

Faculty Senate Minutes
October 10, 4:00 PM, GEB A204

Recording: <https://mediaserver.uthsc.edu/uthscms/Play/ca85f937f3cc439fba22be2ec4f85ae01d?catalog=95be5dca-bf92-48a5-b3c6-fbb2fa6c941b>

Senators Present: (44) William Callahan, Ricketta Clark, Dawson Colvert, George Cook, Terry Cooper, Martin Donaldson, Ioannis Dragatsis, Peter Fischer, Jami Flick, Lekha George, Bruce Hamilton, David Hamilton, Peg Hartig, Penny Head, Uzoma Ibeguogu, Vinay Jain, Vickie Jones, Vijay Joshi, Mack Land, Jennifer Langford, Chris Ledbetter, Carol Likens, Nawajes Mandal, Tracy McClinton, Linda Moses-Simmons, Megan Mulligan, Dayna Myers, Stephanie Nikbakht, Frank Park, Jay Ragain, RK Rao, Phyllis Richey, Duane Schafer, Reese Scroggs, Tim Self, Christina Spivey, Wen Lin Sun, Fridtjof Thomas, Regan Williams, Richard Williams, Wes Williamson, Zhaoui Sunny Wu, Ryan Yates, Yanhui Zhang **Via Zoom:** (9) John Boughter, Jami Smith Brown, Bill Dabbs, Ellen Hamby, Colleen Hastings, Csaba Kovesdy, Laura Reed, Shaun Rowe, Jackie Sharp **Academic Affairs:** MaryAnn Clark

Guest Speaker: Steve J. Schwab, M.D., Chancellor, “Civil Discourse”

- Call to order
- The agenda was approved.
- Minutes of the September 12, 2017 Faculty Senate meeting were approved unanimously.
- BOT Report – Terry Cooper gave a report on 3 policies to be discussed at the November Board of Trustees meeting for the purpose of sharing information with the Senate and soliciting feedback (slides of the report are attached to these minutes).
- There was a discussion of the deactivation of the Master in Dental Hygiene program.
- Committee reports (Highlights)
 - Faculty Affairs – Martin Donaldson for Chair Richard Smith – Informational item
 - Legislative Resources – Chair Carol Likens reported that the committee is planning a gubernatorial candidate event on campus. The opioid crisis will be a primary talking point if it is a forum-type event. The event is still in the planning stage; details will be forthcoming.
 - Education and Academic Affairs- Chair (and CASA rep) Peg Hartig announced that “social determinants of health” has been selected as the QEP topic. There are 11 different possible committees to choose from and participation is encouraged. Details will be distributed later.
- Announcements: Martin reiterated the need for feedback on the policies to be discussed at the upcoming Board of Trustees meeting.
- Adjournment: 4:59

3 Policies to be Discussed at the November UT Board of Trustees Meeting

Senate receiving draft policies with response times sufficient to make a difference – increased transparency

**Draft policies are not UTHSC campus up proposals
Policies being discussed were developed at the request of the BOT**

I lead our discussion today as a UTHSC senator, with no special legal expertise in the policies to be discussed, and not as a member of the UT BOT

Objective: only to share factual information and seek as broad a spectrum of opinions as possible from UTHSC faculty

Free Speech Policy

Provisions are included in **Article I.4 of the Academic Freedom & Tenure Policy**
and
new Policy on Student and Faculty Speech.

The Motivation in my opinion

Legislature passed a bill on free speech and Governor Haslam signed it into law

SENATE BILL 2235
By Hensley

HOUSE BILL 2063
By Daniel

AN ACT to amend Tennessee Code Annotated, Title 49,
Chapter 7, Part 1, relative to freedom of speech on
campuses of state institutions of higher education.

