

Communications Report of the Faculty Senate meeting on 2022-February-17

Written by Communications Officer Dr. Dirk Grupe

1. **Meeting start:** 15:45/3:45 PM
2. **Approval of the Minutes** of the February 03, 2022 meeting: Senator Hare moved to accept the minutes, seconded by Senator Jenab, accepted.
3. **Announcements (01:20):** President Long noted that there are several announcements that are not on the agenda which popped up.
 - President Long met with SGA president Emily Wiley and had a really good conversation. The students expressed frustration about how lab manuals are distributed. There are lab manuals that are only available in Lappin Hall. This causes problems for some students with financial aid who can only buy items from the bookstore. The request is that at least some lab manuals being available at the bookstore so students could use their financial aid. With Barnes and Noble moving in there may be a chance that they could just print and sell the lab manuals. Senator Eisenhower mentioned that this used to be the system in Biology. They were then told some years ago that they could not do this anymore. What Biology is doing instead is posting the lab manuals on Blackboard. Senator Lennex pointed out that her daughter had to buy a lab manual in Lappin cash or check. This was the only way to get this lab manual. She was also told that this is a fundraiser for a club. President Long suggested that SGA President Wiley goes to the dean of the College of Science, Dr. Miller and make their request there. SGA Representative Ethan Wells remarked that he as a Biomedical Science major has a lot of classes in Lappin and he had to purchase these manuals as well. He said that specifically in Chemistry the lab manuals since Fall 2020 have been supplied to the students. He also hopes that this can be transferred to the bookstore.
 - Another item that President Long and SGA President Wiley discussed was about course evaluations that there should be a way to give some feedback midway through the semester. President Long responded that this might be a good idea if it is done in a good faith effort. We need some further discussions if we want this. This idea would be some kind of method for constructive criticism. Regent Adams responded that this might be a bigger issue, like having some mechanism so students could express their frustrations over structural problems, like with the lab manuals. This would be a good thing for Academic Affairs to look into.
 - There is a proposed change to PG-48 by President Morgan which President Long had posted on Blackboard. This is about vacation days which does not affect most faculty, only those on a 12 month contract.
4. **Presidents Report:** No report, Dr. Morgan was not present

5. **Provost Report:** Provost Norman was not present due to a family commitment. President Long said that we will have a longer report from the provost next meeting due to him missing two meetings.

6. **Guest Speaker Dr. Shannon Harr, Director of the Office of Research and Sponsored Programs:**(11:00) Dr. Harr thanked President Long for the opportunity to speak in Senate today. He gave a little bit of his background, starting at MSU back in 2001 in student services, but a little bit after that he worked for 9 years in the Office of Research and Sponsored Programs as the Compliance Director and he was formally certified as a research administrator. Dr. Harr mentioned that he has to retake these certifications again. Dr. Harr then worked for 6 years in Assessment. He is now happy to be back at the Office. Dr. Harr then answered questions that were sent to him from Senate through President Long in advance of the meeting. The first one was about the Research and Creative Production committee and how this could be more involved. Dr. Harr said that he would start up discussions with this committee again as it was the case under Dr. Henson's tenure. One issue here might be updates to policies regarding internal grants. Another question was what Dr. Harr is empowered to do without reporting to an administrator. He said he is empowered to do his job. Dr. Norman who is his direct supervisor is not a micro-manager. Following that was the question of what the vision is for the Office of Research and Sponsored Programs. Dr. Harr said he does not know and referred back to past directors of the office, Dr. Mattingly and Ms. Carol Morale. What both of them were passionate about was to provide quality service. He said that the office wants to provide good customer services and wants to make sure that all members of his office will be well-trained. Dr. Harr also pointed out that the office used to have 8 staff, but his office has only 4. Dr. Harr also hopes that the number of proposal submissions can be increased. He also wants to increase the number of internal grants which then can lay the foundation for seeking external funding. He wants to reach out to faculty - new and old - to make sure that the tools are available to them. The overall goal is to increase the amount of external funding. Another issue to look at is the post-award reporting. Although there is a UAR that requires this type of training, it has not been applied recently. Also, changes in policies regarding the use of animals and humans in research need to be monitored. It is important that federal guidelines regarding these matters are followed. Dr. Harr asked that he be included in department and college meetings so he can make sure to talk with faculty who may be interested in external funding. Dr. Harr pointed out that not all external funds are federal or state funds, many of them are private.

