

MEMORANDUM

To: Rev. Dr. Dean Wenthe, President, Concordia University System
Rev. Dr. Matthew Harrison, President, The Lutheran Church—Missouri Synod

From: John W. Sias
Secretary, LCMS

Date: July 9, 2018

Re: Res. 7-02B Task Force Draft Request For Comment (Rec'd July 2, 2018)

Dean and Matt,

In my impression, there are five objectives (generally as laid out in my e-mail to CUS on 5/21) that would be important in this project, which I think are worth stating again as my general perspective. Some extend beyond what may be achievable in a bylaw proposal, but are worthy of consideration as a means of making the existing and proposed bylaw provisions actually *work*:

- 1) Making sure that nothing would get in the way of an initial implementation of the proposed “united Concordia” idea (campuses under a “chancellor,” sharing administration and a common online identity, managing programs and geographical / contextual emphases in a sensible way, and operating with a common strategic view, in the interest of the collaborative service of the whole Synod). Ideally the 2019–2022 bylaws would at least not impede exploration / implementation of the proposed model. I am not convinced that if we start to implement in 2022 it won’t already be too late (thinking more of external factors here—what if the regulatory domain shifts again, or the tanking of higher education in America accelerates, or the bottom falls out of student loans?).

It is my initial impression that consolidation under a “chancellor” could be accomplished by consolidation of institutions under Bylaw 3.6.6.4 (j) (proposed bylaw numbering), with one resulting board of regents and president governing two or more campuses. Certain of the president’s responsibilities (existing Bylaw 3.10.6.6 [b,d,e,f,h,i,j,k,l]) could be delegated in part to a given campus vice-president under Bylaw 3.10.6.6 [g]). The board of regents of the combined institution could likewise delegate certain local responsibilities to a committee (Bylaw 1.5.3.4) consisting of members and possibly also non-members, while retaining supervision and the necessity of performing bylaw-required functions. I do not believe we are far enough down this road to define specific bylaws related to a chancellor-campus arrangement, but for now this may suffice (as it does for Mequon/Ann Arbor).

- 2) Ensuring that the model of governance is such that the congregations of the Synod, the true owners of the universities in a governance model sense, retain proper oversight through the convention and their elected representatives, and that the churchly mission of the Concordias remains



demonstrably and enforceably the chief thing. There is much here to celebrate, but also much that concerns. 2016 Res. 7-02B cites the loss of Concordia Edmonton, noting that “To preserve the Concordia colleges and universities as institutions of the church, it is necessary to strengthen their structural bonds with the Synod, lest the institutions be lost to the church through inattention or the temptation to compromise with secularism.” This establishes a direction. Growth into new areas may improve financial stability but may dilute or even frustrate the core mission. Mere financial sustainability isn’t really the objective—mission sustainability is, to be able more and more to do the thing for which we exist, the thing that makes our schools unique, their churchly purpose. Growth through addition of programs must at some point reach point of unsustainability—or at least unrecognizability. There are “exceptionalist” schools that are doing exceptionally well. This, I think, is what, more than anything else, the *owners* want—schools that excel at providing a distinctly, thoroughly, and convincingly *Lutheran* education to *all* their students. It should be clear to the congregations of the Synod, in this proposal, how any incrementally or radically new model assures them of progress toward this goal.

- 3) Ensuring that the governance model properly protects the interests of Synod (representing the congregations) and of the Concordias themselves in the common property of the system. The Concordia name and the global nature of each institution’s online presence necessitate protections that will safeguard all interests against actions of individual actors. Present limitations on borrowing, etc., are not sufficient and do not deal with online “real estate” or intellectual property (protecting the name).
- 4) Improving on governance in general. Do our boards really *govern*? Are they capable of representing the desire of the *owners* and *directing* the institutions toward *mission sustainability*? We have imposed draconian regulations on the membership of these boards—but even so, have the boards been trained to *direct* as *governing bodies corporate* and as *boards of the Synod*? Governance is an area particularly emphasized in Res. 7-02B. Strong executives with fundraising boards can work for a while, but the governance model in such a situation is really broken, and even exceptional executives can benefit from a board that takes up its proper governance role. **If the boards of regents are going to be the governing connection of the institutions from the Synod, they need to be equipped and encouraged to carry this out. There probably needs to be a coordinative role here for CUS, board cross-pollination or board-building events. This would be an excellent target for some funding, for the benefit of the whole system.** I understand, anecdotally, that at one time (pre-1998) the boards were brought in for training. This could be revived.
- 5) Management of risk. Consolidation brings efficiency but decreased insulation. The insulation may not be worth the inefficiency (and outright competition) that it causes, but if we’re going to live with less insulation we need to be more cautious and have more effective internal controls. We have not equipped CUS (in terms of authority or level of staffing) for an effective level of financial or administrative oversight. **If somehow resources could be obtained (from tuition?) for proper staffing of CUS to carry out its bylaw tasks for the benefit of the system, this would be a grand addition to these bylaws, or at least to agreed policies.** For every institution itself the ideal (a selfish one) may be maximum independence, with minimum individual liability. Investment in new programs is massive. Without a cohesive system-wide strategy there will be a lot of false starts and unhappy endings. It is not possible to strengthen the whole together on this basis, and together we must strive for a better, cooperative (that is to say, churchly) model.

