

## **BOARD OF TRUSTEES**

### **POLICIES GOVERNING ACADEMIC FREEDOM, RESPONSIBILITY, AND TENURE<sup>1</sup>**

The Board of Trustees is constituted by statute of the State of Tennessee as the governing body of The University of Tennessee, with complete and full authority over the organization and administration of the University<sup>2</sup> and its constituent parts, and over the granting of tenure to members of the faculty.

The principal mission of the University is the discovery and dissemination of truth through teaching, research and service.<sup>3</sup> The Board recognizes that freedom of inquiry and expression is indispensable for this purpose and believes that it and the administration and faculty should cooperate to that end. In the University's program of teaching, research and service, it is essential that the Board, administration and faculty cooperate voluntarily, each contributing freely, according to his or her qualifications, in a mutually beneficial exchange of information and ideas.

The following statement is intended to record the policy and procedures of the University with respect to academic freedom, responsibility, and tenure. The Board considers these principles compatible with its statutory authority and responsibilities and the

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<sup>1</sup> This is a compilation and restatement of policies and procedures adopted by vote of the Board of Trustees on November 4, 1955; June 17, 1971; October 20, 1978; by periodic approval of faculty handbook provisions for each University of Tennessee campus; and by revisions recommended by the Board's AY 1997-98 special Tenure Committee and its Faculty Tenure Advisory Committee, and approved by the Board on 18 June 1998; and by revisions approved by the Board on 19 June 2003; and by revisions approved by the Board on 16 March 2006, March 1, 2013, and October 14, 2016; by revisions approved by the Executive and Compensation Committee, acting on behalf of the Board, on December 18, 2017; and by revisions approved by the Board of Trustees on March 23, 2018.

<sup>2</sup> Many terms throughout this document are used generically. "University" refers to The University of Tennessee as a state-wide system composed of several campuses and institutes. "Campus" refers to UT, Knoxville, the Health Science Center, the UT Institute of Agriculture, UT at Chattanooga, and UT at Martin. "Chancellor" refers to the chief executive officer of the unit. "Department" refers to the smallest academic unit (in some cases a college, school, or division); similarly, "department head" refers to chair, director, or dean as appropriate. "Faculty Senate" refers to the campus governance body of elected faculty members and "Faculty Senate Executive Committee" refers to that committee or its comparable group of elected Senate officers. "Chief academic officer" refers to the campus provost, academic vice chancellor, or other official designated by the Chancellor for oversight of campus academic affairs.

<sup>3</sup> The word "teaching" includes the set of instructional activities that normally occurs in classrooms, laboratories, clinical sites, and in directed study, etc.; "research" includes both scholarly investigation and the creation of works of art related to a faculty member's academic appointment; "service" includes public service, institutional service, and other assigned professional/clinical service responsibilities.

constitutional guarantee of freedom of speech and inquiry to each citizen of the United States.

## **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.
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 maintain the mutual respect and confidence of his or her colleagues. He or she should endeavor to understand the customs, traditions, and usages of the academic community.
7. When, as a citizen, a faculty member speaks outside the classroom or writes for publication, he or she should be free, as a citizen, to express his or her opinions. Each faculty member should conduct himself or herself professionally, should be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make clear that he or she speaks for himself or herself and not for the University.
8. This policy is intended to be consistent with the Board of Trustees Policy on Student and Faculty Speech, and shall be interpreted accordingly.

## **Article II. Academic Freedom and Responsibility of the University Administration**

1. The University is committed to recruiting, appointing, retaining and promoting faculty members by processes which are thorough, thoughtful, equitable, and in which the professional judgments of faculty members are of major importance.
2. Administrative officers should actively foster within the University a climate favorable to freedom of teaching and research. In its pursuit of excellence, the University should reward its outstanding faculty members.
3. The administration is responsible for enforcing all Board and campus policies applicable to faculty members. It is the duty of the administration – beginning with department heads, deans, and chief academic officers – to remove from the faculty any faculty member who has been found, through proper procedures, seriously derelict in his or her responsibilities as a member of the academic community.

The Board requires that each campus and its constituent academic units develop appropriate policies and procedures necessary to implement the Board's tenure policy.

## **Article III. Tenure**

### **A. Definition of Tenure**

Tenure is a principle that entitles a faculty member to continuation of his or her annual appointment until relinquishment or forfeiture of tenure or until termination of tenure for Adequate Cause, financial exigency, or academic program discontinuance. The burden of proof that tenure should be awarded rests with the faculty member. The grant of tenure shifts the burden of proof concerning the faculty member's continuing appointment from the faculty member to the University, except in the case of relinquishment or forfeiture of tenure.

## **B. Authority to Grant Tenure**

Tenure is acquired only by positive action of the President or Board of Trustees, and is granted in a particular academic unit (department, school, or college) of a campus. The Board of Trustees makes the decision whether to grant tenure, based upon the recommendation of the President, to (1) University Officers as defined in bylaws adopted by the Board of Trustees; (2) any faculty member who is to be granted tenure upon initial appointment without serving a probationary period at a University campus; and (3) any faculty member recommended for tenure before the sixth year of the probationary period pursuant to early consideration in accordance with Section E.1. of this Article III and the applicable campus policies and procedures governing early consideration. The President makes the decision whether to grant tenure, based upon the recommendation of the Chancellor, in all other cases. The President or Board of Trustees (as applicable according to this policy) may grant tenure at any time during a given year, after confirming that all review and recommendation procedures in Appendix A have been followed.

## **C. Eligibility for Tenure Consideration**

Eligibility for tenure consideration shall be subject to the following minimum standards:

1. Regular, full-time, tenure-track faculty appointments at the academic rank of instructor, assistant professor, associate professor, or professor are eligible for tenure consideration;
2. Temporary, term, and part-time appointments are not eligible for tenure consideration, except that in the extraordinary circumstances defined in Appendix D, faculty members who do not have a full-time appointment may be eligible for tenure consideration.

Each campus may establish additional eligibility requirements for tenure consideration. Campus eligibility requirements for tenure consideration shall be effective upon approval by the Board of Trustees and shall be published in the campus faculty handbook.

## **D. Tenure upon Initial Appointment**

No faculty member shall be granted tenure upon initial appointment except by positive action of the Board of Trustees upon the recommendation of the President, which shall include documentation of compliance with all tenure review and recommendation procedures stated in Appendix A and as established by the campus in accordance with Section G of this Article III. The Board of Trustees will grant tenure upon initial appointment only if (1) the proposed appointee holds tenure at another higher education institution and the Board determines that the President has documented that the proposed appointee cannot be successfully recruited to the University without being granted tenure upon initial appointment; or (2) the Board of Trustees determines that the President has documented other exceptional circumstances warranting the grant of tenure upon initial appointment. When necessary between regular meetings of the Board of Trustees, the Board's executive committee may act on behalf of the Board to grant tenure upon initial appointment in accordance with the provisions of this Section D.

## **E. Probationary Period**

A tenure-track faculty member must serve a probationary period at a University campus prior to being considered for tenure.

### **1. Length of Probationary Period**

Except as otherwise provided in this policy, the probationary period shall be six years. The faculty member will apply for tenure during the sixth year, and if tenure is not granted, the faculty member will be permitted to serve a seventh year as a terminal year. If a faculty member begins employment after July 1 and before January 1, the remaining term of the faculty member's initial appointment will count as the first year of the probationary period, so that what is treated as the first year of a faculty member's probationary period will not be shorter than six months. The provision of a probationary period and any statement in an appointment letter or otherwise regarding the probationary period and the year of mandatory tenure consideration does not guarantee retention of the faculty member for the full probationary period.

A faculty member may request an early consideration for tenure before the sixth year of his or her probationary period but no sooner than the next regular tenure cycle after completion of the first year of the probationary period. Each campus shall adopt policies and procedures regarding a faculty member's early application for tenure, and the consequences of such a candidate's failure to receive tenure upon an early application, which shall be effective upon approval by the Board of Trustees and shall be included in the faculty handbook.

## **2. Extension of Probationary Period**

For good cause related to procedural error, the University and a tenure-track faculty member may agree in writing to extend a six-year probationary period for a maximum of two additional years. The proposed extension must be approved in advance by the chief academic officer, the Chancellor, the President (or designee), and the General Counsel (or designee).

## **3. Suspension of Probationary Period**

The chief academic officer shall decide whether the probationary period will be suspended when the following circumstances occur:

- a. the faculty member accepts a part-time faculty position;
- b. the faculty member accepts an administrative position; or
- c. the faculty member is granted a leave of absence or modified duties assignment.

The chief academic officer shall give the faculty member written notice of the decision concerning suspension of the probationary period.

