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2009 October 5 - Faculty Senate Agenda and Minutes

Faculty Senate, East Tennessee State University

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FACULTY SENATE AGENDA

MONDAY, OCTOBER 5, 2009

2:45 PM FORUM

NOTE TO SENATORS: Please share the Senate agenda, minutes, and any other enclosures with your colleagues prior to the scheduled meeting. Senate meetings are open to ALL faculty. Agendas, minutes, and attendance rosters are available on the Faculty Senate website at <http://www.etsu.edu/senate/>.

Call to Order: President David Champouillon

Approval of Minutes:

Continuing Business: Confirmation of committee assignments (Champouillon);

Nomination of Senator Buerkle as Parliamentarian;

Nomination of Senator Burgess as Chair, Tenure and Promotions Appeals Committee.

New Business: ETSU Legal Counsel Ed Kelly on such matters as telecommuting and workman's comp, online training, and other matters;

Mark Bragg on technology concerns: spyware, use of one operating system, faculty representation on ITGC, elearning, changing of passwords, the timing-out of email messages, inaccessibility of computer services to students and adjuncts between semesters, "permanent" student accounts, and other matters.

Announcements: Provost Bach will attend our next meeting. Please submit questions for him to President Champouillon or Senator Grover by October 16th;

Arts and Sciences senators will meet after adjournment to nominate a proxy for Senator Shafer for spring 2010 and someone to complete former Senator Cecil's term, which ends in spring 2011;

Business and Technology senators will meet to nominate a proxy from the Division of Business for Senator Loess for fall 2009;

Nominees or volunteers are needed to serve as procedural consultants to persons with potential grievances;

Senators Arnall and Kortum, who are members of a new committee studying commencement, are soliciting ideas for revising the ceremony.

Adjournment:

Please Note: Next meeting is October 26, at 2:45 pm, in the Forum, Culp Center. Provost Bert Bach will be our guest.

Please send information and notices of non-attendance to Kathleen Grover (grover@etsu.edu or 96672), Secretary, Faculty Senate 2009-2010.

MINUTES—OCTOBER 5, 2009

Faculty Senate—East Tennessee State University

UPCOMING MEETING:	FOLLOWING MEETING:
October 26, 2009 2:45 pm Forum, Culp Center	November 9, 2009 2:45 pm Meeting Room 6, Culp Center

Present: Alsop, Bartoszuk, Bates, Bitter, Buerkle, Burgess, Byington, Calhoun, Campbell, Champouillon, Creekmore, Crowe, Dorgan, Ecay, Emma, Fisher, Gerard, Granberry, Grover, Harker, Hemphill, Horton, Kelley, Kellogg, Morgan, Mullersman, Mustain, Odle, Peiris, Price, Reed, Roach, Shuttle, Smurzynski, Trainor, Trogen, Zhu, Zou

Excused: Arnall, Brown, Glover, Hamdy, Kortum, Loess, Martin, Schacht, Scott, Shafer, Stone, Stuart

Guests: ETSU Legal Counsel Ed Kelly and Associate Vice President for Information Technology Computer Services Mark Bragg

CALL TO ORDER: President Champouillon called the meeting to order at 2:52 pm.

APPROVAL OF MINUTES: Minutes of the September 14, 2009, Faculty Senate meeting were approved with one correction: President Champouillon had invited Vernon Bradley, Director of Parking, to visit the Senate in the fall semester, but Bradley was unable to come until the spring.

CONTINUING BUSINESS: **Champouillon said that some committee memberships were changed because the Faculty Handbook requires representatives from every college on several of them.** Committees need to support the ad hoc Faculty Affairs Committee as its members tackle the Faculty Handbook. He asked that Vice President Schacht be named chair of Academic Affairs. He suggested that Senators Brown and Mustain be named chairs of Faculty Development and Research, Creative, and Scholarly Activities respectively since they are also on the Faculty Affairs Committee. Each committee needs to consider what in the Handbook relates to its charges. Champouillon asked that committees actually work, perhaps meeting on Mondays when the full Senate is not in session.

Senator Grover nominated Senator Buerkle to be Senate Parliamentarian. The motion was seconded, and Buerkle was elected by acclamation.

Senator Alsop nominated Senator Burgess to be Chair of the Tenure and Promotion Appeals Committee. Senator Peiris seconded, and Burgess was elected by acclamation.