All that said, I am generally very pleased with this draft. I have a few comments on the details, some minor and editorial, and only a few of much significance (boldfaced):

- 3.6.6.1 “and” should be inserted before “other professional church workers of the Synod” and again before “to support.”

The replacement of *regulate* (from earlier draft) with *support* continues to raise serious questions. Does CUS possess regulative authority, even over the churchly character of the non-church-work programs? The remainder of these bylaws seem to indicate the answer is yes. Moreover, CUS certainly has no obligation to *support* these other programs, which are not central to the constitutional objectives of the system, except to the extent that they advance the mission of the Church. (Cf. Const. Art. III 3, III 5; Art. of Inc. II d and perhaps Const. Art. III 2 and 4 and Art. of Inc. II e.)

It would seem that CUS *needs* some well-defined *regulative* functions, e.g., to prevent excessive duplication of programs, coordinate cooperation, to see that all these programs serve a churchly purpose (i.e., if we’re going to train podiatrists, they’re going to be trained to do podiatry in the best tradition of Lutheran ethics, and with a healthy, thorough, curricular and extracurricular introduction to the faith). To replace *regulate* with *support* fundamentally changes the character of CUS with regard to these other programs, which are by far the bulk of the system’s operating volume.

If *regulate* by itself is too strong and too broad, perhaps “maintain the churchly character and curricular fidelity of” would be a suitable narrowing. Coordination of programs and management of shared resources and joint ventures, which may extend beyond these bounds, is noted in what follows.

I am glad to see that the final sentences, “The board shall coordinate...” and “The board shall have authority...” have been maintained in this draft and clearly state CUS’ actual authority in relation to the schools and the other, inter-convention Synod authorities.

- 3.6.6.4 (d) It occurs to me at present that the now-distinguished standards for *curricular fidelity* would more appropriately, under the structure of the Synod, be subject to approval by the President of the Synod (Bylaw 3.3.1.1.1 [c]) than to the Board of Directors.

- 3.6.6.4 (e) “have authority to take action to ensure the Synod’s colleges and universities act in accordance...” An apparently broad power may be construed as a responsibility to exercise power, with some risk of ascending liability. Given CUS’ limited ability to monitor the institutions, this could be a significant risk. It should be added after “take action,” the explanatory phrase to clarify what type of powers are entailed, “(conducting further investigation, requesting information and demanding response, involving other Synod authorities, and/or withholding service or approvals).”

CUS, for example, can hardly be compelled to extend a line of credit, etc., against the interest of the System and the Synod.

- 3.6.6.4 (f–g) These are significantly strengthened provisions, relative to the earlier draft. Provision (g) should probably include the President of the Synod, as well as the BOD, as recipient of findings, as it relates to doctrinal matters.

In (f), *reports* should read *report*.

3.6.6.4 (h) I note that CUS BOD has replaced COP, which makes action without 2/3 consent of the local BOR a more distinct possibility.

3.6.6.4 (j) In light of a recent CCM opinion request, and considering the addition suggested to 3.10.6.4(i) (11-12) below, **I suggest clarification of “to consolidate, relocate, separate, or divest a college or university” to read “to direct the consolidation, relocation, separation, divestiture, or closure of a college or university, and the authority to offer assistance to a board of regents as it carries out actions as directed.”**

3.6.6.5 (h) *Teach* should read *teaching*.

3.10.6.4 (i) (11–12) I am *very glad* to see fiduciary duty to the Synod explicitly acknowledged. **I might like also to see an acknowledgement of such a duty to the Synod’s Concordia University System as such**, even if a sororal duty to the other institutions is too much to explicitly acknowledge. **It should be made explicit that this responsibility (12) includes the responsibility to carry out any actions directed by CUS under Bylaw 3.6.6.4 (j).**

3.10.6.7.3 & 3.6.6.4 (h) **Prior approval is limited to initial, full-time appointments.** It seems little attempt has been made to implement the existing requirement, noted in the language struck. All effort should have been expended to make this work, as bylaws are not “suggestions.” The Office of the President would be more competent to speak to the proposed adjustment—though I would observe that if the approval of vastly more numerous non-full-time faculty is too burdensome to implement, it may indicate, conversely, that it is all the more necessary. If we have so many part-time theology faculty teaching classes that they would be difficult to approve, as opposed to relatively few full-time, then how is the theological program effectively regulated by limiting approval to only the full-time faculty?

Perhaps a compromise might be to allow for rigorous approval of full-time appointments and a periodic “licensure” of part-time re-appointments, involving documentary review of syllabi from classes previously taught, along with other suitable documentation, with an option to go into an in-depth review if determined necessary by the reviewers.

Thanks for the opportunity to review this draft. I believe this proposal offers a significant clarification of the relationships among Synod, CUS, and the colleges and universities, and will incrementally improve the system’s ability to adapt to changing conditions, and as assigned, will strengthen the schools’ connection to the Synod (that is, the congregations thereof) and to its (their) objectives. I believe it to be a faithful and helpful response to the convention’s directive in 2016 Res. 7-02B.

JWS