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2014 September 8 - Faculty Senate Agenda and Minutes

Faculty Senate, East Tennessee State University

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**Faculty Senate Agenda
September 8, 2014
Meeting Room 6**

Old Business

1. Minutes from Retreat
2. Reports from Standing Committees
 - Tenure and Promotion Appeals
 - Grievances
 - Handbook--no report

New Business

1. SAI Committee
2. Teaching Development
3. Grievance Committee -- need new committee members (replacing Arnall, Gann, Forsman)
4. Procedural Consultants for Grievances—need at least 3 trained and one needs to be from College of Medicine or Pharmacy
5. Handbook Committee—Randy Byington Chair
 - need 2 new committee members
 - 1 from Health Sciences
 - 1 from Academic Affairs
6. Committee on Committees
 - replace 3 members
7. Elections Committee
8. ITCG Security Committee Rep

Information Item:

Presentation by Tom Schacht and Doug Burgess on protections and due process afforded (and not afforded) tenured faculty in the TBR system.

Reminder: Attendance is expected. If you are unable to attend email Melissa Shafer at

shafer@etsu.edu and let her know.

2014-2015 Faculty Senate

MINUTES—September 8, 2014

Faculty Senate—East Tennessee State University

UPCOMING MEETING:	FOLLOWING MEETING:
September 22, 2014 2:45 pm Forum, Culp Center	October 6, 2014 2:45 p.m. Forum, Culp Center

Present: Leila Al-Imad, Fred Alsop, Beth Baily, Robert Beeler, Patrick Brown, Doug Burgess, Randy Byington, Kathy Campbell, Dorothy Drinkard-Hawkshawe, Joyce Duncan, Susan Epps, Low Felker, Bill Flora, Virginia Foley, Lee Glenn, Nick Hagemeyer, Tammy Hayes, Jill Hayter Karin Keith, Ken Kellogg, Dharendra Kumar, Guangya Li, Fred Mackara, Anthony Masino, Tim McDowell, Jerome Mwinyelle, Bea Owens, Paul Timir, Peter Panus, Kerry Proctor-Williams, Deborah Ricker, Thomas Schacht, Melissa Shafer, Kathryn Sharp, Taylor Stevenson, April Stidham, Bill Stone, Kim Summey, Paul Trogen, Jennifer Vanover-Hall, Liang Wang, Ahmad Watted, Robert White

Excused: Eric Sellers

Absent: Sharon Campbell, Daryl Carter, Bill Hemphill, Helene Holbrook, Tod Jablonski, Koyamangalath Krishanan, Mary Ann Littleton, Alan Peiris, Darshan Shah, Jim Thigpen, Craig Turner, Shimin Zheng

Guests:

CALL TO ORDER: President Foley called the meeting to order at 2:50pm.

President Foley requested approval of the minutes from August 19, 2014. Senator Byington moved to accept the minutes. Senator Epps seconded. The minutes were approved without dissent.

President Foley asked for reports from standing committees. Senator Burgess stated that the Tenure and Promotion Appeals Committee and the Grievances Committee had a number of cases this past year and all have been resolved. President Foley announced that there is no report from the Handbook Committee.

President Foley moved to the new business on the agenda. (Agenda Item 1) She said that at the retreat we discussed forming a committee to look at SAIs to determine if we are asking the right questions to get the information we need. SAIs play such a role in Tenure and Promotion

that we really need to make sure we're capturing the right information. President Foley asked if anyone was interested in serving on a committee to devise the SAI's. Senators Sharp, Epps, Kellogg, and Hayter volunteered. President Foley asked if someone was willing to chair that committee. Senator Sharp volunteered to serve as chair.

(Agenda Item 2) President Foley stated that there was also discussion of establishing an ad-hoc committee to look at creating a Teacher or Faculty Development Center. She asked for volunteers to serve on that committee. Senators Brown and Epps volunteered. Senator Brown agreed to serve as chair of the committee.

President Foley commented that the Faculty Development Center and the SAI committee will be expanded beyond Faculty Senate. She asked that as the committee chairs contact people outside that they be prepared to announce at the next Faculty Senate meeting the roster of committee members.

(Agenda Item 3) Senator Byington, serving as chair of the Committee on Committees began by explaining that the Grievance Committee is a Faculty Senate staffed committee that serves in an advisory capacity to the president. There is an individual representative from each college. We need to replace a representative from the College of Clinical and Rehabilitative Health Sciences, the College of Public Health, and the College of Education.

President Foley asked if these individuals need to be tenured faculty. Senator Byington replied that it is best if he or she is tenured and ideally be at the rank of professor, but we've never made that a requirement. Senator Burgess agreed that it is probably best for anyone who wishes to serve to be tenured.

