

# Faculty Senate – Provost Report

2/23/23

- Good afternoon.
- I have some really good news to report. After many years of conversation, and thanks to the leadership of Dean Mark L'Esperance, the College of Education and his team, I can announce that we will be expanding the capacity of the young Children's Program in the near future.
  - Details will be forthcoming soon, but I am very grateful to our colleagues in A&F and particularly to Jason McClain for their persistence in making this happen.
- At the recommendation of members of the Steering Committee, my remarks today will be focused on responding to the content of two resolutions:
- The Resolution Regarding Transparency and Accountability of A&P Appointments within the Division of Academic Affairs, and
- The Resolution of Condemnation of Recent Actions of JMU's Provost
  - While I have been told by the Speaker that many significant amendments have been suggested, I haven't seen these and so I will be responding directly to the documents provided on Monday, February 20.
- It's important to note a point that was emphasized at last week's senate steering committee meeting. The committee members articulated the senate's criteria for creating resolutions and spoke to the standards that must be met for a resolution to be considered.
- The senators noted that a resolution should not appear on an agenda unless it cites sources and provides data for claims made. Additionally, a strong rationale for the resolution is required.
- In particular, Senator Shoffner submitted key points, stating a resolution could not be considered if:
  - It is addressing an action that has not yet occurred (temporally), and
  - It does not provide support for claims: in other words, a resolution should clarify how claims have been reached via citation/reference
- Today, I approach my responses to the resolutions with those criteria in mind.
- At last month's Senate meeting, I expressed my disappointment that the agreed-upon process for the development of resolutions had not been followed. That process allows for opportunities for consultation between the authors and appropriate stakeholders, and that such a consultation would cover the content and goals of the resolution, and would serve as an opportunity to provide needed information and context. It was also agreed that resolutions would focus on recommendations for the future.
- It is important today for Senate to know an outcome of a meeting held this past Tuesday between my office, Speaker Ott Walter, and Senators McLeary and Nelson, as chairs of the Faculty Concerns and Academic Policies committees, respectively.
  - We all agreed that there was a significant misunderstanding related to holding such a consultation meeting last fall. I acknowledge that my office holds some responsibility for that misunderstanding, which I expressed to the three senators; and we all agreed that there were miscommunications on both sides of setting up the meeting.
  - Nevertheless, we did discuss this and other resolutions and were able to address quite a few issues. Senator Nelson recommended that it would be beneficial for the Senate as a whole to hear the points I made, so that is what I will now do.
- I'll begin with comments on the A&P Appointments resolution.

Resolution	Response
<p><i>Whereas</i> the American Association of University Professors' Statement on Government of Colleges and Universities asserts the importance of adhering to standards and procedures of sound academic practice, which includes acknowledgement of (or responsiveness to) dissenting faculty views, and</p>	<p>The resolution begins with a statement from AAUP, taken from the Section 4, titled "The President."</p> <p>AAUP says many things, among them that their statements are not to be taken as a "blueprint" and instead "assist in the establishment of sound structures and procedures."</p> <p>It is important to look at the totality of what AAUP says, rather than picking and choosing quotes in isolation.</p>
<p><i>Whereas</i> as reported by the COACHE task force in 2021, the single largest decrease in faculty satisfaction among the 25 benchmark categories was with senior leadership, followed by a significant decrease in satisfaction with divisional leadership and in both "trust" and "shared sense of purpose" (COACHE Report p. 15), and</p>	<p>While this is an accurate quote from the COACHE study, the same section goes on to state:</p> <p>"While faculty perceptions of Divisional Leadership and Senior Leadership showed the greatest decreases in satisfaction, <b>it is important to note that JMU's results were comparable to Peer Group and Cohort Group responses for these benchmarks.</b>"</p> <p>This in no way minimizes the importance of the COACHE results.</p> <p>The COACHE report also lists recommendations for improvement, beginning on p. 20. Quite a few of the recommendations have begun to be addressed, and I will give just one example:</p> <p>This Task Force recommends the university create a better structure for defining shared governance across the university, where consensus is built across and within colleges and divisions.</p> <ul style="list-style-type: none"> <li>• With senate, I formed a joint task force charged to investigate shared governance best practices and make recommendations for what shared governance looks like at JMU.</li> <li>• There are now four joint task forces with equitable representation of, and co-chaired by, faculty.</li> <li>• This is just one example of Faculty Senate and administration working collaboratively to shape the institution's vision.</li> </ul> <p>Across campus, I speak every day to faculty and administrators actively addressing the COACHE report recommendations. There is clearly still much work to do, and I am reassured to know that we are all committed.</p>
<p><i>Whereas</i> the 2021 CLIMATE survey reports that "seventy-five percent of tenured and tenure track faculty respondents 'strongly disagreed' or 'disagreed' that JMU leadership (e.g. vice presidents, provost, deans) meaningfully include faculty in decision making processes," (p. 198 Climate Study) and</p>	<p>This statement related to the Climate Study is true, and I took serious note of that when the results came back.</p> <p>I was the main advocate for initiating a university climate study and began advocating for that the semester I arrived. I bring that up now to help express the seriousness with which I approach the results of the study and my commitment to addressing them.</p> <p>Overall management of climate study implementation is now the purview of Vice President for Diversity, Equity and Inclusion and Chief Diversity Officer Malika Carter-Hoyt. For items related to Academic Affairs and instructional faculty, Dr.</p>