WHEREAS, Article I, § 19, of the Tennessee Constitution recognizes "[t]he free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty."; and

WHEREAS, the state institutions of higher education in Tennessee have historically embraced a commitment to freedom of expression in policy; and

WHEREAS, in recent years, state institutions of higher education have abdicated their responsibility to uphold free speech principles, and these failures make it appropriate for all state institutions of higher education to restate and confirm their commitment in this regard; and

WHEREAS, earlier this year, the Committee on Freedom of Expression at the University of Chicago, an institution long known for its commitment to the ideals of free and open inquiry, academic freedom, and fair debate, released a statement on the importance of freedom of expression on campuses. These principles, the Chicago Principles, are an inspiring articulation of the critical importance of free expression in higher education; and

WHEREAS, the general assembly views freedom of expression by students in higher education as being of critical importance and requires that each institution of higher education ensure free, robust, and uninhibited debate and deliberations by students of Tennessee institutions whether on or off campus; and

[Article I.] Academic Freedom and Responsibility of the Faculty Member

A healthy tradition of academic freedom and tenure is essential to the proper functioning of a University. At the same time, membership in a society of scholars enjoins upon a faculty member certain obligations to colleagues, to the University and to the State that guarantees academic freedom.

1. The primary responsibility of a faculty member is to use the freedom of his or her office in an honest, courageous, and persistent effort to search out and communicate the truth that lies in the area of his or her competence.
2. A faculty member is entitled to full freedom in research and in publication of the results, subject to the adequate performance of his or her other academic duties, but research for pecuniary gain either within or beyond the scope of his or her employment must be based upon an understanding with The University administration, according to The University's policies (e.g., Compensated Outside Services, Conflict of Interest).
3. A faculty member should maintain a high level of personal integrity and professional competence, as demonstrated in teaching, research, and service. Academic freedom does not exempt a faculty member from an evaluation by colleagues and administration of his or her qualifications for continued membership in their society.
4. Although faculty are free in the classroom to discuss subjects within areas of their competence, faculty shall be cautious in expressing personal views in the classroom and shall be careful not to introduce controversial matters that have no relationship to the subject taught, and especially matters in which they have no special competence or training and in which, therefore, faculty's views cannot claim the authority accorded statements they make about subjects within areas of their competence; provided, that no faculty will face adverse employment action for classroom speech, unless it is not reasonably germane to the subject matter of the class as broadly construed, and comprises a substantial portion of classroom instruction. A faculty member is entitled to freedom in the classroom in discussing the subject, but the faculty member should use care in expressing personal views in the classroom and should be careful not to introduce controversial matters that have no relation to the subject taught, and especially matters in which he or she has no special competence or training and in which, therefore, the faculty member's views cannot claim the authority accorded his or her professional statements.
5. A faculty member should recognize that the right of academic freedom is enjoyed by all members of the academic community. He or she should be prepared at all times to support actively the right of the individual to freedom of research and communication as defined herein.
6. In addition to the normal responsibilities of a citizen of the state and nation, including the duty to uphold their Constitutions and obey their laws, a faculty member also should conduct himself or herself professionally with colleagues. He or she should strive to

Places limits on faculty speech in classroom – Restricted to area of expertise

THE UNIVERSITY OF TENNESSEE
BOARD OF TRUSTEES
POLICY AFFIRMING PRINCIPLES OF FREE SPEECH FOR STUDENTS AND FACULTY
Proposed for Adoption by the Board of Trustees
November 3, 2017


SECTION 1. PURPOSE

This purpose of this policy is to affirm certain principles of free speech for students and faculty at The University of Tennessee in accordance with the First Amendment to the United States Constitution, Article I, Section 19 of the Tennessee Constitution, and the Campus Free Speech Protection Act.

SECTION 2. DEFINITIONS

- A. "Constitutional time, place and manner restrictions" means restrictions on the time, place, and manner of free speech that do not violate the First Amendment to the United States Constitution or Article I, Section 19 of the Tennessee Constitution that are reasonable, content- and viewpoint-neutral, narrowly tailored to satisfy a significant University interest, and leave open ample alternative channels for the communication of the information or message to its intended audience.
- B. "Faculty" or "Faculty Member" means any person, whether or not the person is compensated by the University, and regardless of political affiliation, who is tasked with providing scholarship, academic research or teaching. For the purposes of this policy, "faculty" includes tenured and non-tenured professors, adjunct professors, visiting professors, lecturers, graduate student instructors and those in comparable positions, however titled. For the purposes of this policy, "faculty" does not include persons whose primary responsibilities are administrative or managerial.