Senator Morrison pointed out that there are some departments that do not receive federal grants very often, like English for example. He mentioned that still they have several distinguished researchers who do not rely on external funding and he was wondering if the office could supply support for these researchers as well. Dr. Harr agreed with this and mentioned the Research and Creative Production committee again and pointed out the internal grants. Dr. Harr said he would like to increase the amount for internal funding.

Senator Dr. Hare mentioned that while we have seen the decline of staff in the Office of Research and Sponsored Programs, we have seen an increase in paperwork that researchers have to do. He hopes that we can avoid shifting more of this work onto faculty, but this is all he has seen over the last decade. Senator Hare hopes that we can streamline the process and reduce the paperwork, so faculty can participate more in research and bring

in more external funding. Dr. Harr said that he want to look into all processes.

Senator Dr. Jenab asked about the F&A. Every year from his grant \$40000 are F&A and only \$2000 is coming back to him, the rest is going to the ORSP. Senator Jenab requested more transparency where this money is going to. Dr. Harr pointed out that there is a policy, a UAR, which defines how much money goes to the departments. Only 5% goes to his office, 5% goes to the library, and 45% goes to the University's General Funds. Senator Jenab suggested that this money should go into research rather than fixing broken windows for example. Dr. Harr stated that the original idea of F&A is to support other research so it will enable faculty to search for other funding opportunities. Senator Kmetz ask if these numbers are from a University policy driven by external mandates. Dr. Harr said that they are University policy and each university has their own. Senator Kmetz pointed out JStore which if fully funded through the F&A money to the library. Senator Kmetz also pointed out that part of the general funds money goes to student scholarships and it would be interesting to see where the money at other institutions is going to. President Long supported this proposal. Senator Jenab ask about Dr. Harr's plan for the future. The question is how we can promote more research on campus. Dr. Harr said he would be happy to come back to Senate after talking more to the Research and Creative Production committee and academic leadership. President Long thanks Dr. Harr for being at Senate today.

7. **Faculty Lines** (32:10) President Long said that three different department have reached out to him addressing the issue regarding "confidentiality agreements" for search committees. This is one of the items that the provost wants to address in the next meeting. However, we do have a special speaker today, AAUP MSU Chapter President Senator Dr. Lennex. She was also approved by several faculty who are on search committee who now have to sign confidentiality agreements. A copy of one of the these confidentiality agreements if posted on Blackboard (and appended to this report). This "agreement" looks very similar to the "confidentiality understanding" that people were required to sign last April. Faculty Senate at the time took action and fought against it. We already have PG-61 that regulates confidentiality on campus business. This included search committees. A resolution from Faculty Senate was presented to President Morgan who agreed to rescind the "understanding" and we thought this was the end of it. However during the next Staff Congress meeting CFO Mary Fister-Tucker mentioned that she and Jane Fitzpatrick are looking into this "understanding" to bring it back. When you compare the language in the old "understanding" and the new "agreement" some of it is very similar. AAUP took action during a meeting in the previous week and passed a resolution which is presented here (and also appended to this report). This new "agreement" is quite troubling again.

Faculty Regent Dr. Adams (and AAUP member) then presented a document (also appended to this report) that pointed out the flaws and problems in this new "agreement". Regent Adams was aslo contacted by several faculty regarding this new confidentiality agreement. One question was, are we following common practices of other institutions in Kentucky. The answer is No. Why are faculty and staff concerned? Because this agreement is overly broad, vague and allows for viewpoint discrimination. It is redoing the same confidentiality understanding we had last year. For example the new agreement states: *I understand that if I breach any of these confidentiality obligations or fail to act in a professional manner, I may be subject to disciplinary action.* What this means is never