## **4. Notice of Non-renewal**

Notice that a tenure-track faculty member's appointment will not be renewed for the next year shall be made in writing by the chief academic officer, upon the recommendation of the department head and dean, according to the following schedule:

- a. In the first year of the probationary period, not later than March 1 for an academic year appointment and no less than three months in advance for any other term of appointment;
- b. In the second year of the probationary period, not later than December 15 for an academic year appointment and no less than six months in advance for any other term of appointment; and
- c. In the third and subsequent years of the probationary period, not less than twelve months in advance.

These notice requirements relate only to service in a probationary period with the University. Credit for prior service shall not be considered in determining the required notice. Notice of non-renewal shall be effective upon personal delivery or upon mailing, postage prepaid, to the faculty member's residential address of record at the University.

## **5. Enhanced Tenure-Track Review (ETTR)**

For each tenure-track faculty member, the department and department head will conduct an enhanced review to assess and inform the faculty member of his or her progress toward the grant of tenure during the third or fourth year of the probationary period (with the year to be determined in the department head's sole discretion).

The tenured departmental faculty will confer regarding the faculty member's performance and will then write a report to the department head that will contain a list of the participating tenured faculty members; suggestions for enhancing the faculty member's progress toward the grant of tenure; the majority and minority report, if applicable; and the summary vote on whether the faculty member is progressing satisfactorily toward the grant of tenure. The department head will present and discuss the tenured faculty's report, as well as his or her own written assessment, with the faculty member. Copies of the ETTR documents will be given to the faculty member. A favorable ETTR does not commit the tenured departmental faculty, the department, or the college to a subsequent recommendation for the grant of tenure.

Each campus shall adopt further procedures regarding the ETTR, including specifications of the required contents of the materials to be reviewed, which shall be effective upon approval by the Board of Trustees and shall be included in the campus faculty handbook. Any appeal regarding the ETTR shall follow the same procedures for an appeal of an annual performance and planning review.

## **F. Criteria for Tenure**

Tenure is granted after a thorough review which culminates in the University acknowledging a reasonable presumption of the faculty member's professional excellence, and the likelihood that excellence will contribute substantially over a considerable period of time to the mission and anticipated needs of the academic unit in which tenure is granted. Professional excellence is reflected in the faculty member's teaching, research, and service including the faculty member's ability to interact appropriately with colleagues and students. The relative weights of these factors will vary according to the fit between the faculty member and the mission of the academic unit in which he or she is appointed.

Each campus and college may establish more-specific criteria for tenure that are consistent with the criteria stated in this policy but may be more restrictive. Campus and college criteria for tenure shall be effective upon approval by the President (or designee) and the General Counsel and shall be published in the campus faculty handbook.

Each department shall establish more-specific criteria for tenure in that unit that are consistent with the criteria stated in this policy and any criteria established by the college and campus but may be more restrictive. After approval by the dean and chief academic officer, departmental criteria for tenure shall be published in the bylaws of the department. Departmental criteria for tenure shall not be required, however, if more-specific criteria have been established by the applicable college, and the dean and chief academic officer have approved application of the college criteria in lieu of departmental criteria.

### **G. Consideration and Grant of Tenure**

Each campus shall establish procedures for considering a faculty member for tenure that are consistent with the minimum components stated in Appendix A. Campus procedures shall be effective upon approval by the Board of Trustees and shall be published in the campus faculty handbook.

### **H. Locus of Tenure**

Tenure at The University of Tennessee is granted in a particular academic unit (department, school, or college) of a specific campus, in a position appropriate to the faculty member's qualifications. Reorganizations that result in the merger or splitting of departments do not affect the tenure or probationary status of the faculty involved.

If a tenured faculty member voluntarily transfers from one UT campus to another, his or her tenured status is not transferred. However, a review by the responsible administrators in consultation with the tenured faculty of the receiving department may result in an immediate recommendation to the President that tenure at the new campus be granted to the transferred individual; on the other hand, a new probationary period in the receiving unit may be established. There shall be no involuntary transfer of faculty members between campuses.

Transfers of tenure between departments on the same campus do not require the President's approval, but must be approved by the responsible campus administrators in consultation with the tenured faculty of the receiving unit, with notice to the President. In any event, prior to the effective date of the transfer all conditions relating to tenure must be documented and accepted, in writing, by the transferring faculty member. If a non-tenured faculty member transfers from one existing department to another, a new probationary period must be established and documented under the same guidelines that would be followed if the faculty member came from another institution. All conditions relating to the new probationary period must be documented and accepted, in writing, by the transferring faculty member.

If a tenured faculty member accepts a part-time faculty position or an administrative position with the University, neither of which can carry tenure, the faculty member retains tenure in the full-time faculty position he or she vacated.

## **I. Evaluation of Tenured Faculty Members**

The University is committed to the evaluation of all faculty members as a means of strengthening the principle of tenure. To that end, the University applies two mechanisms for evaluating and supporting the work of tenured faculty: the Annual Performance-and-Planning Review (detailed primarily in campus faculty handbooks) and the Enhanced Post-Tenure Performance Review (detailed in G.2. below and Appendix E). Both review processes focus on the faculty member's contributions to the University's missions through teaching, research (including scholarly and artistic work), service, and clinical care.

Competent teaching is a crucial responsibility for faculty members, and the effective use of appropriate instructional evaluation (including departmental files of class syllabi and related materials, student, and peer evaluation, etc.) is important to all objective review processes. Faculty members with research/creative arts responsibilities should have the quantity and quality of their work fairly assessed. Each faculty member's service contributions should be evaluated impartially.

### **1. Annual Performance-and-Planning Review**

Each faculty member and his or her department head will engage in a formal annual Performance-and-Planning Review, examining the current fiscal/academic year's activities and planning what should occur during the coming fiscal/academic year. The planning aspects of these annual academic year reviews also should take place in the context of longer-term goals for the campus, college, and department. Each campus shall strive to reward faculty members who more than meet expectations for rank, and administrators shall develop and publish guidelines for each campus to allocate funds for this purpose whenever feasible. Each faculty member's annual review should proceed from guidelines and criteria which are appropriate to the department, college, and campus, and this annual review should be a key element in merit pay or performance-based salary adjustments. A document summarizing the review – including an objective rating of the faculty member's performance, as listed below – must be signed by the faculty member (to acknowledge receipt of the review document) and the department head. The head must send a copy to the dean. The dean must send copies of the documents or a list of names by category to the chief academic officer for review and approval/disapproval.

The performance rating scale for annual reviews shall be approved by the Board of Trustees, and may include (in whole or in part) the ratings defined below. Unless or until the Board of Trustees approves a campus-specific rating scale, campuses shall employ the rating scale defined below. To ensure seamless application of other faculty policies and procedures related to performance ratings (whether part of this document or some other policy or procedure), any campus-specific rating scale must explain how it articulates with the rating scale defined below.

Campus faculty handbooks, college bylaws, and/or department bylaws must specify the substantive performance criteria to be used when conducting performance reviews within the particular unit.

The following performance rating scale is to be applied in evaluating tenured faculty members when no campus-specific scale is in place:

- a. Exceeds Expectations for Rank – eligible for significant merit pay or performance-based salary adjustment that is consistent with campus, college, and department fiscal situations;
- b. Meets Expectations for Rank – eligible for minimum merit pay or performance-based salary adjustment that is consistent with campus, college, and department fiscal situations;
- c. Needs Improvement for Rank – not eligible for merit pay or performance-based salary adjustment and may require an Annual Review Improvement Plan (see below); and
- d. Unsatisfactory for Rank – not eligible for any salary adjustment and requires an Enhanced Post-Tenure Performance Review (III.G.2. below).

Annual Review Improvement Plan: Within 30 calendar days of the annual review, any faculty member with an overall performance rating of Needs Improvement for Rank must collaborate with the head on an Annual Review Improvement Plan to be reviewed by the head and recommended by him/her to the dean for review and approval/denial. The next year's annual review must include a progress report that clearly describes improvements in any area(s) for which improvement was required. This Annual Review Improvement Plan process is inapplicable if the faculty member's performance rating has triggered Enhanced Post-Tenure Performance Review.

Appeal Process: Each campus shall have a campus-wide process by which a faculty member may appeal his or her annual review rating. Developing the process should

involve the Faculty Senate or an appropriate committee thereof. The final decision on an appeal shall not be appealable to the President.

## **2. Enhanced Post-Tenure Performance Review (EPPR)**

Enhanced Post-Tenure Performance Review (EPPR) is an expanded and in-depth performance evaluation conducted by a committee of tenured peers and administered by the chief academic officer. Procedures for conducting an EPPR are detailed in Appendix E.