Resolution	Response
	Carter-Hoyt is working closely with Narketta Sparkman-Key and me to ensure an appropriate lens for evaluating and implementing changes related to academics.
<i>Whereas</i> the 2022 College of Science and Math (CSM) dean search process, as authorized by the provost (as hiring authority), involved the following non-transparent and intimidating practices, including but not limited to:	From this statement regarding the CSM dean search, it is difficult to respond as the terms non-transparent and intimidating are not clearly defined.  I want to emphasize again how senators noted the need to cite sources and provide data for claims. I could deliberately address these claims if I knew how these terms were operationalized.
1. <i>Dispensing of all qualitative faculty feedback:</i> (through an email communication from the Office of the Provost to CSM faculty on April 7 2022 Update on CSM Dean Search requesting your participation) Members of the search committee were not allowed to view qualitative faculty feedback. All qualitative feedback for all candidates as submitted by faculty via the initial online survey was deemed “inappropriate or irrelevant” by the provost and the search committee chair, in consultation with Human Resources and Legal teams, who “rendered the [faculty] feedback unusable.” The provost’s office refused to provide any evidence or adopt a less severe response (such as selected redaction)	The search committee was bound by confidentiality, as instructed by Dr. Lovell, several times.  I understand that there is discontent with the decision to embargo the qualitative feedback, and that this matter has been a topic of conversation among some senators, President Alger and myself.  As previously explained, I made this decision after examining the feedback, in consultation with University Counsel and Human Resources. As is always the case with personnel matters, confidentiality is of utmost importance, which means I am quite limited in our ability to provide detailed responses to inquiries such as this.  I regret to share with you that some of the qualitative feedback included comments that were the most shockingly unprofessional and grossly unfair to multiple people – beyond the candidates – and I have never seen anything like this in my over 10 years working with searches. Appropriate redaction left virtually nothing to review. This does not apply to all of the feedback, of course. However, it would have been inappropriate to discard only some of the data set, so the feedback was not shared.  To mitigate the lack of this data, a second survey opportunity was provided to the CSM faculty and staff and to the entire division (emailed 4/13/23). It did not ask for qualitative feedback for two reasons: time pressures and concerns that material would be unusable (again).  I would ask you this: Would Senate prefer I ignore HR and legal advice? In my opinion, it would have been reckless and even malpractice for me not to follow the advice of University Counsel.
2. <i>Mishandling conflict of interest concerns:</i> (through an email communication from the provost to the chair of CSM college council at the time on March 22 2022) The provost (as the hiring authority) failed to acknowledge or successfully mediate at least one perceived conflict of interest related to the search committee.	I acknowledged this concern by replying to the original email from the CSM College Council Chair Hala Nelson, in which I responded but did not concur that this was a conflict of interest.  Contrary to this assertion, I followed the proper procedure just as you describe it here to address this perceived conflict of interest by consulting with appropriate offices, which included HR and University Counsel.