speaking about anything. The only person allowed to speak is the chair of the committee or the hiring supervisor. The problem here is that now there is no mechanism to report a complaint outside the chain of commands. Basically what this also means is that the higher administration can hire who ever they want and there will be no outside discussion that this was not following the recommendations of the search committee. The question then is why even having a search committee. What this document does is it protect the reputation of supervisors and not that of the candidates. This violates federal and state mandates for whistle blower protection. The reason this occurs now is because people have asked questions regarding the hiring processes on campus by the administration. However, instead of fixing problems with the process, we hear you are not allowed to talk about the broken process. What this really is, is a lack of administrative accountability. Regent Adams pointed out even more problems with the document which would not allow faculty to speak in a grievance hearing. We have already seen the chilling effect of such a document on campus. The faculty person who reported on hiring problems in their collage was repeatedly ask to have conversations with a supervisor. It was stated that this is the provost's and University's opinion. The faculty member was also told that even not being on a search committee still falls under the confidentiality agreement. It applies to all University employees being on a search committee or not. The meeting with the faculty member was recorded and the memo send to the provost. As pointed out by AAUP President Lennex this can be added to the personal file and can be seen as a warning. If this can happen to faculty, then what would happen to a staff person? Regent Adams pointed out that the faculty member before the meeting with the supervisor request AAUP representation. This request was denied because it was "a private meeting". So the person who came to talk in Senate is now told you are not allowed to speak at all. What is the path forward: an open conversation and a consistent articulation of necessary rules and regulations. We want to make sure that everybody serving the public good is guarded. What we need is true shared governance with people willing to talk to us in an open conversation. What we do not need is punitive surveillance like the Stasi (Ministerium für Staatssicherheit).

AAUP President Dr. Lennex shared the AAUP resolution on the the confidentiality agreement and pointed out that back in April 2021 she shared a document from the AAUP from 2013 that clearly states that these confidentiality agreements are simply not legal, they are just on paper. Our PG-61 already covers professional behavior. The new resolution has similar language as the Senate resolution from April 2021. This new confidentiality agreement is disrespectful to faculty and staff who serve on search committees. We need to give this respect back to faculty and staff. AAUP passed the resolution last week and it has been forwarded to the provost, although AAUP does not have the chain of commands that Faculty Senate has. Dr. Lennex also pointed out the SACS-COC report which praised shared governance thanks to work of Faculty Senate. Regent Adams also thanks President Morgan for posting the SACS-COC Report. Regent Adams also pointed out that the report said that the policies and procedures for hiring are understood and followed by search committees. Our successful report says that our search committees are functioning. There is no need for an additional confidentiality agreement. It seems again a "solution" to a problem that we do not have. The only thing this agreement does is fostering fear while we should come together and celebrate successes. Senator Lennex said

that there are several legally troubling languages in this "agreement". She also pointed out that there are multiple versions of this on campus. For example the "agreement" can request search committee members to do things against their best interest because they are employed by a specific person. That is illegal. Senator Lennex asked Senate to read through this document very carefully and bring up any questions senators might have. She also pointed out that Faculty Senate last year was quite successful with their resolution.

Senator Grupe (also an AAUP member) who was the Faculty Senate President at the time the old resolution was passed in April 2021, said that he was not expecting seeing this "confidentiality agreement" again, although sort of. He pointed out that during the May 2021 Staff Congress meeting, just two weeks after Senate passed the resolution, CFO Mary Fister-Tucker said they would reverse it. Now we are seeing this again. He also said that some forms confidentiality agreements can make sense, like before coming to this Senate meeting he was serving on a NASA panel and for these panels panelist have to sign such an agreement but it is very very specific about what can be discussed outside and what can not (e.g. who are panelists and what proposals were discussed). This university "confidentiality agreement" however, is not specific and very broad. All necessary points to conduct e.g. a search committee are already regulated through PG-61. Why do we have to waste our time again with this? He also said that he is in full support of the AAUP resolution.

Regent Adams pointed out that some people who saw this "agreement" again laughed about it, but others were deeply scared and they may have good reasons for being scared. This is the same issue with many people on campus asking why do we need to have evaluations when we do not have the money for it. However, we are told you have to! And on the other hand, Faculty Senate and Staff Congress have asked for years to have supervisor evaluations. Over three years Staff Congress came up with the practices on how to evaluate supervisors. The only thing we have are department chair evaluations. We are repeatedly told, you don't know what your supervisor does. We have a situation now where lower level employees are evaluated all the time, but if they say anything and give a critique, then this is "defamation". In the last Staff Congress meeting the interim HR director Dr. Atkins said not to give all employees blanket positive evaluations. If we do not know what we are doing wrong we can not improve. This sounds good, however there is a problem, because there is a record of our performances, but no record of performance for higher ups. So we have a situation where only the persons in a position of authority can speak, but if you do criticize the people above you, you are brought into a private room and told that your critique is defamation. Regent Adams also remarked that she was threatened to be sued by the former President Dr. Andrews. This type of behavior makes many of us un-comfortable and fearful serving on search committees. Senator Lennex confirmed that it makes many of us fearful being on a search committee. She reminded that these documents are out there and some faculty may have even been ask to sign such a document for a search committee. But even you are not on a search committee you may now be bound by a document that you may not have seen. You are bound by PG-61, period. Our SCAS-COC report lauds our process with hiring. They do not see anything wrong with our search process or with credentials. They gave us a good clean report. Last Spring the "confidentiality understanding" was vetoed by Faculty Senate and rescind by President Dr. Morgan, but unfortunately we now seeing this resurfacing again. We know

