

Policy Title: Appeals to the Board

Policy Type: General Board **New/revised:** New

Old Policy #: 1:02:11:00

Approval level: Board of Trustees
 President
 Vice President
 Other (specify here)

Purpose: The purpose of this policy is to set the conditions and procedures for appeals to ETSU's Board of Trustees.

Policy:

The following provisions describe when an ETSU student or employee may appeal a decision of the President (or his/her designee) to the Board of Trustees.

1. A student or employee of ETSU may appeal a final decision of the President, consistent with the requirements of this policy.
2. UAPA hearings are not appealable to the Board.
3. Appeals to the Board shall be limited to alleged violations of state or federal law or ETSU policy where the complainant has not filed a federal or state administrative appeal or a lawsuit in state or federal court.
4. If, at any time during the pendency of the appeal, a complainant files a lawsuit or administrative action based on the same subject matter as the appeal, the appeal will be dismissed without further action.
5. Unless there is a violation of state or federal law under the limitations described above, decisions that are not appealable to the Board include, but are not limited to the following:
 - a. Termination of executive, administrative, professional, clerical and support employees during or at the end of the initial probationary period or pursuant to the terms of the contract of employment;
 - b. Non-renewal of a tenure-track faculty appointment during the first four years of the probationary period;
 - c. Denial of tenure unaccompanied by notice of termination in the fifth year of the probationary period;
 - d. Non-renewal of a temporary faculty appointment;
 - e. Salary determinations;
 - f. Student academic matters, e.g., grade appeals, failure to meet retention policies, etc.;
 - g. Performance evaluations of faculty or staff; and
 - h. Residency classification of students for tuition and fee purposes.

The procedure for appeals to the Board is as follows:

1. A student or employee who is dissatisfied with the decision of the President may petition the Board for permission to appeal the decision of the President to the Board.
2. The petition must be submitted in writing to the Secretary of the Board within 20 calendar days following the date of the President's written decision.
3. The petition for appeal must present:

- a. A brief statement of the issues to be reviewed including a statement of the redress desired;
 - b. A brief statement of the facts relevant to the issues to be reviewed, with appropriate reference to where such can be found in the record;
 - c. A statement of applicable law/policy;
 - d. A brief argument; and
 - e. Citation of any applicable authorities (such as policies, statutes, and cases).
4. The petition for appeal must be limited to ten (10) pages, typed, double spaced, and on 8 ½ X 11" paper.
5. The appropriate standing Committee of the Board shall review the decision of the President on the basis of the record submitted to the President, with any new evidence which for good cause shown was not previously considered, and determine whether the petition to appeal will be granted.
6. The Committee, in determining whether to grant an appeal, may consider the following:
 - a. Whether Board policy or procedures have been followed;
 - b. Whether or not there is material evidence to substantiate the decision appealed from; and/or
 - c. Whether or not there has been a material error in the application of the law, which prima facie results in substantial injustice.
 - d. The listing 1-3 above is not exhaustive and, in the discretion of the Board committee, other considerations may be taken into account.
7. If the petition to appeal is granted, the Committee shall hear the appeal at a subsequent regularly scheduled meeting of the Committee and may request the person appealing to appear and present arguments on his or her behalf.
8. The Committee shall recommend action to the Board. The decision of the Board shall be final and binding for all purposes.
9. Record
 - a. The record on an appeal to the Board, reviewed by the Committee, shall consist of all relevant documents, statements, and other materials submitted by the person appealing and by the President.
 - b. In the event that the person appealing does not submit sufficient information to allow review of the decision being appealed, the Committee may require the person appealing to furnish any additional information which may be necessary.
9. The following provisions shall govern the review by the Committee of an appeal under this policy:
 - a. A decision may be remanded for further consideration upon a finding that it was not made in accordance with applicable state or federal law or ETSU procedures; provided, however, that the decision should not be remanded if the procedural error was not material to the decision and therefore constituted harmless error;
 - b. A decision may be modified or reversed only upon a finding that the decision constituted an abuse of discretion or was made in violation of applicable state or federal law or ETSU policies; provided, however, that the decision should not be modified or reversed if the violation of policy was not material to the decision and therefore constituted harmless error;
 - c. A decision should be affirmed in the absence of a finding of abuse of discretion or material violation of applicable state or federal law or ETSU policies or procedures.

10. Notwithstanding any provision herein to the contrary, any decision may be remanded by the Board for a resolution of the matter which is mutually acceptable to the parties or which is, in the best judgment of the Board, a fair and equitable resolution.

Related Policies

- Uniform Procedures for Cases Subject to the Uniform Administrative Procedures Act

5/8/2017 – approved by the Board of Trustees.