This policy recognizes that the work of a faculty member is not neatly separated into academic or calendar years. To ensure that performance is evaluated in the context of ongoing work, the period of performance subject to enhanced review is the five most recent annual performance review cycles. Each campus administration must collect and maintain sufficient data regarding annual performance reviews to implement this policy effectively.

An Enhanced Post-Tenure Performance Review must be initiated when the chief academic officer determines that a faculty member has:

- requested an EPPR, after at least four annual performance review cycles since the last enhanced review (such as a previous EPPR or a review in connection with tenure or promotion);
- received one overall annual performance rating of “Unsatisfactory” (or the campus equivalent for the lowest performance rating); or
- received two overall annual performance ratings of “Needs Improvement” (or the campus equivalent for the next-to-lowest performance rating) during any four consecutive annual performance review cycles.

The Board of Trustees reserves the right to direct the administration to conduct an Enhanced Post-Tenure Performance Review of all tenured faculty of a campus, college, school, department, or division at any given time or at periodic intervals, as the Board in its discretion deems warranted. Post-Tenure Performance Reviews should be staggered so that not all tenured faculty at a campus are being reviewed at the same time.

a. Administration of the EPPR by the Chief Academic Officer<sup>4</sup>

The EPPR process will be administered under the direction and oversight of the chief academic officer. As with any performance evaluation, the chief academic officer may overrule a performance rating assigned by a department head or dean during the annual review process. This practice ensures that when an EPPR process is activated by one or more negative performance ratings (III.G.2. above), the chief academic officer is aware of existing concerns.

The task of administering the EPPR requires implementation of this policy and the procedures detailed in Appendix E, as well as any additional steps the chief academic officer finds necessary to comply with the policy objectives. For example, the chief academic officer may be required to adapt the implementation of this policy to satisfy legal requirements (such as limitations on disclosure of student information) or respond to unexpected events (such as replacement of a committee member who becomes unable to serve).

b. Peer Review Committee's Charge

The peer review committee is charged to review the information relevant to the faculty member's performance during the review period and to conclude whether or not that performance has satisfied the expectations for the faculty member's discipline and academic rank.

As detailed in Appendix E, the expectations for faculty performance may differ by campus, college, department, and even among sub-disciplines within a department or program. Those expectations may be commonly-held standards in the discipline or may be stated explicitly in the faculty member's own past annual performance reviews, work assignments, goals or other planning tools (however identified), as well as department or college bylaws, the campus faculty handbook, this policy, and in other generally-applicable policies and procedures (for example, fiscal, human resources, safety, research, or information technology policies and procedures).

The peer review committee must reach a conclusion as to whether or not the performance has satisfied the expectations for the faculty member's discipline and academic rank. If the peer review committee concludes that the faculty member's performance has not met the expectations for the discipline and academic rank, the committee must also

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<sup>4</sup> Where indicated in Appendix E, the chief academic officer may delegate tasks associated with the EPPR to a vice provost, associate or assistant vice chancellor for academic affairs, or other appropriate campus academic administrator.

recommend either that an EPPR improvement plan be developed as detailed in Appendix E, or that tenure be terminated for Adequate Cause under III.H. below and Appendix B.

The committee must report its conclusions and recommendations in writing, including an explanation for each conclusion or recommendation, and enumerating the vote for any conclusion or recommendation that is not adopted unanimously. The faculty member must have an opportunity to review and respond to the committee's draft report.

All written conclusions and recommendations of the peer review committee must be reviewed and considered by the chief academic officer and the Chancellor.

c. Review and Action by the Chancellor

The Chancellor may accept the peer review committee's conclusions and recommendations or make different conclusions in a written explanation provided to the faculty member with copies to the chief academic officer, dean, department head, and members of the peer review committee. Based on those conclusions, the Chancellor may take further action as deemed appropriate, including (without limitation) actions described in this policy, in the applicable faculty handbook, or in any other policy and procedures generally applicable to faculty.

If the Chancellor concludes (based on the recommendation of a peer review committee or based on independent review of the EPPR materials) that an EPPR improvement plan is warranted, the Chancellor will promptly direct the chief academic officer to oversee development of the plan (Appendix E).

d. Final Review and Action Following Any EPPR Improvement Plan

If an EPPR improvement plan is implemented, the peer review committee must reconvene to review performance under the plan and to decide whether or not performance under the plan satisfies the expectations for the faculty member's discipline and academic rank. The committee must report its conclusions and recommendations in writing, as described in Appendix E. The chief academic officer and the Chancellor must review all conclusions and recommendations of the peer review committee. The Chancellor may: accept the committee's conclusions and recommendations; provide a written explanation of different conclusions to the faculty member with copies to the chief academic officer, dean, department head, and members of the peer review committee; or take further action deemed appropriate, including (without limitation) actions described in this policy, in the applicable faculty handbook, or any other policy and procedures generally applicable to faculty.

**3. Campus Coordination of the APPR and EPPR Review Processes**

Because each campus conducts the Annual Performance-and-Planning Review (APPR) on its own timetable, procedures for coordinating the APPR (III.G.1.) and the EPPR (III.G.2.) must also vary by campus. This policy therefore requires that each campus establish (by July 1, 2017) a system for evaluating the ongoing performance of a faculty member whose past performance is being reviewed under the EPPR process.

Such a campus system for coordinating the APPR and the EPPR must be reviewed and approved by the President (or a designee) and Chancellor before implementation. A properly-approved system of coordinated reviews may include an alternate form of annual review (in lieu of the normal APPR) when an EPPR is underway. In such a case, any campus performance evaluation substituted for the APPR must result in an overall performance rating considered for annual salary adjustments (including across-the-board and other raises).

## **J. Termination of Tenure**

### **1. Grounds for Termination**

#### **a. Relinquishment or Forfeiture of Tenure**

A tenured faculty member relinquishes tenure upon resignation or retirement from the University. A tenured faculty member forfeits tenure upon taking an unauthorized leave of absence or failing to resume the duties of his or her position following an approved leave of absence. Forfeiture results in automatic termination of employment. The chief academic officer shall give the faculty member written notice of the forfeiture of tenure and termination of employment.

#### **b. Extraordinary Circumstances**

Extraordinary circumstances warranting termination of tenure may involve either financial exigency or academic program discontinuance. In the case of financial exigency, the criteria and procedures outlined in the Board-approved Financial Exigency Plan for each campus shall be followed. In the case of academic program discontinuance, the termination of tenured faculty may take place only after consultation with the faculty through appropriate committees of the department, the college, and the Faculty Senate.

If termination of tenured faculty positions becomes necessary because of financial exigency or academic program discontinuance, the campus administration shall attempt to place each displaced tenured faculty member in another suitable position. This does not require that a faculty member be placed in a position for which he or she is not qualified, that a new position be created where no need exists, or that a faculty member (tenured or non-tenured) in another department be terminated in order to provide a

vacancy for a displaced tenured faculty member. The position of any tenured faculty member displaced because of financial exigency or academic program discontinuance shall not be filled within three years, unless the displaced faculty member has been offered reinstatement and a reasonable time in which to accept or decline the offer.

c. Adequate Cause

“Adequate Cause” for terminating a tenured faculty member means the following:

(1) Unsatisfactory Performance in Teaching, Research, or Service, which includes the following and similar types of unsatisfactory performance:

- a) failure to demonstrate professional competence in teaching, research, or service;
- b) failure to perform satisfactorily the duties or responsibilities of the faculty position, including but not limited to failure to comply with a lawful directive of the department head, dean, or chief academic officer with respect to the faculty member’s duties or responsibilities;
- c) inability to perform an essential function of the faculty position, given reasonable accommodation, if requested;
- d) loss of professional licensure if licensure is required for the performance of the faculty member’s duties;
- e) with respect to members of the Health Science Center faculty, failure to be granted or loss of medical staff membership and privileges at affiliated teaching hospitals;
- f) loss of appointment (or substantive alteration of the faculty member’s work) with an affiliated entity unless approved in advance by the chief academic officer (or designee) (for example, loss of employment with an affiliated medical practice group or loss of “joint faculty” support from Oak Ridge National Laboratory);
- g) as specified in Appendix D, paragraph 4, cessation of employment with an external entity/primary employer if tenure was granted contingent upon remaining employed by the external entity/primary employer; or

h) dishonesty or other serious violation of professional ethics or responsibility in teaching, research, or service; or serious violation of professional responsibility in relations with students, employees, or members of the community.