how AAUP nationally things about this and we also know that this document holds no legal water. Senator Lennex ask Faculty Senate to carefully view the AAUP resolution and think about what Faculty Senate wants to do with it that might support the process of Shared Governance. We need to have the protection to speak with others about it is something occurs in a search. President Long suggested to continue this conversation at the next Senate meeting, so senators have a chance thinking about the document and the resolution. Dr. Kessinger (guest) remarked that he noticed a different between a document he signed and the document presented here. Senator Dr. Lennex responded that there are several version circulating on campus.

8. **Regent Report** (Dr. Adams, 1:00:50): President Morgan sent our three things he is proud of, one was about the "satellite" (but he means the 21m antenna), the positive SCAS-COC report, and that the CPE has put forward its new strategic plan. Regent Adams reminded Senate that President Morgan extended our current strategic plan until we knew what CPE's plan would be. Now this is available. Another item Regent Adams pointed out was in athletics that Murray State is leaving the OVC next year and Morehead then will be the only Kentucky University in the OVC. There was an article about this with Athletic Director Gordon who was ask if Morehead was bringing back scholarship football and he did not answer that question (<https://www.kentucky.com/sports/spt-columns-blogs/mark-story/article258294903.html>). Regent Adams pointed out that this would make football much more expensive than it currently already is.
9. **Staff Congress Report** (1:03:00): Chair David Flora was not present, but Vice-Chair Halisha Tuerk wrote the report in the chat. Staff Congress EC met with President Morgan to discuss what future raises might look like and the new version of PG-48 (which regulates vacation days) which will give staff more flexibility how to spend their earned vacation days. It was also discussed with the President about ways to start raising salaries to 2022 level (right now the University is still using 2013 CUPA data).
10. **SGA Report** (Ethan Wells, 01:04:00): SGA Representative Well reported that SGA brought in bells that you now can hear over campus. In a discussion with President Long, SGA Rep. Wells pointed out that these bells were very expensive. President Long congratulated SGA for obtaining these bells which will be a great thing this SGA will leave behind.
11. **Executive Council Committee Reports:** (1:05:20)

President Long pointed out that the SACS-COC report is now made available on the MSU webpage.

President Long then continued with the discussion on faculty workload calculations. The question is what are the next steps. Based on the report that was given in the previous Senate meeting by committee chair Dr. Kessinger, what does Senate want to do with this information. Senator Grupe recommended more discussion on this document. In particular in its current form the 0.67h workload for 1 hour of labs time is not acceptable for his department (PHES) and probably not for any department that offers labs because faculty get cheated and work for free. Labs make a lot of work and not getting compensated for an entire hour is in his opinion not acceptable. President Long supported that opinion and said that the only reason he could see for this action is cost savings. President Long

also expressed his hope that Provost Norman can address this issue at our next Senate meeting. Senator Finch pointed out that there are similar issues with Studio in Art and Design. There are similar issues also in Theater, Music and Dance with private lessons. She recommended that Senate would be a good place to discuss this further.

12. Executive Council Subcommittee Reports:

- **Academic Issues:** (K. Jenab, 1:08:50): The Academic Issues committee did not meet in the previous week, but will have a meeting with the provost regarding the resolution on the 50% rule. President Long stated that he had a meeting with the provost on this topic and that there are opportunities here.
- **Evaluations:** (L. Lennex, 1:10:00): Evaluation chair Dr. Lennex had nothing to bring forward from the committee, but asked President Long if he had any update on dean evaluations. The committee had a lengthy discussion about dean evaluations, which should occur this spring again. President Long who was the chair of Evaluations when the dean evaluations happened two years ago said that he was under the impression that the evaluations would happen this year again. This will be another question for Provost Norman. Senator Lennex provided a link to the master schedule (https://www.moreheadstate.edu/MSU/media/Academic-Affairs/Morehead_State_Master_Calendar_FY22_v20220112.pdf which on the bottom of the page lists the chair evaluations, but nothing about the dean evaluations. Senator Lennex also said that when her committee brought this up in August last year and they were told to ask this question through President Long, which they did. However, it is not there. The committee wants to make sure that this is not just overlooked. President Long also remarked that he will bring up this issue when he will meet again with the provost in the following week.

