faculty member and appropriate administrative officers in an attempt to reach a mutually agreeable settlement. In the event that a mutually agreeable settlement cannot be achieved the president shall appoint an informal inquiry committee consisting of five tenured faculty members.~~

~~Although not mandatory, every attempt shall be made to appoint committee members acceptable to the faculty member concerned. This committee shall attempt to arrange a mutually agreeable settlement between the various parties. Failing in~~



~~this, the committee shall render a recommendation to the president concerning the desirability of initiating formal dismissal proceedings. This recommendation shall not be binding upon the president.~~

~~A dismissal will be preceded by a written statement of reasons, and the faculty member concerned will have the right to be heard by a hearing committee consisting of members of the faculty and administration (and not including any member of the faculty committee referred to in the preceding paragraph). This hearing committee shall consist of seven members appointed jointly by the presidents of the university and the Faculty Senate. The president of the university shall appoint one of the seven to chair the committee. The committee shall, at its first meeting, determine its own rules and procedures not otherwise specified in this document.~~

~~Any party to the case has the right to challenge hearing committee members for cause. In the event of such challenges, replacement members will be chosen in the manner specified in the ETSU Faculty Handbook.~~

~~Pending a final recommendation by the hearing committee, the faculty member will be suspended or assigned to other duties in lieu of suspension only if the president determines that immediate harm to the faculty member himself or herself or others or significant disruption to any university operation is threatened by continuance. Before suspending a faculty member, pending an ultimate determination of his/her status through the institution's hearing procedures, the administration will consult with the hearing committee concerning the propriety, the length, and the other conditions of the suspension. Suspension is appropriate only pending a hearing. Salary will continue during the period of suspension.~~

~~The hearing committee may, with the consent of the parties concerned, hold joint pre-hearing meetings with the parties to define and clarify the issues, effect stipulations of facts, provide for the exchange of documentary or other information, and achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.~~

~~Service of notice of hearing, with a statement of the time and place of the hearing and with specific charges in writing, will be made at least twenty (20) days prior to the hearing. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges or asserts that the charges do not support a finding of adequate cause, the hearing tribunal will evaluate all available evidence and base its recommendation upon the evidence in the record.~~

~~During the proceedings the faculty member will be permitted to have an advisor and/or counsel of his or her choice. This advisor or counselor may be present during the hearing but may not participate.~~

~~A court reporter will transcribe the hearing or hearings and, at the faculty member's request, a transcript will be made available without cost to the faculty member.~~

~~The burden of proof that adequate cause exists rests with the institution and shall be satisfied only by clear and convincing evidence in the record considered as a whole.~~

~~The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The administration will cooperate with the hearing committee in securing witnesses and making available documentary and other evidence.~~

~~The faculty member and the administration will have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear, but the committee determines that the interests of justice require admission of their statements, the committee will identify the witnesses, disclose their statements, and if possible provide for interrogatories.~~

~~In the hearing of charges of incompetence, the testimony may include that of qualified faculty members from East Tennessee State University and other institutions of higher education.~~

~~The hearing committee will not be bound by strict rules of legal evidence, and may admit any evidence which is of value in determining the issues involved. The committee will seek to obtain the most reliable evidence available.~~

~~Except for such simple announcements as may be required concerning the time of the hearing and similar matters, public statements and publicity about the case by the faculty member, members of the hearing committee, or administrative~~

~~officers will be avoided until the proceedings have been completed, including consideration by the Board. The president and the faculty member will be notified of the decision in writing and will be given copies of the record of the hearing.~~

- ~~a.—If the hearing committee concludes that adequate cause for dismissal has been established by the evidence in the record, the faculty member may appeal that decision to the president within ten days. The hearing committee may recommend to the president, with supporting reasons, that a penalty other than dismissal would be more appropriate. If the hearing committee concludes that adequate cause for dismissal has not been established by the evidence in the record, it will so report to the president, who may reject the report with a written statement of reasons. Any decision by the president may be appealed to the Board within twenty calendar days of the decision pursuant to the following subsection: If dismissal or other severe sanction is recommended, the president will, on request of the faculty member, transmit to the chancellor the record of the case. The review of the record by the Board or its designee will be based on the record of the committee hearing, and will provide for written argument by the principals or by their representatives. The decision of the president will either be sustained, or the proceeding returned to the president with specific objections. The president will then reconsider, taking into account the stated objections, and return the case to the hearing committee if necessary. The Board or its designee will make a final decision only after study of the president's reconsideration.~~
- ~~b.—If the president determines that adequate cause for dismissal, or other lesser sanctions, has not been established the hearing record will be expunged.~~