(2) Misconduct, which includes the following and similar types of misconduct:

- a) failure or persistent neglect to comply with University policies, procedures, rules, or other regulations, including but not limited to violation of the University's policies against discrimination and harassment;
- b) falsification of a University record, including but not limited to information concerning the faculty member's qualifications for a position or promotion;
- c) theft or misappropriation of University funds, property, services, or other resources;
- d) admission of guilt or conviction of: (i) a felony; or (ii) a non-felony directly related to the fitness of a faculty member to engage in teaching, research, service, or administration; or
- e) any misconduct directly related to the fitness of the faculty member to engage in teaching, research, service, or administration.

## **2. Termination Procedures for Adequate Cause**

Each campus shall establish procedures for terminating a tenured faculty member, or a tenure-track faculty member before the expiration of the annual term, for Adequate Cause. Termination procedures shall incorporate and be consistent with the procedures in Appendices B and C. The procedures shall be effective upon approval by the Board of Trustees and shall be published in the campus faculty handbook.

The procedures in Appendix B shall apply if the Adequate Cause grounds for termination include both (i) unsatisfactory performance in teaching, research, or service and (ii) misconduct.

### **K. Disciplinary Sanctions other than Termination for Adequate Cause**

This section applies only to the imposition of disciplinary sanctions when the University does not propose to terminate a faculty appointment for Adequate Cause.

Disciplinary sanctions other than termination may be imposed against a faculty member.

If the proposed sanction is suspension without pay for a definite term (no more than one year), the procedures set forth in Appendix B or C (as applicable and as tailored to reflect that the proposed sanction is suspension without pay rather than termination) shall be offered in connection with the suspension.

If the proposed sanction does not involve suspension without pay, the department head shall make a recommendation to the dean, and the dean shall make a recommendation to the chief academic officer. The chief academic officer shall give the faculty member written notice of the proposed sanction and the supporting reason(s) and shall offer him or her an opportunity to respond both in writing and in person. The faculty member may appeal the proposed sanction through established appeal procedures, and the sanction shall be held in abeyance until conclusion of the appeal. A decision by the Chancellor on appeal will be the final decision for the University and not appealable to the President.

History:

|         |   |
|---------|---|
| Adopted | 06/18/1998  |
| Revised | 06/18/2003; 03/16/2006; 03/01/2013; 10/14/2016; 12/18/2017;<br>03/28/2018 |

## **APPENDIX A: PROCEDURES FOR CONSIDERATION AND GRANT OF TENURE**

### **1. Tenured Faculty's Recommendation**

An adequate evaluation of a tenure candidate's qualifications, professional contributions, potential, and determination of whether he or she should be accepted as a tenured member of the campus academic community, requires the judgment of both the candidate's faculty colleagues and the responsible administrators. Thus, although recommendations for tenure are administrative actions that must be approved by the President or Board of Trustees, there should be no positive recommendation for tenure without formal consultation with the tenured faculty of the department in which the candidate holds his or her position.

Procedures governing the tenured faculty's consideration of a candidate for tenure, including without limitation a requirement for external reviews, a requirement for peer review of faculty members who engage in teaching, and the required contents of the materials to be submitted by the candidate, must be established in bylaws adopted by the academic unit (department, school, or college). The bylaws shall provide for a meeting of the tenured faculty to debate and discuss the tenure candidacy. The bylaws shall also provide for the manner of taking and recording a formal vote of the tenured faculty on whether the candidate should be recommended for tenure and shall establish the minimum number of votes necessary to constitute a positive recommendation. Departmental procedures for tenure consideration shall not be required, however, if the college dean and the chief academic officer have approved application of the procedures established in college bylaws in lieu of departmental procedures.

### **2. Department Head's Recommendation**

The vote of the tenured faculty is advisory to the department head. After making an independent judgment on the tenure candidacy, the head shall submit his or her recommendation to the dean with a written summary of his or her judgment. If the head's recommendation differs from the recommendation of the tenured faculty, the summary must explain the reasons for the differing judgment, and the head must provide a copy of the summary to the tenured faculty. The tenured faculty may forward a dissenting report to the next level of review.

### **3. Dean's Recommendation**

All tenure recommendations of the department head, whether positive or negative, shall be reviewed by the dean of the college. The dean must establish either a college-wide committee for review of tenure and promotion recommendations or, if a college-wide committee is not established, some other independent peer review committee in addition to the departmental review. The recommendation of such a committee shall be advisory to the dean. After making an independent judgment on the tenure candidacy, the dean shall forward his or her recommendation to the chief academic officer.

### **4. Chief Academic Officer's Recommendation**

All tenure recommendations of the dean, whether positive or negative, shall be reviewed by the chief academic officer. After making an independent judgment on the tenure candidacy, the chief academic officer shall forward his or her recommendation to the Chancellor.

### **5. Chancellor's Recommendation**

All tenure recommendations of the chief academic officer, whether positive or negative, shall be reviewed by the Chancellor. After making an independent judgment on the tenure candidacy, the Chancellor shall forward only positive recommendations to the President.

### **6. President's Action or Recommendation**

The President acts only on the Chancellor's positive recommendation for tenure. If the President concurs in the positive recommendation, he or she shall grant tenure if he or she is authorized to do so, and the Chancellor shall give the faculty member written notice of the effective date of tenure. If only the Board is authorized to grant tenure, the President shall submit the recommendation for tenure to the Board of Trustees.

### **7. Action by the Board of Trustees**

The Board of Trustees acts only on the President's positive recommendation for tenure. After positive action by the Board of Trustees to grant tenure, the Chancellor shall give the faculty member written notice of the effective date of tenure.

**APPENDIX B: TERMINATION PROCEDURES FOR UNSATISFACTORY PERFORMANCE IN TEACHING, RESEARCH, OR SERVICE**

The following procedures shall apply to termination of a tenured faculty appointment, or termination of a tenure-track appointment before expiration of the annual term, for unsatisfactory performance in teaching, research, or service within the definition of Adequate Cause.

**1. 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 chief academic officer may suspend a faculty member with pay, or change his or her assignment of duties, pending completion of the University's termination proceedings described in this appendix and in campus procedures incorporating this appendix. The chief academic officer may combine action under his paragraph with any other procedures in this appendix.

**2. Tenured Faculty's Recommendation**

The department head shall direct the tenured departmental faculty to consider the faculty member's performance in teaching, research, and service and, by a vote taken in accordance with applicable department or college bylaws, to make a recommendation on the question of whether the faculty member's performance constitutes Adequate Cause for termination. The faculty recommendation shall be advisory to the department head. If an Enhanced Post-Tenure Performance Review (EPPR) has been completed in the preceding four years, the report of the EPPR peer committee shall be provided to the tenured faculty, along with any other evaluative information provided for their review. The faculty member under review shall be provided with a copy of the material provided to the tenured faculty and shall be given a reasonable opportunity to submit responsive written materials before the vote of the tenured faculty.

**3. Department Head's Recommendation**

The department head shall consider the faculty member's performance in teaching, research, and service, and the recommendation of the tenured departmental faculty, and make a recommendation on the question of whether the performance constitutes Adequate Cause for termination. The department head shall forward his or her recommendation to the dean, together with the history of efforts to encourage the faculty member to improve his or her performance and a report of the recommendation of the tenured faculty (including the vote tally) on the question of whether the faculty member's performance constitutes Adequate Cause for termination.

#### **4. Dean's Recommendation**

The dean shall consider the faculty member's performance in teaching, research, and service, and the recommendation of the tenured departmental faculty and department chair, and make a recommendation on the question of whether the performance constitutes Adequate Cause for termination. The dean shall forward his or her recommendation to the chief academic officer, together with the recommendations of the tenured faculty and the department head.

#### **5. Decision by the Chief Academic Officer**

##### **a. Review by the Chief Academic Officer**

- (1) If the chief academic officer concludes that Adequate Cause for termination may exist, he or she shall call the faculty member to a meeting to discuss the possibility of a mutually satisfactory resolution of the matter.
- (2) If a mutually satisfactory resolution is not achieved within 30 calendar days, the chief academic officer shall ask the Faculty Senate (or appropriate committee of the Senate) to conduct an informal inquiry and make a recommendation as to whether Adequate Cause for termination exists. The recommendation of the Faculty Senate shall be provided to the chief academic officer within 30 calendar days of the request and shall be advisory to the chief academic officer.
- (3) If the chief academic officer concludes that Adequate Cause does not exist, then the chief academic officer shall provide the faculty member with written notice of the conclusion (with a copy to the dean and the department head), and shall include in the notice any further instructions regarding the matter as may be necessary.