Another issue discussed in the committee was the personnel action calendar (https://moreheadstate.edu/MSU/media/Academic-Affairs/Personnel_Action_Calendar_AY22.pdf). Senator Lennex ask that senators may have a look at this and think about how the yearly evaluation could be linked to the schedule for the tenure process. The committee would like to draft a proposal that can then be presented to the provost in order to avoid duplication of effort for tenure-track faculty. Senator Lennex asked to send comments to her by next Wednesday.

- **Faculty Welfare & Concerns** (K. Kaufman, 1:13:30): The committee made some clarifications in the language in PAc-30. There was some confusion about the 25% of the total funds, this was corrected to total funds available for compensation raises. Senator Brigham asked what the normal timing for raises is, by what time do we know that there will be raises? Regent Adams remarked this this is more than a decade ago, but from our policies they should occur every year. Our policy still have the underlying assumption that there always will be raises and that these raises will be merit based. The timing is kind of unknown because faculty is not involved in the budget decision. Senator Hare remarked that this is sometime in May when the Board of Regents votes on the budget. Regent Adams clarified that the Board has a proposed budget for the upcoming year in August. Regent Adams also reminded Senate that the budget is a plan how to spend the money, but it is a Board approved budget. Senator Finch pointed out that she only got a raise once in the seven years

she has been here and she only knew this from her notification letter that her salary was now \$118 more annually. Senator Lennex remarked that in a newsletter from Governor Beshear that there will be a reprieve on state tax. There is also a possibility of more money coming to higher education. There might be specific funding for raises. This could have an effect on our cycle.

Senator Kaufman asked that based on the discussion, does the January 1st date that is written in PG-30 is still acceptable. Senator Lennex suggested to shift this to January 31 because by that time we should have heard from the governor if there are any changes in the funding. Dr. Kessinger pointed out that this would be kind of at odds with the faculty evaluations that occur in January. Regent Adams responded that this is a valid point, but the evaluations do not have to take place in January because there is no date mandated by policy. We historically have done evaluations in January, but there is no policy that regulates that date. Senator Lennex pointed out again that the plan is to align the personnel calendar better with tenure evaluation, so we may have evaluation more likely in Fall in the future. The bottom line however is that if we do not have money then why are we doing annual reviews? Senator Hare clarified that the January 1 date was chosen given the recent practices for raise announcements. It was chosen as a protection for faculty. Senator Kaufman suggested that the date may need some further discussion in particular in light of the personnel action calendar. Senator Lennex remarked that from her perspective she would be fine if we have a vote on PAc-30 today. Senator Morrison suggested to hear what the provost has to say on this matter, which may solve some of the problems. He also worries about the January 1st date. Senator Kaufman supported that notion.

- **Governance:** (J. Finch, 1:26:00)

- The Governance committee received a request from Dr. Steven Chen to step down from the Academic Appeals committee. The committee approved the request and proposed to replace him with Dr. Lydia Njeroge.
- The Faculty interest survey for standing committees will be released on March 21, the day after Spring Break. Senator Finch asked that if you have suggestions for the new survey, send comments to her. She also asked to inform constituents that this will be coming in a few weeks. The survey will run for two weeks.
- The committee will meet with Provost Normal on March 10 to discuss the issue regarding populating ad hoc committees. We also want to avoid endless ad hoc committees.
- The final item was the issue that we have changed senate terms from a 3 year appointment to a two year appointment. The problem is now that in many departments/schools both senators' terms end the same year. The committee suggested that one senator in a department this year takes on a one year term and the other a two year term so we will avoid this issue in the future.

13. New Business: President Long said that he had planed to prepare a statement regarding the meeting he and Senator Finch had with President Morgan regarding Faculty Regent Adams. President Long has to postpone this to the next meeting because he had not enough time to finish it.

Communications Officer Senator Grupe said that the Senate webpage had been updated. There are still some photos of senators missing. Senator Grupe asked that if senators would like to see their photo on the webpage instead of a picture of Beaker, then please send him a photo.