Senator Byington asked if there is a volunteer from the College of Clinical and Rehabilitative Health Sciences. It was determined that other than Senator Byington, the eligible senators from the college were not in attendance. Senator Byington stated he would email them and he would let us know the decision at a later time. He asked if there was a volunteer from the College of Education. It was determined that president Foley was the sole tenured senator in that college and so she accepted the seat by default.

Senator Byington asked if there was a volunteer from the College of Public Health. It was determined that there were no tenured representatives from the college. Senator Burgess stated that if necessary, the committee could manage without. He explained that when a hearing is convened only five people are part of the hearing.

(Agenda Item 4) President Foley said in relation to the Grievance Committee are the Procedural Consultants. She asked Senator Burgess to explain the duties of a Procedural Consultant. Senator Burgess explained that the Procedural Consultants were implemented to assist a faculty member in determining whether an issue is a Complaint or a Grievance and to inform the faculty member of the flow chart and deadlines associated with filing either a Complaint or Grievance. He added that the consultant is not a legal representative or advisor. The need for a Procedural Consultant arose some eight or nine years ago when there was a case where the faculty member had not understood the process in the handbook. In the guidelines, the

minimum number of Procedural Consultants is three. Senator Byington announced that because of retirements and other issues we are down to only one procedural consultant at this time. President Foley stated that we need to train additional procedural consultants. Senator Byington added that the training for that is done by Ed Kelly and Doug Burgess. He said that we are looking for someone from the medicine side of campus and then a minimum of one person from the academic side of campus who would be willing to serve in the role of a procedural consultant. Senator Burgess stated that the training lasts one to one and a half hours.

President Foley asked if anyone was willing to be trained as procedural consultants. Senator Stone said that he was willing but is on the Academic Ethics Committee. He asked if that would be a conflict of interest. Senator Byington replied that it should not be and noted that Senator Stone is the volunteer from the Medical School. President Foley said that we now need a volunteer from the academic side of the street. Senators McDowell and Glenn both volunteered. President Foley asked Senator Burgess to get together with Ed Kelly and arrange the training session for the new consultants.

(Agenda Item 5) Senator Byington explained that according to the bylaws, the chair of the Handbook Committee is the immediate past-president and the committee consists of two members from the health science side of campus, two members from the academic side of campus, and two members of the administration. He said that we need to replace one person from the health sciences side and one person from academic affairs side to serve on the Handbook Committee. He explained that if there is a change in the handbook the committee follows through to make sure that the appropriate changes have been made and that the notations have gone up on the webpage that indicate at what point the update was made. Also, if there is something that comes from a change in TBR policy that impacts the Faculty Handbook, then the Handbook Committee decides where in the handbook that TBR policy impacts the wording and begins the process of bringing the proposed wording to Faculty Senate, which then goes to Academic Council and to the president for approval. The committee meets on an ad-hoc basis. Senator Byington asked if there were volunteers. President Foley added that one need not be tenured to serve. Senator Ricker volunteered from the Health Sciences and Senator Flora volunteered from the Academic Affairs side of the campus.

(Agenda Item 6) Senator Byington stated that there are three seats that need to be filled on the Committee on Committees. According to the bylaws, the past-president is the chair of the Committee on Committees. There is no stipulation on rank or tenure and no stipulation on academic or health science. Most of the work is done between January and the start of the following school year. Senators Felker, K. Campbell, and Vanover-Hall volunteered.

(Agenda Item 7) Senator Byington stated that according to the bylaws, the Elections Committee oversees elections of the senate officers every year. The bylaws also state that the Elections Committee oversees a uniform election process for senators from the colleges, should there come a dispute or anything associated with that process. In the past the only thing that has been required is overseeing the elections for our officers. He added that since he is chairing these other committees, he would like to rotate off of that committee.

Senator Schacht asked if this committee potentially has jurisdiction over elections on senators from colleges. Senator Byington replied that according to the bylaws, the answer to that is yes. Senator Schacht commented that last year there was a brief but fierce controversy about that issue which resulted from the desire of some folks to set term limits on elections in the senate. It is possible that if that issue comes up again, this committee will actually have something to sink its teeth into. Senator Byington said that one of the things that he actually quoted back in that particular argument was that the fact of a uniform elections procedure was mentioned at this point in our bylaws.

Senator Schacht reminded that we have a piece of unfinished business from last year in the form of a proposal to create a procedure for conducting faculty referendums. He said we never did get to act on that. We put it on the table, but it is still an issue we might want to deal with. This committee might be the one to take on the charge.

Senator Byington said that the committee has been comprised of three or four people in the past. The majority of the responsibility of the committee is conducting the elections at the end of the year.

President Foley asked if Senator Schacht would be willing to serve on the committee. Senator Schacht agreed. President Foley stated that since she was ineligible to run that she would be willing to serve on that committee. Senator Drinkard-Hawkshaw volunteered to be the third committee member.