##### **b. Sanctions Less than Termination for Adequate Cause**

- (1) If the chief academic officer concludes Adequate Cause exists but that a sanction other than termination or suspension without pay should be imposed, then the chief academic officer may impose the lesser sanction. The faculty member may appeal the lesser sanction to the Chancellor, whose decision shall be final and not appealable to the President.
- (2) If the chief academic officer concludes Adequate Cause exists but that the sanction should be suspension without pay rather than termination, the chief academic officer shall employ the procedures set forth in paragraph 5c of this appendix and in campus procedures incorporating this appendix, all as appropriately tailored to

reflect that the proposed sanction is suspension without pay rather than termination. If the faculty member wishes to contest the suspension without pay, the procedures shall be those set forth in paragraph 7 of this appendix and in campus procedures incorporating this appendix, all as appropriately tailored to reflect that the proposed sanction is suspension without pay rather than termination.

**c. Termination for Adequate Cause**

**(1) Notice of Adequate Cause and Opportunity to Respond**

Before deciding that the faculty member's appointment should be terminated for Adequate Cause, the chief academic officer 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 chief academic officer. The faculty member may choose to respond in writing instead of, or in addition to, a meeting with the chief academic officer. Any written response must be submitted to the chief academic officer within ten calendar days of delivery of the written statement of the grounds for termination.

**(2) Notice of Termination**

If, after considering any information provided by the faculty member and after consulting with the Chancellor and the President, the chief academic officer concludes that the faculty member's appointment should be terminated for Adequate Cause, the chief academic officer shall provide written notice of termination to the faculty member (1) providing 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 (paragraph 7a 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 Uniform Administrative Procedures Act; and (3) providing notice that the faculty member has fifteen calendar 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 chief academic officer shall send a copy of the written notice to the Faculty Senate at the same time.

**6. Failure to Contest Termination**

If the faculty member does not contest the charge(s) in writing and make the required hearing election within fifteen calendar days after receipt of the written notice described in paragraph 5c(2) of this appendix, the faculty member shall be terminated, and no appeal of the matter will be heard within the University.

**7. Options to Contest Termination** *[NOTE: The following material has been re-ordered with track changes turned off to place the tribunal provisions before the UAPA provisions, but track changes show any change in wording.]*

The rights provided in this paragraph 7 are in lieu of any other rights of grievance or appeal in the applicable faculty handbook or any appeal to the President.

**a. Pre-Termination Hearing before a Tribunal and Final Decision by the Chancellor**

If the faculty member makes a timely election to contest the charge(s) through a hearing by a University tribunal, the faculty member must confirm in writing the decision to waive the right to a hearing under the Uniform Administrative Procedures Act, and the Chancellor shall ask the Faculty Senate, or a designated committee of the Faculty Senate, to appoint a tribunal within fifteen calendar days and shall notify the faculty member of this action. The matter then shall proceed in accordance with the tribunal procedures described below, with the faculty member's termination stayed pending the conclusion of those procedures.

**(1) Composition of the Tribunal**

The University tribunal shall consist of members of the faculty and the administration. Either the Chancellor or the faculty member may challenge the appointment of a tribunal member on the ground of bias or conflict of interest. A challenge shall be judged by the Faculty Senate, or a designated committee of the Faculty Senate, whose decision on the challenge shall be final and not subject to appeal.

**(2) Notice of Hearing**

The Chancellor shall give the faculty member written notice of the hearing date at least 20 calendar days in advance.

**(3) Representation**

If the University intends to be represented by legal counsel, the written notice of the hearing date shall so advise the faculty member. The written notice shall also state the faculty member's right to be represented by legal counsel or other representative of his or her choice. If the faculty member intends to be represented by legal counsel, he or she must notify the tribunal chairperson within ten calendar days of receipt of the written notice of the hearing date. If the faculty member fails to give timely notice of legal representation, the hearing date shall be postponed at the University's request.

#### **(4) Waiver of Hearing**

If, at any time prior to the hearing date, the faculty member decides to waive his or her right to a hearing and respond to the charges only in writing, the tribunal shall proceed to evaluate all available evidence and rest its recommendation upon the evidence in the record.

#### **(5) Pre-Hearing Preparation**

The faculty member and the University shall have a reasonable opportunity prior to the hearing to obtain witnesses, specific documents, or other specific evidence reasonably related to the charge(s).

#### **(6) Evidence**

The tribunal is not bound by legal rules of evidence and may admit any evidence of probative value in determining the issues. The tribunal shall make every reasonable effort, however, to base its recommendation on the most reliable evidence. If the charge is “failure to demonstrate professional competence in teaching, research, or service,” the evidence shall include the testimony of qualified faculty members from this and/or other comparable institutions of higher education.

#### **(7) Confrontation and Cross-Examination of Witnesses**

The faculty member and the University shall have the right to confront and cross-examine all witnesses. If a witness cannot or will not appear, but the tribunal determines that his or her testimony is necessary to a fair adjudication of the charge(s), the tribunal may admit as evidence the sworn affidavit of the witness. In that event, the tribunal shall disclose the affidavit to both parties and allow both parties to submit written interrogatories to the witness.

#### **(8) Adjournments**

The tribunal shall grant adjournments to allow either party to investigate evidence to which a valid claim of surprise is made.

#### **(9) Burden of Proof**

The burden of proof that Adequate Cause exists rests with the University and shall be satisfied only by clear and convincing evidence in the record considered as a whole.

#### **(10) Findings and Conclusions**

The tribunal shall make written findings and conclusions and shall provide a copy to the faculty member at the time of submission to the Chancellor.

(a) If the tribunal concludes Adequate Cause for termination has not been established, it shall so report to the Chancellor.

(b) If the tribunal concludes Adequate Cause for termination has been established but that a sanction other than termination should be imposed, it shall so recommend to the Chancellor, with supporting reasons.

(c) If the tribunal concludes Adequate Cause for termination has been established and that termination is the appropriate sanction, it shall so report to the Chancellor.

#### **(11) Transcript of the Hearing**

A verbatim record of the hearing shall be made, and a transcript shall be provided to the faculty member and the Chancellor at the time of the tribunal's submission of its findings and conclusions.

#### **(12) Final Decision by the Chancellor**

Upon receipt of the tribunal's findings and conclusions, the Chancellor shall provide an opportunity for written argument by the parties and may provide the parties an opportunity to present oral argument. After considering the tribunal's findings and conclusions and any arguments of the parties, the Chancellor will determine whether Adequate Cause has been established and whether termination is the appropriate sanction.

If the Chancellor concludes that Adequate Cause has not been established, the Chancellor shall provide the faculty member with written notice of the conclusion (with a copy to the tribunal), and shall include in the notice any further instructions regarding the matter as may be necessary.

If the Chancellor concludes that Adequate Cause has been established but that a sanction other than termination should be imposed, including without limitation suspension without pay, the Chancellor may impose the lesser sanction by written notice to the faculty member (with a copy to the tribunal). The notice shall include the date on which the sanction will become effective. The decision of the Chancellor shall be final and not appealable to the President.

If the Chancellor concludes that Adequate Cause has been established and that termination is the appropriate sanction, the Chancellor shall provide the faculty member with a written notice of termination stating the grounds for termination (with a copy to

the tribunal). The notice of termination may include or adopt the written findings and conclusions of the tribunal if applicable to the Chancellor's decision. The notice shall include the date on which termination will become effective. The decision of the Chancellor shall be final and not appealable to the President.

**b. Post-Termination Hearing and Final Decision under the Uniform Administrative Procedures Act**

**(1) Contested Case Procedures**

If the faculty member makes a timely election to contest the charge(s) under the Uniform Administrative Procedures Act (UAPA), the Chancellor shall appoint an administrative judge, the faculty member's employment will be terminated on the date specified in the notice provided under Paragraph 5c(2), and the matter shall proceed post-termination in accordance with the contested case procedures promulgated by the University under the UAPA. The UAPA contested case procedures are published in the Compiled Rules and Regulations of the State of Tennessee, Tenn. Comp. R. & Regs. § 1720-1-5.

**(2) Initial Order**

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

**(3) Final Order**

The administrative judge's initial order shall become the final order unless review is sought by either party or the Chancellor within the fifteen-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 UAPA 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. If the University's final order is favorable to the faculty member and concludes that the faculty member's employment should not have been terminated for Adequate Cause, then full restitution of salary lost during the termination will be made.

**(4) 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 Uniform Administrative Procedures Act.

## **APPENDIX C: TERMINATION PROCEDURES FOR MISCONDUCT**

The following procedures shall apply to termination of a tenured faculty appointment, or termination of a tenure-track appointment before expiration of the annual term, for misconduct within the definition of Adequate Cause.

### **1. Suspension or Reassignment Pending Completion of Termination Proceedings**

The chief academic officer may combine action under this paragraph with any other procedures in this appendix.