14. Old Business: none
15. Motion to adjourn the meeting by Senator Grupe, seconded by Senator Jenab. The motion was approved by logging off.
The meeting adjourned at 17:17/5:17 PM.
16. The next Senate meeting will be on March 03, 2022.
17. The **recording of the meeting** can be found at <https://moreheadstate.webex.com/webappng/sites/moreheadstate/recording/79f25d1c7260103abffa00505681acf4/playback>

Confidentiality Agreement for Search Committee Members



As a member of the Search Committee for the position of _____ at Morehead State University, I understand that the ultimate success of our endeavor and the integrity of the University depend on the search being conducted in an impartial, ethical and professional manner. In consideration of my designation as a member of this Search Committee, I hereby agree to the following:

1. I understand that the role of this Search Committee is to recommend candidates to the hiring supervisor who has the ultimate authority to select a candidate of choice.
2. I accept the responsibility of conducting myself in a professional manner as a representative of the University.
3. I acknowledge that all information concerning the candidate pool, including but not limited to application materials, resumes/CVs, reference letters, papers, books, files, documents, and communications (in electronic form or any other format), that comes into my possession and relates to the work of the Search Committee is highly confidential, I also agree to permanently protect the identity of individuals who have expressed interest in exploring this opportunity, including qualifications and merits of the applicants. I will maintain the privacy of all applicants' information, even after the search process is complete. I agree that no applicant materials will be shared outside of the search committee except when approved by the hiring supervisor and search committee chair (i.e., it may be appropriate to share candidate CVs as part of an on-campus candidate visit).
4. I agree to maintain absolute confidentiality of all discussions of the Search Committee and/or hiring supervisor, both during the search process and after its completion. I understand that any breach of confidentiality could result in considerable damage to the reputations and/or livelihoods of the candidates, the Search Committee members, and the University.
5. I will record and consider only information that is job related including experience, education and skills for the position. I understand that I must commit to and make decisions without regard to any biases of individuals based on protected class and non-job related criteria. Morehead State University is committed to providing equal employment opportunities to all persons regardless of race, color, national origin, age, religion, sex, sexual orientation, gender identity, gender expression, protected veteran status, or disability or any other protected class under all applicable discrimination laws.
6. I agree that any real or potential conflicts of interest between myself and any applicant must be disclosed promptly to the Search Committee chair and may require me to excuse myself from participating in a specific interview or preclude me from continuing on the Search Committee.
7. I acknowledge that only the Search Committee chair or the hiring supervisor is authorized to speak on behalf of the Search Committee.
8. I understand that I may be removed from the Search Committee if I breach any of these confidentiality terms and conditions or fail to act in a professional manner. I also understand that should I be removed from the Search Committee, all terms of this agreement are still applicable and binding.
9. I understand that all materials related to this search must be given to the hiring supervisor upon completion of the search.
10. I understand that if an applicant progresses in the interview process to a campus visit with the department/unit/office, the fact that this person applied becomes public knowledge. This neither negates the above confidentiality protocols regarding the applicant nor the applicants who are not moved forward. Does not negate the confidentiality protocols of this agreement.

I have read, understand and agree to abide by all terms of this Confidentiality Agreement as a condition of my service as a member of the Search Committee. I understand that if I breach any of these confidentiality obligations or fail to act in a professional manner, I may be subject to disciplinary action. I also understand that if an investigation or litigation occurs as a result of this search, I am obligated to cooperate with University officials to provide truthful, accurate and complete information.

Print Name: _____

MSU ID: _____

Signature: _____

Date: _____

Whereas the upper administration is requiring designated employees to sign a “Morehead State University CONFIDENTIALITY UNDERSTANDING” because “employees in certain positions at Morehead State University are subjected to information that otherwise may be confidential”;

Whereas the “Morehead State University CONFIDENTIALITY UNDERSTANDING” specifies the “information may come from observation, from hearing conversations, or from documents or materials to which the employees come in contact”;

Whereas the “Morehead State University CONFIDENTIALITY UNDERSTANDING” secures its “confidentially understanding” by citing the “Confidentiality of Information” section of [PG-61](#), “Ethical Principles and Codes of Conduct”;

Whereas the “principles and codes of conduct” outlined in PG-61 apply to “Each member of the University,” who is required to “Maintain confidentiality in all matters deemed confidential by either University regulation and/or state/federal law”;

Whereas protecting information “deemed confidential by either University regulation and/or state/federal law” (PG-61) is a general expectation at Morehead State University, not a “job assignment” for “certain positions,” nor a “duty [that] extends beyond” an employee’s “employment”;