Resolution	Response
<p>The provost’s reply to the concern regarding the conflict of interest did not follow proper procedure to address the perceived conflict of interest, such as citing relevant policies, or consulting appropriate offices who oversee such matters</p>	
<p>3. <i>Copying only one of the candidates on email correspondence concerning the search:</i> (through the same email communication referenced in point 2 above- from the provost to the chair of CSM college council at the time on March 22 2022) When the provost responded to the inquiry about a possible conflict of interest raised by a full-time member, the provost responded to the faculty member’s email by cc’ing the potential subjects involved in the conflict of interest—including the internal job candidate. Copying the internal candidate puts the integrity of the search in question as it raises concerns of favoritism and unfairness to the other (external) candidates. It also raises concerns of retaliation for the faculty members raising the issue, since the copied candidate was (1) the internal candidate, (2) was already serving in the position for which the search was being conducted, and (3) was a supervisor with authority over the faculty members who raised the concern,</p>	<p>This point refers to another asserted conflict of interest.</p> <p>I’m afraid this may be getting too into the weeds, but the internal candidate was the interim dean. It was appropriate to copy her as the supervisor of the search committee member in question, who became AUH in December. Dr. Prins was copied as the interim dean, not as a candidate.</p> <p>It was necessary to send the email communication given the supervisory relationships involved and the role of deans in determining AUHs workloads. Inclusion on this email didn’t result in favoritism, and it was not confidential information; each of the three candidates could review the website – or ask – and know who was serving as interim AUH as well as who was on the search committee.</p> <p>As to retaliation: Has there been any? No, and there is no evidence of retaliation.</p> <p>In fact, there is evidence of the opposite: The faculty member raising the concern (Nelson) praised the current dean for her actions during the search, which is assurance that there was no retaliation (email to Sam 1/27/23).</p> <p>Therefore, the conflict of interest claim here is vague – what is the conflict and what process should have been followed?</p> <p>To summarize, after conversation with the president and counsel, I disagreed that there was a conflict of interest involved, a decision I stand by.</p>
<p>4. Not allowing the search committee to present a summary of committee findings to stakeholders invested in the search, and</p>	<p>The summary documentation created by the search committee goes to the hiring authority, as per best hiring practices, and not to the entire college. This is a best practice that is part of our mutually agreed upon hiring guidelines.</p>
<p><i>Whereas</i> the process in the aforementioned search failed to follow principles of genuine transparency and meaningful shared governance, and</p>	<p>Again, this is difficult to respond to as it is broad with no data or citations. Where are principles of genuine transparency defined and articulated? And what is “genuine” transparency as opposed to “ingenuine” transparency? The same questions apply to “meaningful” and “shared governance,” a term</p>

Resolution	Response
	which our joint task force is still working to define.
<p><i>Whereas</i> the decline of transparency regarding the search processes for divisional and senior leadership within the Division of Academic Affairs have further eroded faculty trust in JMU’s commitment to shared governance, and to meaningful faculty input within the Division of Academic Affairs;</p>	<p>This is an assertion without supportive data or a rationale, using the criteria Shoffner shared at last week’s steering meeting.</p>
<p><i>Be it resolved</i> that the language of <a href="#">JMU Policy 1106</a> on Conflict of Interest be revised, or a new policy or guidelines be written (for example, similar to the National Science Foundation’s policies), to include a clear process to be followed when concerns about conflicts of interest are raised regarding searches or other academic matters, and to include a mechanism by which faculty—or a neutral third-party on their behalf (such as the faculty ombudsperson)—can verify and document that the conflict of interest claims have been properly handled and resolved;</p>	<p>This policy does not pertain to this issue and is inaccurately cited. Policy 1106 in #3, Definitions, defines “conflict of interest” as occurring when a university employee or officer, or a member of her immediate family has a personal interest, or benefits or suffers from her participation in a contract or transaction considered by JMU.</p> <p>The policy is applicable only to financial or business interests.</p>
<p><i>Be it further resolved</i> that the language of the non-disclosure confidentiality agreement required of search committee be rewritten to clarify that confidentiality about the personnel involved in the search does not preclude committee members (or faculty) from raising actionable objections in response to perceived violations of the search process;</p>	<p>The non-disclosure confidentiality agreement never precluded anyone from raising objections to any part of the search process. Many objections to the process were heard, considered and decided upon, so this is an incorrect assertion.</p>
<p><i>Be it further resolved</i> that by April 2023, senior leadership publicly adopt policy and guidelines which establish a transparent and accountable search process for divisional and senior leadership within the Division of Academic Affairs, in proactive and meaningful consultation with members of instructional faculty and staff. This policy must allow committee summary reports of searches and should include a mechanism by which faculty—or a neutral third-party on</p>	<p>This is already underway.</p> <p>The offer to work together to create A&amp;P hiring guidelines was extended in Fall 2022, and the Speaker indicated she would consider it. As of February 2023, this has been acted on.</p> <p>The charge was jointly developed by me and speaker, and it was shared with the committee at their initial meeting earlier this week.</p>

Resolution	Response
<p>their behalf (such as the faculty ombudsperson)—can verify claims that normal search processes must be suspended. In general, search processes must follow the recommendations of the American Association of University Professors’ Statement on Government of Colleges and Universities.</p>	

- Moving on to comments on the condemnation of the provost resolution.