(Agenda Item 8) Senator Byington stated that we need someone to represent senate on the Information Technology Governance Committee (ITCG) Safety sub-Committee which deals with network security, servers, etc. They meet on an ad-hoc basis. Senator Bailey volunteered.

Senator Byington added that there was a request from the Dean in the library that did not make the agenda. Two of the senators that were on the Library Advisory Committee last year have rotated off of senate and so there is a need for two senators to represent the senate and faculty at large on the Library Advisory Committee. Senators Schacht and Trogen volunteered.

Senator Byington stated that that takes care of all the committee vacancies at this point in time.

President Foley said that the remaining business on the agenda is an information item. She asked Senators Schacht and Burgess to do a presentation on what is and what is not available in terms of protections and due process for faculty members. She said that before they begin she would like to remind everyone that President Noland is attending our September 22nd meeting. On October 6th, Dean Van Zandt will be in attendance to talk about the library.

Senator Schacht began by saying that the issue under discussion has to do with our comfort level with the procedures that are followed on this campus when there is a move by the administration to terminate a tenured faculty member. The ETSU Faculty Handbook Section 2 under Employment/Tenure describes Termination of Tenure for Adequate Cause. That's the only procedure that we're concerned with. The other two reasons that can be used to terminate tenure are elimination of a program or financial exigency. At ETSU the procedure for Termination of Tenure for Adequate Cause is directed at one of seven potential causes set forth

in a statute passed by the legislature that established the tenure process for TBR and that sets forth the grounds for termination. Those seven potential causes are: (1) Incompetence or dishonesty in teaching or research; (2) Willful failure to perform duties and responsibilities or continued failure to comply with the policies of the board; (3) Conviction of a Felony or conviction of a crime involving moral turpitude; (4) improper use of narcotics or intoxicants which impair the faculty member's ability to perform their duty; (5) disregard of standards of professional conduct; (6) falsification of information on employment application or other information regarding qualifications for a position; or (7) 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. Of those seven, he said there are two that ought to give us pause. The first is disregard of accepted standards of professional conduct and the reason that is bothersome is that we do not have a reference document. We don't have anything we can look through to see where we get these standards from. The closest thing we have is the American Association of University Professors' statement on ethics which is incorporated by reference into our Faculty Handbook. That statement was originally published in 1940. It is accompanied by some clarifying interpretive remarks that are made on the AAUP website that are not referenced in our Handbook. In any case, we don't know what accepted standards are. The second cause for termination that is of concern is the failure to maintain the level of professional excellence and ability demonstrated by other members of the faculty. Anybody that is below average by definition is in jeopardy for their tenure. The vagueness in those standards becomes more of a concern when you look at the procedures by which those determinations will be made.

Senator Schacht continued that in our ETSU Faculty Handbook, there is a description of a process by which a hearing committee composed of faculty is convened to hear the charges and to make an advisory recommendation to the president. Our policy says "the committee shall at its first meeting determine its own rules and procedures not otherwise specified in the document." In other words, the committee can operate however it sees fit. There is no requirement that the committee hearing one faculty member's situation operate the same way that the committee hearing another faculty member's situation operates. The lack of specificity creates the opportunity for arbitrary or inconsistent processing of these matters. If you look at what is in the faculty handbooks of some other TBR institutions he said, there are also some differences. For example, at ETSU a faculty member is permitted to have an advisor or an attorney, but that person is not allowed to participate in the proceedings. What our policy says is, "The advisor or counselor may be present during the hearing, but may not participate." In contrast, at the University of Memphis, the policy simply says, "During the hearing, the faculty member will be permitted to have an academic advisor present and may be represented by legal counsel of his/her choice." Another example of a difference is when the allegations against a faculty member involve incompetence, one could make the argument that incompetence is a specialized determination that has to be made by other people with specialized expert knowledge in that person's field. At ETSU, under the heading of witnesses, our policy says in the hearing of charges of incompetence, the testimony *may* include that of qualified faculty members from ETSU and other institutions of higher education. In contrast, at Memphis, it says in a hearing on charges of incompetence, the testimony *shall* include that of qualified faculty

members from the institution or other institutions of higher education. So essentially, what Memphis does is they treat this the same way they would treat a medical malpractice claim where expert testimony is required.