Whereas [KRS statute 164.348](#) (“Campus Free Speech”) requires postsecondary institutions to protect “the fundamental and constitutional right of all students and faculty to freedom of expression” (2a) by granting “students and faculty the broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue” (2b);

Whereas the last sentence of the second paragraph of the “Morehead State University CONFIDENTIALITY UNDERSTANDING” —“Idle chatter and gossip is not in the best interest of employees or the institution” —is an unattributed opinion, not a statement of fact or policy;

Whereas “idle chatter and gossip” are not regulated “by either University regulation and/or state/federal law”;

Whereas the document does not describe what is considered to be “idle chatter and gossip”;

Whereas KRS statute 164.348 section 2c specifies postsecondary institutions must commit to “maintaining a marketplace of ideas where free exchange of ideas is not suppressed” where speech is not prohibited, even when “some or even most of the members of the institution’s community” find that speech “to be offensive, unwise, [or] disagreeable”;

Whereas the institution’s own [PG-65](#) (“Campus Free Speech Protection”) states the “University maintains a marketplace of ideas where the free exchange of ideas shall not be suppressed because an idea put forth is considered offensive, unwise, disagreeable” in order to “protect

the fundamental and constitutional right of all University students and faculty to freedom of expression”;

Whereas a “CONFIDENTIALITY UNDERSTANDING” that **suggests** a “personnel performance issue” for “idle chatter and gossip” the administration deems offensive, unwise, or disagreeable could **appear to threaten** a hostile work environment that quells dissent and subverts whistleblower protections;

Therefore be it resolved that Faculty Senate does not endorse the use of the “Morehead State University CONFIDENTIALITY UNDERSTANDING” *for any employee* because the “UNDERSTANDING” is overbroad, vague, and allows for viewpoint discrimination. The prior constraint it imposes on campus members’ ability to discuss “nonpublic University business” infringes upon the whistleblower protections afforded all public employees in the Commonwealth of Kentucky.

Faculty Senate urgently requests that any “CONFIDENTIALITY UNDERSTANDING” signed by a faculty or staff person be immediately rescinded. Proper protections for confidentiality are already specified in PG-61. Targeted employees should not have to sign away the rights they possess as citizens in the guise of upholding an institutional policy that already applies to “Each member of the University.”



Erring on Confidentiality

In the wake of recent hiring issues, the University has instituted a confidentiality requirement for persons serving on search committees. This requirement, which has had an uneven roll-out, is currently manifest in a “Confidentiality Agreement for Search Committee Members” that appears to exist in different forms for different searches.

Important historical context:

- The level of confidentiality now required for all searches (internal as well as external) aspires to that which has historically been accorded upper-level administration searches (such as president and provost).
- The document replicates the fundamental problem of the “CONFIDENTIALITY UNDERSTANDING” select staff and administration were expected to sign last year.
- On May 6, 2021, Senate unanimously passed a resolution to rescind the “CONFIDENTIALITY UNDERSTANDING.”
- The President, in a verbal conversation with the Executive Council of the Senate, stated the “CONFIDENTIALITY UNDERSTANDING” would be rescinded. Days later, in a report to Staff Congress, CFO Fister-Tucker stated that she and GC Fitzpatrick had been charged, by the President, with redrafting the understanding.
- The then-President (now the Communications Officer) of Senate informed Staff Congress of Senate actions (and the President’s agreement) after the CFO’s report.

What necessitates this new level of confidentiality?

The administration has not provided a clear or compelling reason. If there is some deficiency in the training search committees have previously received, or if there is some loophole in [PG-61](#) (the outline of the ethical codes and principles that apply to all employees), that has not been openly stated or rectified.

Are we just following standard practices of confidentiality used in hiring practices at other institutions in the Commonwealth?

No. Several Kentucky schools have processes and enumerated guidelines openly available for review, and steps outlined in those openly available documents cover processes and information that our internal documents designate “confidential.”

Why are faculty and staff concerned?

Like the “CONFIDENTIALITY UNDERSTANDING,” this new “agreement” is overly broad, vague, and allows for viewpoint discrimination. It too imposes prior constraint on a campus members’ ability to discuss business deemed (by the administration) “nonpublic,” and it infringes on the whistleblower protections afforded all public employees in the Commonwealth. (Note: this articulation of problems in language is taken directly from the Senate resolution to rescind the “CONFIDENTIALITY UNDERSTANDING.”)