05/04/87; 07/91; 05/92; 07/92; 09/96; 07/97 (Effective 1998-99 review cycle); 01/02; TBR 04/02/04; 02/12/09; 10/13/11; 08/01/13; INSERT DATE OF APPROVAL

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INTEROFFICE MEMORANDUM

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**TO:** MEMBERS OF FACULTY SENATE  
**FROM:** MEMBERS OF FACULTY SENATE SUBCOMMITTEE – TENURE TERMINATION  
**SUBJECT:** TBR VS ETSU TENURE TERMINATION POLICIES  
**DATE:** NOVEMBER 5, 2014

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Dear Members of Faculty Senate:

The purpose of this memo is to update members of the ETSU Faculty Senate the results of Faculty Senate's Subcommittee on Tenure Termination ("Subcommittee") review of the existing tenure termination policies and procedures of TBR versus ETSU. It is the recommendation of the Subcommittee the following items be implemented by ETSU going forward for all tenure termination proceedings to insure compliance with TBR mandated guidelines as well as mitigate potential unnecessary litigation against ETSU.

Subcommittee source documents are attached to this memo. The source documents include the following:

1. Published TBR policy and guidelines for the termination of tenured faculty.
2. Published ETSU policy and guidelines for the termination of tenured faculty.

Subcommittee Recommendations based on variance of TBR & ETSU policies and procedures:

1. Attorney Representation at Hearing Committee – ETSU must comply with TBR policy

TBR policies and procedures for "Termination for Adequate Cause" via subsection 1(b)(2) regarding suspension of a tenured faculty member as well as subsection 8(a) regarding the Tenure Termination Hearing Committee clearly states the faculty member "will be permitted to have an academic advisor and may be **represented** by legal counsel of his/her choice". ETSU policies and procedures state "During the proceedings the faculty member will be permitted to have an advisor and/or counsel of his or her choice. This advisor or counselor may be present during the hearing but may not participate." The ETSU policy is in direct contradiction to the clear language spelled out by TBR that a faculty member "may be **represented** by legal counsel of his/her choice". ETSU policies and procedures restrict a right conveyed to tenured faculty members by TBR. Present ETSU policies and procedures may create more harm to ETSU rather than help, as the ETSU restriction is more than likely a violation of a party's fundamental constitutional right.

2. Pre-Hearing Discovery – ETSU must comply with TBR policy

TBR policies and procedures for "Termination for Adequate Cause" via subsection 7 permits a Pre-Hearing prior to the formal Hearing Committee to discuss the upcoming Hearing Committee procedures as well as discovery of evidence. Subsection 7 states "The chairperson of the hearing committee may in his/her discretion require a joint prehearing conference with the parties which may be held in person or by a conference telephone call."

ETSU policies and procedures state "The hearing committee may, with the consent of the parties concerned, hold joint pre-hearing meetings with the parties to define and clarify the issues, effect stipulations of facts, provide for the exchange of documentary or other information, and achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious."

In light of the contradiction between TBR and ETSU policy it is the recommendation of the Subcommittee ETSU recommends ETSU policy be modified to state "The Hearing Committee *will at the request of the faculty member concerned...*"

3. Appeal of President's decision to terminate faculty member when Hearing Committee recommended any result other than termination

TBR policies and procedures for "Termination for Adequate Cause" via subsection 9 states "After consideration of the committee's report and the record, the president may in his/her discretion consult with the faculty member prior to reaching a final decision regarding termination. Following his/her review, the president shall notify the faculty member of his/her decision, which, if contrary to the committee's recommendation shall be accompanied by a statement of the reasons. If the faculty member is terminated or suspended as a result of the

president's decision, the faculty member may appeal the president's action to the Chancellor pursuant to TBR Policy 1:02:11:00. Review of the appeal shall be based upon the record of hearing. If upon review of the record, the Chancellor notes objections regarding the termination and/or its proceedings, the matter will be returned to the president for reconsideration, taking into account the stated objections, and, at the discretion of the president, the case may be returned to the hearing committee for further proceedings”.

Current published ETSU policies and procedures state “If the hearing committee concludes that adequate cause for dismissal has not been established by the evidence in the record, it will so report to the president, who may reject the report with a written statement of reasons. Any decision by the president may be appealed to the Board within twenty calendar days of the decision pursuant to the following subsection: (a) If dismissal or other severe sanction is recommended, the president will, on request of the faculty member, transmit to the chancellor the record of the case. The review of the record by the Board or its designee will be based on the record of the committee hearing, and will provide for written argument by the principals or by their representatives. The decision of the president will either be sustained, or the proceeding returned to the president with specific objections. The president will then reconsider, taking into account the stated objections, and return the case to the hearing committee if necessary. The Board or its designee will make a final decision only after study of the president's reconsideration.”