Policy possesses very broad coverage

 "Free Speech" means speech, expression, or assemblies protected by the First Amendment of the United States Constitution or Article I, Section 19 of the Tennessee Constitution, verbal or written, including but not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, carrying signs, displays, or circulating petitions. "Free speech" does not include the promotion, sale, or distribution of any product or service.

D. "Student" means:

1. An individual currently enrolled in a course of study at the University; and

2. An organization that is comprised entirely of individuals currently enrolled in a course of study at the University and is registered with the University pursuant to University rules.

SECTION 3. POLICY

The Board of Trustees of The University of Tennessee affirms the following principles of free speech with respect to University students and University faculty:

- A. Students have a fundamental constitutional right to free speech.
- B. The University must be committed to giving students the broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue, subject to Section 4.
Restrictions permissible – with an element of judgement
- C. The University must be committed to maintaining a campus as a marketplace of ideas for all students and all faculty in which the free exchange of ideas is not to be suppressed because the ideas put forth are thought by some or even by most members of the University's community to be offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrongheaded.
- D. It is for the University's individual students and faculty to make judgments about ideas for themselves, and to act on those judgments not by seeking to suppress free speech, but by openly and vigorously contesting the ideas that they oppose.
- E. It is not the proper role of the University to attempt to shield individuals from free speech, including ideas and opinions they find offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.
- F. Although the University greatly values civility and mutual respect, concerns about civility and mutual respect must not be used by the University as a justification for closing off the discussion of ideas, however offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrongheaded those ideas may be to some students or faculty.
- G. Although all students and all faculty are free to state their own views about and contest the views expressed on University property, and to state their own views about and contest speakers who are invited to express their views on University property, they may not substantially obstruct or otherwise substantially interfere with the freedom of others to express views they reject or even loathe. To this end, the University must promote a lively and fearless freedom of debate and deliberation and protect that freedom.

- H. The University must be committed to providing an atmosphere that is most conducive to speculation, experimentation, and creation by all students and all faculty, who shall always remain free to inquire, to study and to evaluate, and to gain new understanding.
- I. The primary responsibility of faculty is to engage an honest, courageous, and persistent effort to search out and communicate the truth that lies in the areas of their competence.
- J. Although faculty are free in the classroom to discuss subjects within areas of their competence, faculty shall be cautious in expressing personal views in the classroom and shall be careful not to introduce controversial matters that have no relationship to the subject taught, and especially matters in which they have no special competence or training and in which, therefore, faculty's views cannot claim the authority accorded statements they make about subjects within areas of their competence; provided, that no faculty will face adverse employment action for classroom speech, unless it is not reasonably germane to the subject matter of the class as broadly construed, and comprises a substantial portion of classroom instruction.
- K. The University must maintain the generally accessible, open, outdoor areas of its campus as traditional public forums for free speech by students (i.e., limited public forums because the University has intentionally opened those areas for the limited purpose of free expression activities by a certain group, students).

NOTE: As stated in Chapter 1720-01-12 of the Rules of The University of Tennessee, University property is not a traditional public forum or a designated public forum for non-affiliated persons (persons or entities who are not University units, students, student organizations, employees, or volunteers) and thus is not open for use by non-affiliated persons, either by tradition or by University policy, for free expression activities, except as otherwise expressly provided in Chapter 1720-01-12.

- L. The University must not restrict students' free speech only to particular areas of a campus, sometimes known as "free speech zones."
- M. The University must not deny student activity fee funding to a student organization based on the viewpoints that the student organization advocates.
- N. The University must not establish permitting requirements that prohibit spontaneous outdoor assemblies or outdoor distribution of literature, although the University may maintain policies that grant members of the University community the right to reserve certain outdoor spaces in advance.

- O. The University must not charge students security fees based on the content of their speech, the content of the speech of guest speakers invited by students, or the anticipated reaction or opposition of listeners to speech.
- P. The University must allow all students and all faculty to invite guest speakers to campus to engage in free speech regardless of the views of guest speakers.
- Q. The University must not disinvite a speaker invited by a student, student organization, or faculty member because the speaker's anticipated speech may be considered offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed by students, faculty, administrators, government officials, or members of the public.

