



To: University Council
From: Ashley Leonard, Compliance Counsel
Date: October 10, 2019
Re: Policy Development and Administrative Rulemaking – after Public Comment

I. Introduction

The Policy Development and Administrative Rulemaking policy is a new policy and procedure for East Tennessee State University. The policy formalizes the existing policy process while creating an informal policy office (the office of university compliance) to work with originators and sponsors on shepherding policies through the process. The originator, Ashley Leonard, collaborated with the prior Policy Review Committee and the President’s Chief of Staff prior to finalizing the policy for public comment. The public comment period for this proposed policy runs from September 30, 2019, through October 9, 2019. The university received nine comments to this policy.

II. Comments Received

One comment stated “it would be helpful to have some instructions for using the template” for policies and procedures because “the separation/interaction between policy and guideline is sometimes difficult to determine.” The template has been updated to provide descriptions for each section and will be posted on the university policy website. Another comment recommended that policies posted for public comment should include a summary document explaining the rationale for and likely impacts of the policy/revision.

Other comments focused on the “Department Rules” section of the policy; specifically, how different departments utilize individualized processes for department rules. As a result, the Department Rules section has been replaced with a Unit Rules section that provides clarity and flexibility between university units.

III. Legal Review of the Proposed Policy

This new policy complies with the Board of Trustees’ delegation of authority to the President and the university’s shared governance model. The policy also expressly states compliance with Tennessee’s Uniform Administrative Procedures Act when promulgating administrative rules.



Policy Development and Administrative Rulemaking	
Responsible Official: University Counsel	Responsible Office: Office of University Compliance

Policy Purpose

This policy provides the university-wide procedure for the development, revision, and review of all university policies and procedures. This policy also provides the authority for East Tennessee State University to promulgate administrative rules under the Tennessee Uniform Administrative Procedures Act.

Policy Statement

All written policies and procedures or administrative rules submitted for review and approval by the East Tennessee State University Board of Trustees or its President must be developed or revised in a transparent, collaborative, and efficient manner. University policies and procedures or administrative rules must be clearly written, accessible to the university community, and periodically reviewed.

Authority: Tenn. Code Ann. §§ 4-5-202, 4-5-206, and 4-5-211

Definitions

Academic Council: An advisory body to the Provost that reviews, recommends, or approves university policies that affect academic issues.

Administrative Rule: Any ETSU regulation, standard, statement, or document of general applicability that is not a policy that describes the procedure or practice requirements of an agency; or implements, prescribes, or interprets an enactment of the general assembly or congress or a regulation adopted by a federal agency. Administrative rule includes the establishment of a fee, the amendment or repeal of a prior rule, and ETSU statements that relate to the discipline or housing of students. Administrative rule does not include general policy statements that are substantially repetitious of existing law or ETSU statements that relate to admission, graduation, or curriculum of ETSU students.

Approval Date: The date the Board of Trustees or President approves a policy.

Comment Period: A 14 calendar day period during which students, employees, and others may comment on a proposed new policy or revised policy or procedure.

Effective date: The date a policy or procedure goes into effect. Unless otherwise stated, the effective date will be when the office of university compliance posts the policy on the university webpage, thereby providing notice to the university community.

Emergency policy: A temporary memorandum policy enacted by the President when extraordinary circumstances require immediate action.

Originator: The person(s) assigned to draft and develop a policy or procedure.

Policy Template: A standardized guidance document with a proper outline and format for policies and procedures.

Procedures: Specific methods and processes for implementing university policies.

Office of University Compliance: For purposes of this policy, the Office of University Compliance is the university department responsible for offering guidance to a policy originator, ensuring a legal review of draft policies occurs and reviewing policies for accuracy, clarity, and consistency as well as ensuring compliance with this policy and procedure. This office is located in the Office of University Counsel.

Sponsor: A member of the ~~University Council or Academic Council~~ or University Council responsible for a policy.