Burgess spoke about the Senate website and said he was working to get it

updated. He also spoke of the Tenure and Promotion Appeals Committee. He has been a member since former Senator Lattie Collins was chair. He asked that senators nominate tenured faculty to two-year terms. All colleges must be represented, and he would like to have two additional members as back-ups in case others must recuse themselves. He asked that names be sent to him or to Grover.

Senator Creekmore said members cannot be department chairs. They will need to learn procedures and represent faculty. Champouillon agreed that the T&P Appeals and Concerns and Grievance Committees are two of the most important in the University.

NEW BUSINESS: Champouillon introduced **Ed Kelly, University Counsel, who provided background information before addressing such matters as telecommuting, workman's comp, and online training.**

Before he came to ETSU in 1997, Kelly was attorney general in New York and SUNY. Then, few schools had attorneys; now, all do. Litigation has increased. People seek adversarial remedies to problems, especially in these difficult economic times. Court systems do not differentiate between schools and corporations, so sharp attorneys are suing faculty personally and seeking massive judgments, particularly in matters involving civil rights. Attorneys' discovery processes are increasingly probing because ediscovery of all documents, including email, is part of gathering evidence. Here at ETSU, cases of plagiarism have gone to court to ensure students' rights were respected and they had chances to appeal. In student disciplinary cases, "helicopter parents" get involved. Faculty suits challenge unsuccessful tenure and promotion, unlawful discharge, and administrative procedures. Harassment and retaliation are the biggest growth area. Retaliation charges can proceed even if the basis charge of harassment is determined to be irrelevant. A person can bring a charge of retaliation upon him/herself by acting rashly.

In ediscovery, any emails, private as well as public, can be used. Kelly advised that people not email "anything that cannot be published in a newspaper." He also advised that anyone fearing a suit see him for counsel. A study was done of women who sued after being denied tenure. Half won their cases; half did not. But even those who won said their experiences were so painful that they would never sue again. Kelly asked for questions.

Champouillon asked about telecommuting and workman's comp. If someone is injured while doing university work at home, can he/she get compensated for medical costs? Kelly said the recently publicized policy concerns staff who apply to have off-campus work sites approved. Courts have trouble deciding if, according to state laws, such workers are to be compensated. For faculty, the primary work site is still campus, so a faculty member injured while working at home is not covered.

Champouillon asked about ETSU's policy of requiring annual online training about harassment, discrimination, and Title VI. Faculty contend that ETSU's requirements are stringent compared to those at other state schools. Kelly said it is imperative that we demonstrate instruction to have an affirmative defense if charged with violating the policies. The online training permits the computer to show what the training is and that it is completed, relieving the University of responsibility for violation. It is the best way to document training.

Alsop said faculty do not question the need for training but its frequency. Kelly responded that yearly is preferable and every two years is okay, but three years is too long between testing. Employees need current information. If sued, we would be glad for the documentation. Senator Emma asked if the training is to protect either the University or the faculty or staff member. Kelly said anyone not taking the training is in deep trouble; the attorney general may decide not to defend him/her. Burgess acknowledged that the University has to certify regular training, but how often? Kelly said he does not know. In "heart balm" cases, people feel badly treated and sue. Human Resources and he help decide whether to defend, and annual tests document training, thereby making defense more likely. Alsop asked whom he counsels. Kelly said his first duty is to the University. If someone suggests an impending lawsuit, he practices "alternative resolution" when possible. He represents the University president but also the state and TBR in some cases.

Senator Fisher asked if the Guyier discrimination case is finished. Kelly said yes, with agreements for scholarships and affirmative action. Now we fall under the Supreme Court provisions regarding reverse discrimination and so on.

Champouillon thanked Kelly for sharing important information and introduced **Mark Bragg, who addressed the Senate on technology concerns.**

Bragg said that Kelly calls him to conduct ediscovery in possible lawsuits. Otherwise, his office does not conduct investigations and initiates none without the approval of Counsel and HR.

Senator Hemphill said ETSU employees are using free software against spyware that may not be the best protection possible, but if it fails we would be held responsible for damage done by the spyware. Bragg said the University has personal, private information on a quarter-million students; we are custodians of that material. We also have patient information for the Colleges of Nursing and Medicine. A naïve user opens a pop-up and agrees to accept and install software containing spyware that becomes a problem. Some spyware just watches interests and sells the information to other vendors; other spyware watches every keystroke and gets valuable data that may be sold to criminals. We must reduce the ability to install such spyware. Now, days' worth of clean-up and reinstallation result from carelessness, and the Security Subcommittee has supported action to limit risks. It is now educating people on how to avoid problems.