SECTION 4. EXCEPTIONS

Nothing in this policy shall be construed as prohibiting the University from imposing measures that do not violate the First Amendment to the United States Constitution or Article I, Section 19 of the Tennessee Constitution such as:

- A. Constitutional time, place, and manner restrictions;
- B. Reasonable and viewpoint-neutral restrictions in nonpublic forums;
- C. Restricting the use of University property to protect the free speech rights of students and faculty and preserve the use of the property for the advancement of the University's mission;
- D. Prohibiting or limiting speech, expression, or assemblies that are not protected by the First Amendment to the United States Constitution or Article I, Section 19 of the Tennessee Constitution; or
- E. Content restrictions on speech that are reasonably related to a legitimate pedagogical purpose, such as classroom rules enacted by faculty.

SECTION 5. CAMPUS AND INSTITUTE POLICIES

University campuses and institutes must adopt policies on the use of university property that are consistent with this policy.

SECTION 6. ANNUAL PUBLICATION OF THIS POLICY

Campuses and institutes must make this policy available to students and faculty annually through one or more of the following methods:

- A. Published annually in the campus/institute student handbook and faculty handbook, whether paper or electronic;
- B. Made available to students and faculty by way of a prominent notice on the internet site for the campus/institute other than through the electronic publication of the policy in the student handbook and faculty handbook;
- C. Sent annually to students and employees to their University-provided email address; or
- D. Addressed by the campus/institute in orientation programs for new students and new faculty.

DRAFT

The Motivation in my opinion

My perception of BOT member opinions - current appeals process takes too long to complete

Revision of Tenure Policy As It Applies To Termination for Cause

The termination procedures in Appendix B (unsatisfactory performance) and Appendix C (misconduct) of the Tenure Policy are being revised to provide that a hearing under the TUAPA (Tennessee Uniform Administrative Procedures Act) will be a post-termination hearing. Faculty members would continue to have the right to elect (instead of the TUAPA hearing) a pre-termination hearing before a tribunal appointed by the faculty senate (in cases of unsatisfactory performance) or an ad hoc committee appointed by the chancellor (in cases of misconduct).

Removes the option of having two pre-termination hearings conducted in tandem.

- (3) After considering the recommendation of the Faculty Senate, the chief academic officer shall make a recommendation to the Chancellor as to whether termination proceedings should be initiated.

2. Chancellor's Decision to Initiate Termination Proceedings

~~If, after consulting with the President, the Chancellor decides to initiate termination proceedings, he or she shall give the faculty member written notice, including (1) a statement of the grounds for termination, framed with reasonable particularity, (2) notice of the faculty member's right to contest the proposed termination in a hearing before a tribunal, as described below, or in a hearing conducted under the provisions of the Tennessee Uniform Administrative Procedures Act, and (3) notice that the faculty member has ten days after receipt of the written notice to elect in writing to contest the termination and to elect in writing the form of hearing. The Chancellor shall send a copy of the written notice to the Faculty Senate at the same time.~~

A. If, after consulting with the President, the Chancellor decides to initiate termination proceedings, the Chancellor shall give the faculty member written notice, including a statement of the grounds for termination, framed with reasonable particularity, and the opportunity to respond to the stated grounds and the proposed termination in a meeting with the Chancellor. The faculty member may choose to respond in writing instead of, or in addition to, a meeting with the Chancellor. Any written response must be submitted to the Chancellor within ten calendar days of delivery of the written statement of the grounds for termination.

B. If, after considering any information provided by the faculty member, the Chancellor concludes that the faculty member's appointment should be terminated for adequate cause, the Chancellor shall provide written notice to the faculty member (1) notifying the faculty member of the termination with a statement of the grounds for termination, framed with reasonable particularity, and the date on which the termination will become effective unless the faculty member elects to contest the termination in a pre-termination hearing before a hearing tribunal (paragraphs 6-8 of this appendix); (2) providing notice of the faculty member's right to contest the proposed termination in a pre-termination hearing before a tribunal, as described below, or in a post-termination hearing conducted under the provisions of the Tennessee Uniform Administrative Procedures Act; and (3) providing notice that the faculty member has ten days after receipt of the written notice to elect in writing to contest the termination and to elect in writing the form of hearing. The Chancellor shall send a copy of the written notice to the Faculty Senate at the same time.