#### **A. Suspension with Pay or Reassignment of Duties**

After consultation with the President of the Faculty Senate or the Faculty Senate Executive Committee, the chief academic officer may suspend a faculty member with pay, or change his or her assignment of duties, pending completion of the University's termination proceedings described in this appendix and in campus procedures incorporating this appendix.

#### **B. Suspension without Pay**

After consultation with the Chancellor, the President, and the President of the Faculty Senate or the Faculty Senate Executive Committee, the chief academic officer may suspend a faculty member without pay pending completion of termination proceedings only for the following types of alleged misconduct and only in accordance with the procedures outlined in paragraph 8 of this appendix entitled "Expedited Procedure for Termination or Suspension Without Pay in Certain Cases of Misconduct":

- (1) alleged misconduct involving: (i) acts or credible threats of harm to a person or University property; or (ii) theft or misappropriation of University funds, property, services, or other resources;
- (2) or indictment by a state or federal grand jury, or arrest and charge pursuant to state or federal criminal procedure, for: (i) a felony; or (ii) a non-felony directly related to the fitness of a faculty member to engage in teaching, research, service, or administration.

If the University's final determination after either a UAPA proceeding or an ad hoc hearing committee proceeding is favorable to the faculty member and concludes both that the faculty member's employment should not be terminated for adequate cause and that the faculty member should not have been suspended without pay pending completion of termination proceedings, then full restitution of salary lost during the suspension without pay will be made.

## **2. Consultation with Tenured Faculty**

The department head shall consult with the tenured faculty before making a recommendation regarding whether a faculty member's alleged misconduct constitutes Adequate Cause for termination.

## **3. Department Head's Recommendation**

If the department head concludes that a faculty member's alleged misconduct constitutes Adequate Cause for termination, he or she shall forward a recommendation to the dean. The recommendation shall include a report of the head's consultation with the tenured faculty.

## **4. Dean's Recommendation**

If the dean concludes that a faculty member's alleged misconduct constitutes Adequate Cause for termination, he or she shall forward a recommendation to the chief academic officer.

## **5. Decision by the Chief Academic Officer**

### **a. Review by the Chief Academic Officer**

- (1) If the chief academic officer concludes that Adequate Cause for termination may exist, he or she shall call the faculty member to a meeting to discuss the possibility of a mutually satisfactory resolution of the matter.
- (2) If the chief academic officer concludes that Adequate Cause does not exist, the chief academic officer shall provide the faculty member with written notice of the conclusion (with a copy to the dean and the department head), and shall include in the notice any further instructions regarding the matter as may be necessary.

### **b. Sanctions Less than Termination for Adequate Cause**

- (1) If the chief academic officer concludes Adequate Cause exists but that a sanction other than termination or suspension without pay should be imposed, the chief academic officer may impose the lesser sanction. The faculty member may appeal the lesser sanction to the Chancellor, whose decision shall be final and not appealable to the President.

- (2) If the chief academic officer concludes Adequate Cause exists but that the sanction should be suspension without pay rather than termination, the chief academic officer shall employ the procedures set forth in paragraph 5c of this appendix and in campus procedures incorporating this appendix, all as appropriately tailored to reflect that the proposed sanction is suspension without pay rather than termination. If the faculty member wishes to contest the suspension without pay, the procedures shall be those set forth in paragraph 7 of this appendix and in campus procedures incorporating this appendix, all as appropriately tailored to reflect that the proposed sanction is suspension without pay rather than termination.

**c. Termination for Adequate Cause**

**(1) Notice of Adequate Cause and Opportunity to Respond**

Before deciding that the faculty member's appointment shall be terminated for Adequate Cause, the chief academic officer 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 chief academic officer. The faculty member may choose to respond in writing instead of, or in addition to, a meeting with the chief academic officer. Any written response must be submitted to the chief academic officer within ten calendar days of delivery of the written statement of the grounds for termination.

**(2) Notice of Termination**

If, after considering any information provided by the faculty member, and after consulting with the Chancellor and the President, the chief academic officer concludes that the faculty member's appointment should be terminated for Adequate Cause, the chief academic officer shall provide written notice to the faculty member (1) providing 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 an ad hoc hearing committee (paragraph 7a of this appendix); (2) notice of the faculty member's right to contest the proposed termination in a pre-termination hearing before an ad hoc hearing committee (paragraph 7a of this appendix) or in a post-termination hearing under the provisions of the Uniform Administrative Procedures Act; and (3) notice that the faculty member has fifteen calendar days after receipt of the written notice to elect in writing to contest the termination. The chief academic officer shall send a copy of the written notice to the Faculty Senate at the same time.

## **6. Failure to Contest**

If the faculty member does not contest the charge(s) of misconduct in writing within fifteen calendar days after receipt of the written notice described in paragraph 5c2 of this appendix, the faculty member shall be terminated, and no appeal of the matter will be heard within the University.

## **7. Options to Contest the Termination**

The rights provided in this paragraph 7 are in lieu of any other rights of grievance or appeal in the applicable faculty handbook or any appeal to the President.

### **a. Pre-Termination Hearing before an Ad Hoc Hearing Committee and Final Decision by the Chancellor**

If the faculty member contests the charge(s) of misconduct but elects to waive his or her right to formal hearing under the contested case procedures of the UAPA, the faculty member must confirm in writing the decision to waive the right to a hearing under the UAPA, and the Chancellor shall appoint an ad hoc hearing committee to conduct an informal hearing on the charges, with the faculty member's termination stayed pending the conclusion of the procedures set forth in this paragraph 7a. The faculty member may be represented before the hearing committee by legal counsel or other representative of his or her choice. If the faculty member intends to be represented by legal counsel, he or she must notify the committee chairperson within ten calendar days of the hearing date. If the faculty member fails to give timely notice of legal representation the hearing date shall be postponed at the University's request.

The hearing committee shall make a written report of its findings and conclusions to the Chancellor.

Upon receipt of the hearing committee's findings and conclusions, the Chancellor shall provide the opportunity for written argument by the parties and may provide the parties an opportunity to present oral argument. After considering the hearing committee's findings and conclusions and any arguments of the parties, the Chancellor will determine whether Adequate Cause has been established and whether termination is the appropriate sanction.

If the Chancellor concludes that Adequate Cause has not been established, the Chancellor shall provide the faculty member with written notice of the conclusion (with a copy to the hearing committee), and shall include in the notice any further instructions regarding the matter as may be necessary.

If the Chancellor concludes that Adequate Cause has been established but that a sanction other than termination should be imposed, including without limitation suspension

without pay, the Chancellor may impose the lesser sanction by written notice to the faculty member (with a copy to the hearing committee). The notice shall include the date on which the sanction will become effective. The decision of the Chancellor shall be final and not appealable to the President.

If the Chancellor concludes that Adequate Cause has been established and that termination is the appropriate sanction, the Chancellor shall provide the faculty member with a written notice of termination stating the grounds for termination (with a copy to the hearing committee). The notice of termination may include or adopt the written findings and conclusions of the tribunal if applicable to the Chancellor's decision. The notice shall include the date on which termination will become effective. The decision of the Chancellor shall be final and not appealable to the President.

**b. Post-Termination Hearing and Final Decision under the Uniform Administrative Procedures Act**

**(1) Contested Case Procedures**

If the faculty member makes a timely election to contest the charge(s) under the Uniform Administrative Procedures Act (UAPA), the Chancellor shall appoint an administrative judge, the faculty member's employment will be terminated on the date specified in the notice provided under Paragraph 5c(2), and the matter shall proceed post-termination in accordance with the contested case procedures promulgated by the University under the UAPA. The UAPA contested case procedures are published in the Compiled Rules and Regulations of the State of Tennessee, Tenn. Comp. R. & Regs. § 1720-1-5.

**(2) Initial Order**

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

**(3) Final Order**

The administrative judge's initial order shall become the final order unless review is sought by either party or the Chancellor within the fifteen-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 UAPA 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. If the University's final order is favorable to the faculty member and concludes that the faculty member's employment

should not have been terminated for Adequate Cause, then full restitution of salary lost during the termination will be made.

#### **(4) 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 Uniform Administrative Procedures Act.

#### **8. Expedited Procedure for Termination or Suspension without Pay in Certain Cases of Misconduct**

In the following cases of alleged misconduct by a faculty member, the chief academic officer, after consulting with the Chancellor, the President, and the President of the Faculty Senate or the Faculty Senate Executive Committee, may invoke an expedited procedure to accomplish termination or suspension without pay, with comprehensive due process procedures to be offered after termination or suspension without pay:

- A. alleged misconduct involving (i) acts or credible threats of harm to a person or University property, including, without limitation, sexual harassment or other sexual misconduct; or (ii) theft or misappropriation of University funds, property, services, or other resources; or
- B. indictment by a state or federal grand jury, or arrest and charge pursuant to state or federal criminal procedure, for: (i) a felony; or (ii) a non-felony directly related to the fitness of a faculty member to engage in teaching, research, service, or administration.