Stakeholder: University units or positions that are particularly impacted by a university policy and procedure. Stakeholders may include faculty senate, staff senate, student government association, or other operational stakeholders.

Substantive Revision: Changes that alter the intent, scope, meaning, or application of a university policy or procedure.

Technical Correction: A change that does not alter the intent, scope, meaning, or application of a university policy or procedure. For example, job titles, department names, responsible personnel, grammatical errors, format revisions, hyperlink updates, policy renumbering and changes in statutory or regulatory citations.

Unit Rule: A written directive that applies to a specified academic, administrative, or other unit of the university and governs a process that is unique to that unit. Unit rules may be referred to by various names which include but are not limited to as department rule, department guideline, department policy, by-law, charter, regulation, handbook, standard operating procedure or statement of standards.

University Council: An advisory body to the President.

University Policy: A guiding principle that addresses the governance or internal management inherent in carrying out the mission of the university that does not affect private rights, privileges, or procedures available to the public. Unless a policy explicitly states otherwise, it is binding on all students, faculty, and staff.

Policy History

Effective Date:

Revision Date:

Procedure (s)

A. Policy and Procedure Approval Process

1. Policy Requests

- a. Any student or university employee may submit a written or verbal request to develop a new university policy or procedure or revise an existing policy or procedure by submitting the request to a sponsor for the university.
- b. The sponsor may assign an originator to draft or revise the proposed new or revised policy or procedure and notify the Office of University Compliance of the appointment.
- c. The Office of University Compliance ~~will~~ begins monitoring the progression of the policy development or revision and ~~works~~ with the originator and sponsor to progress the policy or procedure to completion.

2. Policy Drafting

a. Originator Responsibilities

- (1) ~~It is the~~ The originator's ~~responsibility to be~~ is the primary drafter and reviewer of a new or revised policy or procedure.
- (2) The originator ~~will~~ contacts the Office of University Compliance for the policy template. The originator ~~will~~ periodically consults with the Office of University Compliance throughout the drafting and approval process.
- (3) For policies to be approved by the President, the originator and all reviewers must use the edit and track ("track changes") feature on draft policy documents so that those reviewing the draft policy can readily identify all changes and comments to the draft.
 - a) The Office of University Compliance, in consultation with the sponsor, may waive this requirement if the policy revision constitutes a substantial rewrite of the policy or procedure.
 - b) If a waiver is authorized, the draft must include comments explaining differences and similarities with the existing policy.
 - c) Waivers should be limited to substantial rewrite and where use of the edit and track feature would create a document lacking clarity.
- (4) Microsoft Word's "track changes" function must not be used for policies or procedures that go before the Board of Trustees.**
 - a) ~~All amendments to an existing policy must have~~ Use lines ("strikethrough" function) through all language to be deleted.
 - b) ~~All language to be added must be~~ underlined to clearly Underline any added language to indicate the changes ~~to be~~ being made.
- (5) The originator must include stakeholders impacted by the policy or procedure in the

drafting process.

(6) Once the originator has completed a draft, the originator ~~will send~~s the policy draft to the Office of University Compliance.

b. Office of University Compliance Responsibilities

(1) The Office of University Compliance ~~will review~~s the policy for clarity and ensures consistency with other policies and procedures. The Office of University Compliance ~~will~~ also ensures the university's legal counsel conducts a legal review of the policy draft.

(2) Once the policy review has been completed by the originator and Office of University Compliance, the Office of University Compliance ~~will submit~~s the policy and procedures for public comment.

3. 14-day Comment Period

a. The Office of University Compliance ~~will advertise~~s the proposed or revised policy and procedure for a 14-day comment period.

b. The President or their designee may extend the comment period for extraordinary circumstances.

c. When a policy or procedure is posted for a 14-day review, all ~~University Council and Academic Council~~ and University Council members have a responsibility to encourage their respective colleagues and staff to review and comment on the new or revised policy.

d. Upon completion of the 14-day comment period, the Office of University Compliance ~~will provide~~s all received comments to the originator.

e. Within 30 calendar days of receiving all comments, and in cooperation with the Office of University Compliance, the originator ~~must evaluate~~s all comments and revises the policy or procedure as needed.

f. The originator and Office of University Compliance ~~will submit~~s the draft policy to the sponsor. A short joint memorandum summarizing the comments received, revisions made, and any remaining legal or other issues ~~will accompany~~ accompanies the draft.