3. Suspension With Pay or Reassignment Pending Completion of Termination Proceedings

After consultation with the President of the Faculty Senate or the Faculty Senate Executive Committee, the Chancellor may suspend the faculty member with pay, or change his or her assignment of duties, pending completion of The University's termination proceedings.

4. Failure to Contest

If the faculty member does not contest the charge(s) in writing and make the required hearing election within ten days after receipt of the written notice described in paragraph 2B of this appendix, the faculty member shall be terminated, and no appeal of the matter will be heard within The University.

5. Hearing Under the Tennessee Uniform Administrative Procedures Act

A. Contested Case Procedures

If the faculty member makes a timely election to contest the charge(s) under the Tennessee Uniform Administrative Procedures Act (TUAPA), the Chancellor shall appoint a hearing examiner, and the matter shall proceed post-termination in accordance with the contested case procedures promulgated by The University under the TUAPA. The TUAPA contested case procedures are published in the Rules and Regulations of the State of Tennessee and are available in campus libraries and in the Office of the General Counsel.

B. Initial Order

In accordance with the TUAPA contested case procedures, upon completion of the hearing, the hearing examiner shall render an initial order, which either party may appeal to the Chancellor within ten days. In addition, the Chancellor, on his or her own motion, may elect within ten days to review the hearing officer's initial order.

C. Final Order

The hearing examiner's initial order shall become the final order unless review is sought by either party or the Chancellor within the ten-day period. If review is sought, the Chancellor shall review the initial order and issue a final order in accordance with applicable provisions of the TUAPA contested case procedures. The final order, whether rendered by the Chancellor or by virtue of neither party appealing the initial order, shall be the final decision on the charge(s) within The University.

D. Judicial Review

If the final order is unfavorable to the faculty member, he or she is entitled to judicial review of the final order in accordance with applicable provisions of the Tennessee Uniform Administrative Procedures Act.

6. Hearing before a Tribunal

Waive clause



If the faculty member makes a timely election to contest the charge(s) ~~and through a hearing by a tribunal, the faculty member must confirm in writing the decision~~ to waive the right to a hearing under the Tennessee Uniform Administrative Procedures Act, and the Chancellor shall ask the Faculty Senate, or a designated committee of the Faculty Senate, to appoint a hearing

Retreat Salaries for Administrators

The Motivation in my opinion

Editorial: UT needs reasonable policy on retreat salaries

Knoxville News Sentinel Published 3:02 a.m. CT March 9, 2017

University of Tennessee administrators who return to the classroom earn sweet salaries in deals seldom seen outside of academia or a corporate boardroom.

Former UT Knoxville Chancellor Jimmy Cheek will earn \$340,650 annually as a professor, which is 75 percent of his chancellor's salary and nearly double that of the next highest-paid faculty member in the department. There is no limit on the number of years he is eligible for the higher salary.

Other former administrators have similar arrangements, which are called "retreat salaries."

When the News Sentinel first reported the deals last week, UT President Joe DiPietro promptly asked the UT Board of Trustees Friday to amend his contract to a four-year limit on his retreat salary that would bring it in line with the contracts of new Knoxville Chancellor Beverly Davenport and UT Institute of Agriculture Chancellor Tim Cross.

DiPietro should be commended for volunteering to put a cap on his retreat salary. Now the Board of Trustees should adopt a formal policy setting such restrictions for future administrators' contracts.

Retreat salaries are common in academia. They allow administrators with academic backgrounds to return to the classroom without taking a sudden and substantial pay cut.