Under the expedited procedure, the faculty member shall be offered the following process before termination or suspension without pay:

- (1) notice of the charges;
- (2) an explanation of the evidence; and
- (3) an informal opportunity to refute the charges in a meeting with the chief academic officer.

After termination or suspension without pay, the faculty member shall be offered the full range of due process options available to faculty members in other Adequate Cause proceedings as set forth in paragraph 7 of this appendix, except that the termination or suspension without pay shall not be stayed pending the outcome of an ad hoc hearing committee if the faculty member elects that method of contesting the action. If the University's final determination after either a UAPA proceeding or an ad hoc hearing committee proceeding is favorable to the faculty member and concludes that the faculty

member should not have been suspended without pay or that the faculty member's employment should not have been/should not be terminated for Adequate Cause, then full restitution of salary lost during the suspension without pay or termination will be made.

**APPENDIX D: EXCEPTION TO POLICY REQUIRING FULL-TIME STATUS FOR ELIGIBILITY FOR TENURE**

1. In limited circumstances, a tenure recommendation for a highly qualified faculty member who does not hold a full-time appointment may be made in part because of the University's continuing association with a specified external entity (i.e., ORNL, St. Jude, etc.). Such a recommendation must document the extraordinary circumstances that require it, designate the external entity or primary employer, and specify the University's financial commitment (if any) to the faculty member.
2. Recommendations for tenure for all faculty members, including faculty members who do not hold a full-time appointment and including faculty members recommended for tenure upon initial appointment, must adhere to all of the steps described in Appendix A, beginning with the departmental faculty vote. Further, the exception created by this appendix has no effect on the current policy that "tenure at The University of Tennessee is granted in a particular academic unit (department, school, or college) of a specific campus, in a position appropriate to the faculty member's qualifications."
3. If a tenured faculty member who does not hold a full-time appointment was granted tenure contingent upon his or her remaining employed by an external entity/primary employer and then ceases that employment (voluntarily or involuntarily), the University may terminate his or her tenure for Adequate Cause.

**APPENDIX E:           PROCEDURES FOR CONDUCTING THE ENHANCED POST-TENURE  
PERFORMANCE REVIEW**

**1. Objectives of the Enhanced Post-Tenure Performance Review (EPPR)**

The EPPR policy and procedures provide a thorough, fair, and transparent process for:

- coordinating peer evaluation of a tenured faculty member's performance across a five-year period;
- facilitating cooperation between a tenured faculty member and administrators in identifying effective strategies to assist the faculty member in meeting the expectations for the relevant discipline and academic rank; and
- distinguishing those unusual situations in which (despite efforts to facilitate improvement) the faculty member's performance fails to satisfy expectations for the discipline and academic rank, and which may lead to disciplinary action, up to and including proceedings to consider termination of tenure.

**2. Review by the Chief Academic Officer To Determine Whether EPPR is Warranted**

Irrespective of other campus processes or practices through which an annual performance review is finalized, the chief academic officer must review any annual performance evaluation that would result in EPPR.

- If the chief academic officer overrules the performance rating and determines that EPPR is not warranted, the faculty member may choose to proceed with EPPR.
- If the chief academic officer determines that an EPPR is warranted, the chief academic officer should meet promptly with the faculty member to explain the decision and review the EPPR process. The chief academic officer must also provide written notice of this decision (copied to the department head, dean, and Faculty Senate president) that an EPPR will be conducted.

**3. Appointment of the Peer Review Committee**

Within 45 days of the written notice that an EPPR will be conducted, the chief academic officer (or designee) must appoint the peer review committee in the manner described below and meet with the committee to review its charge.

Every member of the peer review committee must be tenured; hold the same or higher academic rank as the faculty member undergoing review; and have some familiarity with the relevant performance expectations for faculty in that discipline and academic rank. In the unusual event that an appropriate peer review committee cannot be assembled

using these criteria, the chief academic officer must provide to the faculty member a written explanation for the deviation from the prescribed criteria.

Consistent with the criteria for service stated above, and absent approval by the Board of Trustees to implement some other appointment mechanism, the chief academic officer (or designee) must appoint the peer review committee using the following nomination process:

- the dean nominates one faculty member to serve both as chair and as a voting member of the peer review committee;
- the department head or chair nominates three faculty members who meet the criteria above, from whom one committee member is appointed;
- the faculty member undergoing review nominates three faculty members who meet the criteria above, from whom one committee member is appointed;
- the Faculty Senate president nominates three faculty members who meet the criteria above, from whom one committee member is appointed; and
- if a college promotion and tenure committee exists, that committee nominates three actively serving members who meet the criteria above, from whom one committee member is appointed. If no college promotion and tenure committee exists, the faculty member under review selects a department other than his/her own from which the chief academic officer selects a final committee member, consistent with the criteria above.

To ensure diverse perspectives among members of the peer review committee, the chief academic officer should solicit nominations from faculty serving in different roles. When feasible, nominations to the peer review committee should include:

- faculty members whose tenure lies in the same department as the faculty member undergoing review, or, in a small department, faculty members who hold tenure in the same college as the faculty member undergoing review;
- at least one faculty member whose tenure resides in a different department than the faculty member undergoing review; and
- at least one faculty member who currently serves (or who served during the most recent cycle) on a college promotion and tenure review committee, if such a committee exists.

#### **4. Collection of Records for Review by the Peer Review Committee**

The chief academic officer (or designee) must collect the following records with respect to the faculty member under review:

- all annual performance reviews for the past five annual performance review cycles, including materials submitted by the faculty member (or an administrator) or developed as part of the evaluation process;
- written performance expectations, which may have been established in the past five annual performance reviews, in department or college bylaws, in the faculty handbook, or in Board of Trustees, fiscal, human resources, research, safety, or information technology policies or procedures; and
- any work assignments, goals, or other plans (however identified) that were described in previous performance evaluations during the review period.

The faculty member undergoing review may submit additional written materials relevant to the review period for the committee's consideration. Such materials must be submitted to the chief academic officer (or designee) for distribution to the committee. The peer review committee may also request that the chief academic officer (or designee) collect and provide additional written materials. Reasonable requests for relevant records will be honored when permitted by law and University policy.

#### **5. Conclusions and Recommendations by the Peer Review Committee**

The peer review committee is charged to review the available performance information and to conclude (based on that information) whether or not performance during the review period has satisfied the expectations for the faculty member's discipline and academic rank. This review should be completed (and written report drafted) within 75 days from the chief academic officer's charge to the peer review committee.

*Interviews* - The peer review committee may conduct a reasonable number of interviews in person or electronically. If the committee chooses to conduct interviews, both the faculty member undergoing review and the administrator who assigned the negative rating(s) must be given the opportunity to be interviewed. All interviews must be conducted separately. Unavailability of the faculty member or administrator for an interview does not constitute grounds for an extension of time to complete the EPPR.

*Voting* - Voting must be conducted by anonymous ballots. No member of the committee may abstain or recuse him/herself from voting. All conclusions and recommendations are adopted upon the vote of a simple majority, except a recommendation that the Chancellor initiate tenure termination proceedings, which requires the support of at least four members of the peer review committee.

**a. Conclusions Regarding Performance and Recommended Action(s)**

All conclusions and recommendations of the peer review committee must be made in writing, with copies to all parties (faculty member, department head, dean, and chief academic officer). Minority reports may be attached. While the committee is not permitted to share written materials directly with the Faculty Senate, the faculty member under review remains free to do so.

Based on the judgment of its members, the peer review committee must conclude either:

- (1) that the performance satisfies the expectations for the faculty member's discipline and academic rank; or
- (2) that the performance does not satisfy the expectations for the faculty member's discipline and academic rank. In such a case, the committee must recommend either:
  - that an EPPR improvement plan be developed and implemented; or
  - by a vote of at least four committee members, that the Chancellor should initiate proceedings to consider termination of tenure based on Adequate Cause (Unsatisfactory Performance in Teaching, Research, or Service) as defined in III.H. of this policy and the procedures detailed in Appendix B.

**b. Review and Responses to the Peer Review Committee's Report**

The committee's written conclusions and recommendations must be distributed to the faculty member, department head, and dean for simultaneous review, who must submit any written responses to the chief academic officer within 14 days.