4. ~~University Council or Academic Council~~ or University Council Review and Approval

a. The sponsor or their designee ~~will then present~~ the draft policy or procedure to ~~University Council or Academic Council~~ or University Council for ~~its~~ review.

(1) Academic Council reviews all draft policies and procedures that are specifically academic in nature, including but not limited to policies and procedures related to faculty, promotion and tenure; academic freedom; catalogs; curriculum; and research.

(2) University Council reviews all other draft policies and procedures.

b. After reviewing the draft, ~~University Council or Academic Council~~ or University Council may make one of the following recommendations:

- (1) Approve the policy and procedure and forward it to the President or Board of Trustees, as appropriate, for review and approval.
- (2) Return the policy and procedure to the originator for further work, with instructions on the changes needed.
- (3) Reject the policy and procedure.

5. Presidential and Board of Trustees Review and Approval

- a. The President or the Board of Trustees ~~will~~ approve the new or substantively revised policy and procedure as submitted, request revisions, or reject the policy or procedure.
- b. ~~Neither the~~ The President nor the Board of Trustees ~~does not~~ need to approve a technical correction of a policy or procedure.

6. Posting of an Approved Policy or Procedure

- a. The President's Office ~~shall notify~~ notifies the Office of University Compliance when the President or Board of Trustees approves a policy or procedure.
- b. The Office of University Compliance ~~has the duty to post~~ the approved policy or procedure on the Policy website and ~~notify~~ notifies the university community.

B. Time Considerations

1. The Originator, Sponsor, President, and Board of Trustees may review and take any action on a proposed new or revised policy or procedure at anytime.
- ~~2.~~ The timing of the review and approval process for new or revised policies rests exclusively with the Board of Trustees or President. However, both entities should provide sufficient time for the following circumstances:
 - a. Stakeholders in the university community ~~should be provided sufficient opportunity~~ to provide comments regarding the proposed policy or procedure.
 - b. ~~Meeting Publishing publication~~ deadline dates for new or revised policies or procedures which are published in of university issued handbooks or manuals.

C. Policy and Procedure Technical Corrections

1. The Board of Trustees has delegated to the President the authority to enact technical corrections, as defined in the Definitions.

2. The originator may recommend technical corrections to the sponsor. The originator ~~must~~ provides a tracked version of the policy and procedure to the sponsor.
3. The sponsor ~~must~~ provides the Office of University Compliance a tracked version of the proposed technical correction. The Office of University Compliance ~~will~~ reviews the proposed technical correction to determine if the change is technical or substantively alters the policy or procedure.
 - a. If there is a disagreement between the originator and Office of University Compliance as to whether a revision constitutes a technical correction, the matter ~~will be~~ is evaluated by the sponsor and President.
 - b. The President ~~will have~~ has the final authority on whether the revision constitutes a technical correction.
4. If the Office of University Compliance determines that the proposed technical correction does not substantively alter the policy or procedure, the Office of University Compliance ~~will~~ posts the corrected policy on the university policy page.
5. The approval of technical corrections to a policy does not constitute the enactment of a new or revised policy, and it does not change the approval or effective dates of such policies.