Retreat Salary Policy for Administrators

Policy on Setting Faculty Salaries Upon Conclusion of Administrative Appointments sets standards for creating administrative salaries and stipends, as well as handling raises and determining the appropriate salary upon moving to a faculty role. The policy provides that the “retreat” salary for an administrator with a salary-based appointment is determined at the time the administrative role is relinquished, based on some general guidelines. Administrators who are paid a base salary and an administrative stipend will simply relinquish the administrative stipend upon return to the faculty. Current administrators who already have a written “return to faculty” salary agreement will not be affected by the new policy.

THE UNIVERSITY OF TENNESSEE
BOARD OF TRUSTEES

POLICY ON SETTING FACULTY SALARIES
UPON CONCLUSION OF ADMINISTRATIVE APPOINTMENTS

SECTION 1. PURPOSE

Administrators who simultaneously hold faculty appointments are compensated for their administrative appointment with either full-time administrative salaries ("Salary-Based Administrative Appointments") or administrative stipends added to their faculty salaries ("Stipend-Based Administrative Appointments"). This policy prescribes the standards for setting faculty salaries for employees who continue to hold faculty appointments after their administrative appointments have concluded.

SECTION 2. APPLICATION

This policy applies to all employees appointed to administrative positions after November 3, 2017 who simultaneously hold faculty appointments. The terms and conditions of all employment agreements (in the case of the President) and offer letters after November 3, 2017 must be consistent with this policy. This policy also applies to employees: (1) who were appointed on or before November 3, 2017; (2) who conclude their administrative appointment and continue to hold a faculty appointment after November 3, 2017; and (3) who do not have written agreement regarding how their faculty salary will be calculated after concluding their administrative appointment.

SECTION 3. FACULTY SALARY AFTER A SALARY-BASED ADMINISTRATIVE APPOINTMENT

When a Salary-Based Administrative Appointment concludes (voluntarily or involuntarily), the administrative salary is relinquished and the administrative supervisor (or, in the case of the President, Chancellors, and other University Officers defined in the Bylaws, the Board of Trustees) will establish a faculty salary within a range that is (a) not more than 150% of the highest salary of all full-time faculty in the department who share the same discipline and academic rank but not including Governor's Chairs, Distinguished Scientists, Chairs of Excellence, endowed chairs, or former administrators whose faculty salaries were not determined in accordance with this policy and (b) not less than the average salary of all full-time faculty in the department who share the same discipline and academic rank. In setting the precise salary, the administrative supervisor (or, if applicable, the Board) shall consider the employee's:

1. previous faculty salary at the University (if applicable);
2. length and quality of administrative service at the University;
3. particular experience, expertise, achievements, and standing in the discipline;
4. expected (or assigned) contributions to the department (and any other affected units);
5. faculty development opportunities foregone while serving as an administrator; and
6. other discipline-specific factors normally considered when setting faculty salaries in the department.

BOT based Exceptions

At the conclusion of a Salary-Based Administrative Appointment, the Board may approve an exception to this Section 3 for an employee who has provided extraordinary administrative service to the University.

SECTION 4. FACULTY SALARY AFTER A STIPEND-BASED ADMINISTRATIVE APPOINTMENT

When a Stipend-Based Administrative Appointment concludes (voluntarily or involuntarily), the administrative supervisor must take action through the payroll function to remove the stipend effective on the end date of the administrative appointment.

Full-time Stipend-Based Administrative Appointments: The administrative supervisor may apply merit and/or across-the-board salary increases to the administrative stipend during the administrative appointment. At the conclusion of the administrative appointment, the employee's faculty salary shall be increased by the amount of all across-the-board increases the employee would have received had they been serving as a faculty member. At the discretion of the administrative supervisor, the employee's faculty salary may also be increased by the average merit increases provided to faculty in the department with the same discipline and rank during the employee's service as a full-time administrator.

Part-time Stipend-Based Administrative Appointments: Any merit increase to the faculty salary during an administrative appointment must be based solely on performance in the faculty role, not the administrative role. An across-the-board salary increase during the administrative appointment applies only to the faculty salary, not to the administrative stipend. The administrative supervisor may, however, increase the administrative stipend during the administrative appointment.

Please Send us your comments about and suggestions for improvement of these policies

Encourage your colleagues to do so as well

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