**c. Conclusions and Recommendations of the Chief Academic Officer**

The chief academic officer will review the committee's report and all timely written responses and will make an independent evaluation of the faculty member's performance. Within 28 days of the distribution of the peer review committee's report (14 days for review and comment by others and 14 days for independent review by the chief academic officer), the chief academic officer must provide to the Chancellor copies of the committee's report, all timely responses to the report, and any additional conclusions or recommendations based on the chief academic officer's independent review of the material. The entire report, including any materials added by the faculty

member, department head, dean, and chief academic officer, must be copied to the faculty member, peer review committee, department head, and dean.

## **6. Review and Action by the Chancellor**

The Chancellor will make an independent evaluation of the faculty member's performance and must provide to the faculty member (copied to the department head, dean, chief academic officer, and members of the peer review committee) a written explanation of the rationale for any conclusions, decisions, or further actions to be taken.

If the Chancellor concludes that the performance under review has satisfied the expectations for the faculty member's discipline and academic rank, the EPPR process is concluded. In doing so, the Chancellor may overrule previous performance ratings and may adjust the faculty member's salary to reflect any across-the-board raises.

If the Chancellor concludes that the performance under review does not satisfy the expectations for the faculty member's discipline and academic rank, the Chancellor may take further action as deemed appropriate. For example (without limitation):

- The Chancellor may require that an EPPR improvement plan be implemented for a period of up to 18 months, as further described below.
- The Chancellor may propose disciplinary action, up to and including proceedings to consider tenure termination based on Adequate Cause (Unsatisfactory Performance in Teaching, Research, or Service) as defined in III.H. of this policy and the procedures detailed in Appendix B.

## **7. Development and Implementation of an Improvement Plan (When Applicable)**

### **a. Written Notice to All Parties**

If the Chancellor concludes that an EPPR improvement plan should be developed, the Chancellor must promptly instruct the chief academic officer to develop and implement an improvement plan using the process detailed below. The chief academic officer must promptly notify in writing the faculty member under review that the Chancellor has determined that an EPPR improvement plan must be implemented (with copies to the department head, dean, and peer review committee). Only one improvement plan may be offered to a faculty member during a given EPPR process; however, the EPPR process may be implemented more than once during a faculty member's career. An EPPR improvement plan may extend no more than 18 months from the time it is implemented by the chief academic officer.

### **b. Development of the EPPR Improvement Plan**

The department head is responsible for drafting the EPPR improvement plan in close collaboration with the peer review committee, dean, and chief academic officer. In drafting the improvement plan, the department head should attempt to address any written concerns raised by the faculty member during the relevant annual review cycles.

Within 30 days of notice that an improvement plan must be developed, the department head is expected to produce a plan supported by the dean, chief academic officer, and a majority of the peer review committee. Once such an improvement plan is developed, the chief academic officer shall forward the proposed plan to the faculty member.

If the department head fails to produce within 30 days an improvement plan supported by the chief academic officer, dean, and majority of the peer review committee, then the committee must assume responsibility for drafting an improvement plan. In such a case, the committee must complete the plan within 14 additional days. Upon approval by a majority of the peer review committee, the proposed plan must be provided to the dean and chief academic officer for review and approval.

In either case, the chief academic officer must ensure that an improvement plan acceptable to the chief academic officer, dean, and majority of the peer review committee is developed and must send the proposed plan to the faculty member for review and response. The faculty member under review must be given one opportunity to review and respond to the proposed improvement plan (within 14 days). The peer review committee must review and consider the faculty member's response, including any modifications requested by the faculty member (within another 14 days). In its discretion, the peer review committee may revise the proposed plan after considering the faculty member's response. The committee must then forward the proposed improvement plan to the chief academic officer for review and implementation (with copies to the dean, department head, and faculty member).

**c. Committee Review after an EPPR Improvement Plan**

At the end of the time allotted for the EPPR improvement plan, the peer review committee must reconvene to review performance under the plan, and to determine whether or not such performance (in the context of the EPPR review period) has satisfied expectations for the faculty member's discipline and academic rank. The peer review committee must provide a written report of its conclusions and recommendations to the faculty member, department head, and dean, who may respond in writing within 14 days.

The chief academic officer must review the committee's report and any timely written responses and must independently evaluate performance under the improvement plan. The chief academic officer must then submit the reconvened committee's report, all

written responses, and his/her own conclusions and recommendations to the Chancellor, with copies to the faculty member, peer review committee, department head, and dean.

**d. Chancellor’s Review and Action after an EPPR Improvement Plan**

The Chancellor will make an independent evaluation of the performance under the EPPR improvement plan (in the context of the EPPR review period) and must provide to the faculty member (copied to the department head, dean, chief academic officer, and members of the peer review committee) a written explanation of the rationale for any conclusions, decisions, or further actions to be taken.

**8. Timeline for Conducting the EPPR**

All EPPR deadlines are counted in calendar days rather than business days, except when the last day of the time period falls during a holiday or administrative closure lasting five business days or longer (such as the administrative closure between fall and spring semesters or an extended weather-related closure). The following table summarizes the key events and deadlines in the EPPR process.

| Event begins   | Days | Event ends   |
|--|------|--|
| Written notice from the chief academic officer that EPPR is warranted  | 45   | Chief academic officer charges the peer review committee   |
| Chief academic officer charges the peer review committee   | 75   | Committee report is distributed for review by the faculty member, department head, and dean  |
| Committee report is distributed for review by the faculty member, department head, and dean  | 14   | Faculty member, department head, and dean submit written responses to the chief academic officer   |
| Chief academic officer reviews timely responses to the report and makes an independent evaluation  | 14   | Chief academic officer submits to the Chancellor the committee’s report, all timely responses, and any additional conclusions and recommendations based on the chief academic officer’s independent evaluation |
| If the Chancellor requires implementation of an EPPR improvement plan, the chief academic officer provides written notice to all parties | 30   | Department head submits to the chief academic officer a proposed improvement plan supported by the dean, chief academic officer, and a majority of the peer review committee                                   |

|   |    |  |
|---|----|--|
| If the department head fails to produce an improvement plan supported by the dean, chief academic officer, and a majority of the committee, then the peer review committee assumes responsibility for drafting a plan | 14 | Peer review committee submits the proposed improvement plan to the dean and chief academic officer for review and approval               |
| Upon approval by the chief academic officer, the proposed improvement plan is sent to the faculty member for review   | 14 | Faculty member submits to the peer review committee any written response (including any requested modifications to the improvement plan) |
| Peer review committee considers the faculty member's response and may revise the proposed improvement plan  | 14 | Peer review committee submits the proposed improvement plan to the chief academic officer for review and approval                        |
| Chief academic officer reviews the proposed plan, responds to the committee as needed, and approves a final improvement plan  | 14 | Chief academic officer sends the approved plan to the faculty member and others for implementation                                       |

On a case-by-case basis, the chief academic officer (or designee) may approve a written request from the peer review committee for an extension of time to complete the initial review. Only one extension may be granted to the peer review committee during a single EPPR, and the chief academic officer (or designee) will determine the length of the extension.

*Concurrent Appeals or Grievances* – While appeal of an annual performance rating (or other procedure) may overlap in time with the five-year review period, the EPPR is purposefully different from the annual performance review process. To the extent provided under the applicable faculty handbook or other campus policies or practices, the faculty member may choose to initiate or maintain an appeal of the most recent annual performance rating while EPPR is underway. Any appeal or other process must be conducted without interference or influence from the EPPR, and vice versa. Faculty leaders should take care to ensure the integrity of all procedures by confirming that no person serves in multiple proceedings related to the same faculty member. Except as may be required by law (for example, under regulatory requirements or a judicial order) any such appeal, grievance, or other University process must proceed simultaneously with the EPPR and must have no impact on the timing or procedures described in this policy.

## 9. Phased Implementation of Enhanced Post-Tenure Performance Review

The Enhanced Post-Tenure Performance Review provisions of the Board Policies on Academic Freedom, Responsibility, and Tenure were, and the procedures outlined in this appendix were approved by the Board of Trustees on October 14, 2016 and became effective on July 1, 2017. Any faculty member who was engaged in a Cumulative Performance Review (CPR) on October 14, 2016 must complete the CPR process under the then-applicable CPR policy provisions. Otherwise, the following implementation schedule applies.

| Date of annual performance review meeting | Overall rating of Needs Improvement (or campus equivalent)   | Overall rating of Unsatisfactory (or campus equivalent) |
|---|--|---|
| On or before June 30, 2017                | CPR policy applies   | CPR policy applies                                      |
| July 1, 2017 – June 30, 2018              | Performance ratings are reviewed by the chief academic officer, who decides whether CPR or EPPR should be applied. | EPPR policy applies                                     |
| July 1, 2018 or later                     | EPPR policy applies  | EPPR policy applies                                     |