Senator Schacht continued that at ETSU, under the heading of Decision and Appeal, it simply says the president and the faculty member will be notified of the decision in writing and will be given copies to the record of the hearing. He said there is nothing in our policy that says what the content of the decision must include. In contrast, the Memphis policy says 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. The report shall also specify any applicable policy the committee considered. If we do not have rules that say when a committee issues a decision, they must state findings of fact and they have to state reasoning for their conclusions, we risk ending up with situations where there is simply a naked conclusion out of a committee for no reason. Now in the UT system, in contrast to TBR, there is a different procedure that is available. It is the Tennessee Uniform Administrative Procedures Act (TUAPA). This is a state statute that governs the process for administrative complaints. The administrative complaints are sort of like court proceedings but they are heard outside of courts. Although, you may have a professional hearing officer or even an administrative law judge preside over one of these proceedings. There has been some conversation through our faculty sub-council at TBR around the question of whether TBR could allow faculty to operate under the Tennessee Uniform Administrative Procedures Act for purposes of these kinds of hearings. TBR's position is that it would require an act of the legislature to do that. So currently at UT, if someone is proposed by the administration to have their tenure terminated, the faculty member can choose to go under the Administrative Procedures Act or they can choose an internal committee process. In the TBR system, the Uniform Administrative Procedures Act is not available.

Senator Schacht stated that he doesn't see anything that would prevent us from looking at the Tennessee Uniform Administrative Procedures Act and extracting from it elements that we think would improve due process here and simply propose to incorporate those into our Faculty Handbook. He would like to encourage the senate to consider establishing an ad hoc committee to study this issue and come up with recommendations for improving the provisions in our Faculty Handbook. As long as we don't violate what TBR requires, we can go above and beyond and add additional protections and procedural safeguards.

President Foley restated that what Senator Schacht is proposing is an ad-hoc committee to work on studying our procedures and determining ways in which they can be improved. She asked if there was anyone interested in serving on such a committee. Senators Alsop, Masino, Burgess, Schacht, and Mackara volunteered. President Foley stated that if anyone has any thoughts for that committee to contact Senators Schacht, Mackara, Masino, and/or Burgess.

President Foley asked if there was any other business. Senator Hayter commented that the College of Business is currently instituting the new university policy where the custodians are no longer taking trash out and that faculty are responsible for emptying their trash. She said that this is new this year and she has a lot of unhappy colleagues.

President Foley asked Senator Sharp if this came out of the Sustainability Committee. Senator Sharp replied that it did not. Senator Mwinyelle added that they were also told that the plastic trash bags that you put inside those cans are no longer available. He said we were told that we could get wet towels and clean the cans and so forth. He said his colleagues were also very annoyed. Senator Mackara added that one of his colleagues complained that the bin provided wasn't big enough for a large drink container and the response she got was that she needed to rethink her drink purchase. President Foley stated that the Executive Committee can let the president know this is a concern. She added that having Kathleen Moore come and talk to the faculty senate might be a good idea.

Senator Drinkard-Hawkshawe asked if the president consulted the faculty senate about the reinstatement of the ETSU football team. President Foley replied that the faculty senate spent considerable time discussing this two years ago. We decided it was not a faculty senate issue, it was a student issue. The president talked to us about the money and where it was coming from and that there is money available for athletics in the general fund that the university has not used. President Noland didn't ask us; he asked SGA because it was a student issue. Senator Byington added that ETSU's lack of spending the full amount allocated allowed by TBR on Athletics resulted in auditors asking our financial people if that was a mistake. He said that we are the only school in TBR that does not spend the total allocated amount of money that TBR would allow on Athletics.

Senator Proctor-Williams said that the faculty in her department asked her to raise a question in faculty senate about the ETSU logo on electronic letterhead. She said that they have been told in her college that any documentation going out of her department and outside the university cannot use electronic letterhead. They must use actual paper printed letterheads for the first page. She wondered if this was a university wide ruling and stated that is going to cost a lot of money. She said they have hundreds of reports going out of her department. There is also a question regarding IRB approval of report modifications. President Foley said that we will put it in the minutes to check into the IRB modifications and to check on the printing also.

Senator McDowell said that he was new here so this is just an informational question. One of things he sees as a function of faculty senate is to circulate information among the faculty. He asked what was the process that caused the change in the academic calendar so that Wednesday is included in the Thanksgiving Holiday and the last Friday of the semester is now a study day. President Foley explained that that was a TBR change. The TBR made that decision 3 or 4 years ago to take effect this year. Senator Byington added that TBR is aligning calendars all across the state. The only freedom that each university has regarding their calendar now is that each university can determine when they want to have spring break so they can align spring break closer to the local school systems so it minimizes impact on student teaching. Senator Kellogg said that he understood that this universal calendar was coming down the pipe. He understands the reasoning behind it and it makes sense. But he too is a little upset because he lost 2 instructional days this semester.

President Foley asked if there was any other business that needs to be brought before the senate. She then asked if there was a motion to adjourn. Senator Brown moved to adjourn. Senator Burgess seconded.

ADJOURNMENT: The meeting was adjourned at 4:15 p.m.

Please notify Senator Melissa Shafer (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 or x96691).