Resolution	Response
<p><i>Whereas</i> during Fall 2022, the provost demanded publicly in the Faculty Senate (on Sept 1 2022 as she read her report to the Faculty Senate), and privately with the Senate Speaker and the Senate Marshal (on Aug 31 2022 from 12:15pm-1:00pm in Alumnae Hall 201), the disclosure of the name(s) of the author(s) of the senate resolution on Transparency and Accountability of A&amp;P Hires Within the Division of Academic Affairs, and</p>	<p>Knowing the author or authors of a resolution is standard procedure, according to Robert's Rules of Order. That person, along with the person who seconds the motion, should be recorded in the minutes.</p> <p>I asked – not demanded, but asked – who the authors were so that I could speak with them to correct errors in the pending resolution and answer other questions. I anticipated a process similar to the one senate used recently with ODS, in which the main subjects of the resolution were involved in advance.</p> <p>Typically, someone who authored the resolution presents it and is available to respond to comments during the discussion period. Without knowing to whom questions should be addressed, the discussion may not be productive.</p> <p>The meeting with the speaker and marshal was not scheduled as a “private” meeting. The speaker was asked to attend and bring with her anyone relevant to the discussion.</p>
<p><i>Whereas</i> the provost further threatened to make the author(s) of the resolution subject to an investigation for libel and for breaching confidentiality rules related to a search, and</p>	<p>The second whereas refers to a threat. There was no threat, implication or intention of a threat or retaliation at that meeting or at any time.</p> <p>I did express concern that the version of the resolution we were reviewing contained evidence of potential faculty misconduct, i.e., a search committee member breaching confidentiality. This <i>could</i> mean that the author and distributor could be potentially open to claims of libel for false accusations. In that case, any allegations would be brought by those faculty members, not by me or any other administrator. Assuming that my cautions were a threat rather than advice does not acknowledge the good faith intentions of this meeting.</p>
<p><i>Whereas</i> the provost's public and private demands to investigate and reveal the authorship of the resolution on <i>Transparency and Accountability of A&amp;P Hires Within the Division of Academic Affairs</i> can reasonably be perceived as a threat to retaliate, and</p>	<p>My questions regarding authorship were in no way a threat.</p> <p>I asked reasonable questions about the process for creating and sharing the resolution, which you'll recall were quite unorganized with senate being unable to show the process for introducing the resolution.</p> <p>As I just commented, I said that the content of the resolution may require an investigation of a breach of confidentiality, but not of anyone on senate. If that happened, it would have been a search committee member who broke confidentiality, brought by the libeled faculty member.</p> <p>It is not reasonable to perceive sharing this information is tantamount to a threat. There are no prior instances of retaliation on which to base this assumption.</p> <p>In addition, as specified in Policy 1324, this use of retaliation does not meet the definition.</p> <p>I also refer you to senate steering's assertion that resolutions not address an action that has not yet occurred.</p>
<p><i>Whereas</i> the provost's silencing actions have exacerbated a culture of fear and systemic intimidation, producing among many faculty a chilling effect on their</p>	<p>The rhetoric here – silencing, fear, chilling – is problematically leading and suggestive. It is in opposition to the guidelines given in section 10 of Robert's Rules related to developing a resolution.</p> <p>I posit that indeed faculty have <b>not</b> been silenced and are <b>not</b> unwilling to</p>

Resolution	Response
willingness to communicate concerns about JMU governance, and	communicate concerns– witness the existence of these resolutions. I regularly hear from faculty and administrators with concerns about governance – and many other issues – and just as regularly respond with no trace of retaliatory behavior. I also advocated for the joint shared governance task force, charged to develop best practices for JMU, hardly the actions of someone unwilling to communicate about concerns.
<i>Whereas</i> the provost’s behavior toward faculty has been at the very least un-cordial and un- collegial, as well as potentially unethical and illegal, and	This section does not provide any evidence. Claiming that my behavior is potentially illegal without providing any basis for the claim is deeply problematic.  It is reckless for this body to claim I’ve potentially done something unethical or illegal with no basis.  AAUP stresses that collegiality should not be a basis for evaluation as it is considered exclusionary and prevents departing from an established norm.
<i>Whereas</i> the concerns with A&P searches raised in the resolution on <i>Transparency and Accountability of A&amp;P Hires Within the Division of Academic Affairs</i> add to a growing culture of distrust among faculty towards the provost’s office;	The final <i>whereas</i> – I’m unable to address these points as they are too vague. There is no evidence or sense of scope or measurement for these broad ideas.
<i>Be it resolved</i> that the JMU Faculty Senate condemns the dissolution of meaningful faculty input and the lack of transparency and accountability in the process by which appointments are determined in senior and divisional leadership roles within the Division of Academic Affairs;	The remaining three paragraphs are broad overstatements without evidence, data, citations, empirical information or definition.
<i>Be it further resolved</i> that the JMU Faculty Senate condemns the dissolution of meaningful shared governance within the Division of Academic Affairs;	
<i>Be it further resolved</i> that the JMU Faculty Senate condemns the culture of intimidation emanating from the provost’s office.	

- I remain committed to working collaboratively with Faculty Senate in good faith to address shared concerns. I invite you again as a body to consider how we might continue to advance JMU, acting as collegial and professional partners working on shared goals.
  - And, as always, my door is open.