D. Emergency Policy

1. When the President determines that emergency policy action is required, the President may enact new policies, revise existing policies, or suspend existing policies.
2. When the President takes emergency policy action, the President ~~will~~ issues a written memorandum outlining:
 - a. the reasons emergency action is required;
 - b. any applicable emergency procedures;
 - c. the anticipated duration of the emergency policy; and
 - d. if applicable, any other policies that will be affected by the enactment of the emergency policy.
3. The President may issue this emergency policy without prior consent or approval of any university unit. However, when an emergency policy has been issued, the President must notify ~~University Council and Academic Council~~ University Council.
4. Emergency policies do not require a 14-day comment period.
5. Once enacted, the Office of University Compliance ~~will~~ immediately publishes the emergency policy on the university policy website. The Office of University Compliance ~~will~~ also sends an email notice to the university community ~~notifying of the~~ regarding the emergency policy.

6. Following issuance of the emergency policy, the President ~~will~~presents the policy to the Board of Trustees at the first available opportunity.
7. After consulting with the President, the Board of Trustees has the authority to affirm, modify or rescind the emergency policy.
8. The emergency policy must be in effect only for the duration of the emergency, not to exceed one year.

E. Unit Rules

1. Given the size, complexity, and numerous academic, administrative, and other units of the university, it is necessary for units to develop unit-specific rules, as defined in the Definitions. Unit rules and procedures provide additional detail to employees to efficiently and effectively operate within respective university units.
2. Unit rules must be consistent with the intent and purpose of university policy and relevant law.
3. Recommendations for new or revised unit rules ~~should~~ go through the unit's established procedures for addressing new rules.
4. Senior administrators are responsible for ensuring the distribution of new unit rules and procedures to all employees in the department.
5. A new unit rule that is properly adopted based on individual units' adoption processes is binding on all employees and students within the relevant unit for which it is developed.

F. Policy Review and Maintenance

1. Sponsors are responsible for reviewing and addressing the policy needs of their respective departments.
2. The Office of University Compliance ~~will~~maintains the policy website or manual as well as a policy archive.
3. The Office of University Compliance ~~will~~coordinates the regular review of university policies. Whenever possible, a policy ~~will be~~is reviewed every five years after it becomes effective and every five years after that. The sponsor ~~will~~reviews policies to assess whether policies remain:
 - a. in compliance with applicable laws, regulations, etc.;
 - b. consistent with other university policies;
 - c. current with policy format, personnel, positions, and entity information; and
 - d. relevant to the needs of the university and its mission.

G. Obsolete Policy or Procedure

1. A student, staff member, or faculty member who believes a university policy is no longer needed may recommend to the Office of University Compliance that the policy is removed.
2. The Office of University Compliance ~~will~~ informs the sponsor of the recommendation.
3. A sponsor ~~will~~ reviews the recommended deletion with the university's legal counsel.
4. Following a legal review, the sponsor ~~will~~ presents a written recommendation to ~~University Council or~~ Academic Council or University Council that a policy or procedure should be deemed obsolete. The written recommendation ~~will~~ includes the reasons the sponsor believes the policy is obsolete.
5. ~~University Council or~~ Academic Council or University Council ~~will~~ approves or ~~deny~~ denies the recommendation and ~~notifies~~ notifies the Office of the President. If the deletion is approved, the Office of the President ~~will~~ notifies the Office of University Compliance.
6. When notified of a policy deletion, the Office of University Compliance ~~will~~ removes the policy from the university policy website and ~~sends~~ sends an email to all university community members notifying of the deletion.

H. Administrative Rulemaking Requirement

1. When required, the University ~~shall~~ enacts an administrative rule consistent with Chapter 1360- 01-02, Filing of Rules pursuant to Title 4, Chapter 5, of the Tennessee Uniform Administrative Procedures Act.
2. On July 1 of every year, the University ~~will~~ submits a list of all adopted policies to the chair of the Tennessee senate and house government operations committees, including a summary of the policy and the university's justification for adopting a policy instead of promulgating a rule.

Procedure History

Effective Date:
Revision Date:

Related Form(s)

Scope and Applicability

Primary: Governance, Academic, Students, Employment

Secondary: Information Technology, Health and Safety, Business and Finance, Operations and Facilities, Communications & Marketing, Advancement