This document also *threatens punishment*. Signatories are obliged to acknowledge: “I understand that if I breach any of these confidentiality obligations or fail to act in a professional manner, I may be subject to disciplinary action.”

What is the prior constraint?

Item #4 of the “Confidentiality Agreement” states:

I agree to maintain absolute confidentiality of all discussions of the Search Committee and/or hiring supervisor, both during the search process and after its completion. I understand that any breach of confidentiality could result in considerable damage to the reputations and/or livelihoods of the candidates, the Search Committee members, and the University.

This “absolute” does not allow members to report hiring infractions or problems in the process. Item #7 (#8 in another draft), in fact, requires members to affirm “that only the Search Committee chair or the hiring supervisor is authorized to speak on behalf of the Search Committee.”

Why is this so concerning?

There is no mechanism for reporting or complaint outside of the ultimate authority of the designated chain of command. All roads of recourse lead back to item #1: “I understand that the role of this Search Committee is to recommend candidates to the hiring supervisor who has the ultimate authority to select a candidate of choice.”

- Given this, why even bother with a search committee?
- This document guards and protects the reputations of supervisors without guaranteeing the whistleblower rights of employees.

Might this problem of prior constraint be an oversight that could be rectified with more thorough review in the drafting process?

Perhaps, but we are now on *multiple* rounds of confidentiality understandings and agreements, and the persons in charge of drafting enforceable documents continue to

produce final products with unforced errors.

- Might the problems we institutionally ascribe to a lack of confidentiality really result from a lack of administrative accountability?

What are other unforced errors or problems with this document?

Two examples are items #8 and #10.

Number 8 (#9 in another draft) lays out consequences of a breach of confidentiality:

I understand that I may be removed from the Search Committee if I breach any of these confidentiality terms and conditions or fail to act in a professional manner. I also understand that should I be removed from the Search Committee, all terms of this agreement are still applicable and binding.

- What mechanisms are in place to ensure that an employee, seemingly bound in perpetuity to an undefined designation of professionalism (determined via administrative edict), will not be subject to intimidation, harassment, or punishment, all in consequence of perceived infractions of a process that cannot be made public?

Number 10 (which is not included in this form in all versions) is without a proper subject:

I understand that if an applicant progresses in the interview process to a campus visit with the department/unit/office, the fact that this person applied becomes public knowledge. This neither negates the above confidentiality protocols regarding the applicant nor the applicants who are not moved forward. Does not negate the confidentiality protocols of this agreement.

- What “does not negate”?
- And why are employees expected to understand and affirm that which is not specified?

What chilling effect have we already seen in response to open Faculty Senate discussions of hiring?

A faculty person who raised concerns about hiring practices was repeatedly asked to have a “conversation” with supervisors. When the “conversation” occurred, the member was read a statement that was said to reflect the views of the academic supervisors (present), university counsel (not present), the head of HR (not present), and the provost (also not present).

The statement took umbrage with specific comments in the Faculty Senate Communications report dated December 2, 2021. Four specific claims were identified and contested. One particular claim—which involved the faculty member’s criticism of administrative action—was described as defamation.

After being accused of giving an “impression. . . , in public, that the university is not making sound decisions about hiring based on arbitrary information,” the member was told:

The university has revised the confidentiality agreement that search committee members must sign before participating in searches to make these issues clearer, but they also apply to other university employees who are not actually serving on search committees, so we wanted to make sure we were on the same page about our obligations here.

The faculty member was further informed this meeting was “not a disciplinary hearing,” but the meeting was nonetheless recorded in a memo, cc’d to the upper administration. This memo, and any such like it, could conceivably be added to the faculty member’s personnel file.

The statement—read *in private* to an isolated individual (note: the individual’s request to have an AAUP representative present *was denied*)—gives the impression that all employees are currently bound by restraints that the administration has yet to make public. There is no indication when, or if, this information would be rendered legible to all the persons purportedly bound by this administratively defined “agreement.” There is also no explanation as to why a signed agreement is necessary for injunctions that purportedly apply to all, regardless of signatory status.

What is the path forward?

An open discussion with clear and consistent articulations of *necessary* rules and regulations for university governance, not cloistered conversations of confidentiality that chill free speech and foster fear. Our obligation here is to guard and protect the **common good** of our **public** institution.

So, what we need is true shared governance, not confused oversight that suggests punitive surveillance such as this:



[Image source](#)