Senator Peiris asked about the University's use of software to protect against spyware. Bragg said ETSU invests \$70,000 yearly in Symantec Brightmail Gateway end protection. But we are only so safe as the last update. The protection covers Macs and Windows platforms. We also have other tools such as Malware to clean spyware. The weakest component in the system is "the loose nut behind the keyboard."

Senator Shuttle asked if we can accept updates. Bragg said yes, but they do require rebooting.

Senator Bitter said he gets complaints about the need to change passwords four times a year; he would like for them to be required only once yearly. Bragg said ITGC want to retain the policy to keep information as safe as possible. ITGC is trying to reduce the number of passwords that each person must use for different systems, however.

Bitter said faculty have been fired for viewing pornography, and faculty have expressed concern that everything they do on a computer is being monitored. Bragg said IT does not monitor. If an issue is raised and a supervisor asks IT to watch. Bragg refers him/her to Counsel or to HR. IT does pass on information to security organizations only on written request but does not read it. Child pornography is a federal crime and will be prosecuted as such.

Senator Campbell asked when ETSU will be rid of the present Windows system. Bragg said Windows 7 will be available in late October, but it must be evaluated for compatibility with other systems. Campbell said she cannot get Vista to work with other components. Bragg said he has heard of such difficulties and anticipates that Windows 7 will be better; he believes 7 will be in ETSU's labs in fall 2010.

Shuttle asked if faculty and staff now getting new computers with Vista will be stuck with Vista for four years. Bragg said so far the policy is yes, but he understands the concern and will try to work around the policy.

Hemphill asked if, when we have proprietary information, is there any way to remove hard drives and maintain them as university assets, ideally with offsite backups. Bragg said that stimulus money has been used to purchase storage space offsite. IT keeps data for a month after a computer is dismantled and has been known to bring back files.

Alsop said that in lecture rooms with smart equipment, machines are periodically scrubbed without warning, necessitating reinstallation of programs and data. Bragg said two reasons exist to scrub: hardware failure and the beginning of a school year. He agreed that communication needs to be increased, especially if workers are making changes that interfere with teaching.

Hemphill said that during email he is often “timed out.” Bragg said that in signing in, a user should note that there is an option for public or private computer. if a person checks private, he/she will not be timed out.

Champouillon said that between semesters students and adjuncts do not have access to computer accounts. Bragg said that student accounts are open for 90 days and adjuncts get 250, so both should have access. Goldmail, unlike the earlier student email accounts, does not expire. Senator Byington said he knows of adjuncts not having email or access to D2L for as long as a month into a semester. Bragg said that once HR approves a new faculty member, a computer account for him/her is activated that very night. He should be notified if there is trouble.

Senator Mullersman asked if the filter keeps out spam we never see. Bragg said we are in control in Outlook, but before that Symantec Brightmail subtracts all known spam. On and one-half million emails come to campus daily, but 97.4% are not delivered because they are recognized spam.

Shuttle said if students are not enrolled, they have no access to ETSU’s libraries via computer. Bragg said the policy was initiated by the libraries.

Champouillon thanked Bragg for sharing important information with us.

ANNOUNCEMENTS: Fisher said that insurance holders claiming dependent coverage inappropriately are being sent certified letters telling them that the coverage is discontinued. Also, reports about the TUFPS Policy Paper about reorganizing higher education in Tennessee have been submitted to Governor Bredesen.

Provost Bach will attend the October 26, 2009, Faculty Senate meeting. Please get questions for him to Champouillon or Grover.

Arts and Sciences senators need to meet to nominate a proxy for Senator Shafer for spring 2010 and someone to complete former Senator Cecil’s term, which ends in spring 2011.

Business and Technology senators need to nominate a proxy from the Division of Business for Senator Loess for fall 2009.

Nominees or volunteers are needed to serve as procedural consultants for persons with potential grievances.

Senators Arnall and Kortum, who are members of a newly established Commencement Committee, are soliciting ideas for revising the ceremony.

Champouillon asked that Senator Harker shift from the Academic Matters Committee to Elections and Governance and Senator Buerkle shift from

Elections and Governance to Academic Matters.

ADJOURNMENT: There being no further business, Champouillon adjourned the meeting at 4:43 pm.

Please notify Kathleen Grover (grover@etsu.edu or x96672), Faculty Senate Secretary, 2009-2010, of any changes or corrections to the minutes. Web Page is maintained by Senator Doug Burgess (burgess@etsu.edu or x96691).