ETSU policies and procedures must comply with TBR policy. Standing ETSU policy restricts an appeal right TBR conveyed to tenured faculty members by limiting the appeal of the President's termination decision over Hearing Committee findings to the ETSU Board. Based on the composition of the ETSU Board versus the Chancellor, ETSU policy and procedure may create potential litigation claim against ETSU for failing to follow proper due process procedures.

4. TBR policies and procedures subsection 8(h) & 8(i)

TBR policies and procedures for “Termination for Adequate Cause” via subsection 8(h) states “The findings of fact and the report will be based solely on the hearing record.” In addition, subsection 8(i) states “The president and the faculty member will be provided a copy of the written committee report. The committee's written report shall specify findings of fact and shall state whether the committee has determined that adequate cause for termination exists and, if so, the specific grounds for termination found. In addition, the committee may recommend action less than dismissal. The report shall also specify any applicable policy the committee considered.”

ETSU policies and procedures must comply with TBR policy. ETSU policies and procedures does not contain TBR subsection 8(h) nor 8(i) in its prevailing format.

5. TBR mandated timing notice of Affidavits

TBR policies and procedures for “Termination for Adequate Cause” via subsection 8(e) states “The faculty member and the administration will have the right to confront and cross examine all witnesses. Where the witnesses cannot or will not appear, but the committee determines that the interests of justice require admission of their statements, the committee will identify the witnesses, disclose their statements, and, if possible, provide for interrogatories. *An affidavit may be submitted in lieu of the personal appearance of a witness if the party offering the affidavit has provided a copy to the opposing party at least ten (10) days prior to the hearing and the opposing party has not objected to the admission of the affidavit in writing within seven (7) days after delivery of the affidavit or if the committee chairperson determines that the admission of the affidavit is necessary to ensure a just and fair decision.*”

ETSU policies and procedures regarding submission of an affidavit when a party is not available to be present states “The faculty member and the administration will have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear, but the committee determines that the interests of justice require admission of their statements, the committee will identify the witnesses, disclose their statements, and if possible provide for interrogatories.”

ETSU policies and procedures must comply with TBR policy. ETSU policy and procedures lacks TBR mandated opposing party notice regarding the use of affidavits (10 and 7 day rule).

6. TBR Pre-Hearing discovery of Witness List, Hearing Procedures and copy of Written Record Shared.

TBR policies and procedures for “Termination for Adequate Cause” via subsection 7 permits a Pre-Hearing prior to the formal Hearing Committee to discuss the upcoming Hearing Committee procedures as well as discovery of evidence. Subsection 7 states “The purpose of the pre-hearing conference should include but is not limited to one or more of the following: (a) As notification as to procedure for conduct of the hearing. (b) To exchange of witness lists, documentary evidence, and affidavits. (c) To define and clarify issues. (d) To effect stipulations of fact. A written memorandum of the pre-hearing conference should be prepared and provided to

each party.”

ETSU policies and procedures state “The hearing committee may, with the consent of the parties concerned, hold joint pre-hearing meetings with the parties to define and clarify the issues, effect stipulations of facts, provide for the exchange of documentary or other information, and achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.”

ETSU policies and procedures must comply with TBR policy. Standing policy language excludes the exchange of witness list, notification of hearing procedures as well as written record of the Pre-Hearing meeting being shared with all parties. It is the recommendation of the Subcommittee ETSU comply with existing TBR policy.

Subcommittee Recommendations based on transparent proceedings to avoid future litigation by parties involved.

1. Historical Record of Prehearings, Hearings, Hearing Committee procedural instructions as well as recommendations be recorded going forward and made available for future tenured faculty members facing termination.
2. Consistent and static procedural rules from notice of pending termination, prehearing meetings and hearing meetings. By publishing a transparent process and policy regarding tenure termination process, potential terminated faculty members can make an informed decision regarding resignation or pursuit of a hearing. In addition, potential Hearing Committee members would be afforded the opportunity to prepare prior to accepting the Committee appointment as well as prepare for their Committee duties.
3. While TBR and ETSU policy require notice of at least 20 days prior to the Hearing Committee to the tenured faculty member facing termination the TBR and ETSU policy is ambiguous and may be construed to require 20 days prior notice to the Pre-Hearing meeting. Under current guidelines, potential litigation may arise from this time discrepancy. Since the Pre-Hearing meeting is elective by the tenured faculty member facing termination, it may be advantageous to ETSU to indicate the 20 days prior notice stipulation starts when the tenured faculty member facing termination waives his/her right to the Pre-Hearing meeting or at the conclusion of the Pre-Hearing meeting.