

MODEL OPERATING PROCEDURES MANUAL

Faculty and Administration Complaints and Appeal of Termination: Colleges and Universities

BYLAW 3.10.6.7.5

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MODEL OPERATING PROCEDURES MANUAL
COMPLAINT/DISPUTE RESOLUTION: COLLEGES & UNIVERSITIES

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I. GENERAL

A. Preamble

The bylaws of The Lutheran Church—Missouri Synod once fully specified a process for the handling of complaints against (and disputes involving) faculty members of the Concordia University System (CUS)’s colleges and universities. This process was analogous to that still specified for Synod’s seminaries under Bylaw 3.10.5.7.9. With regard to the colleges and universities, however, over time, these bylaws were removed and the responsibility for developing suitable policies was placed first on Concordia University System and then on the boards of regents of the individual institutions.

The requirement that there be a *Standard Operating Procedures Manual* for college and university dispute resolution passed from the bylaws in 2016. Each board of regents is responsible for establishing “an appeal process...for use by faculty members who wish to challenge a termination decision [based on a negative performance review]” (Bylaw 3.10.6.7.5.2). Each is also responsible for establishing policies governing faculty termination and dispute resolution (Bylaw 3.10.6.7.1).

This *Model Operating Procedures Manual (MOPM)* has been developed by Concordia University System, in consultation with the Secretary of the Synod, and reviewed by the Commission on Constitutional Matters as to its constitutionality and consonance with the bylaws of the Synod. The intention is to provide a document which a college or university board of regents may adopt to establish the required policy for its respective institution, satisfying the policy development requirements of Bylaws 3.10.6.4 (a)(7), 3.10.6.7.5.2 and 3.10.6.7.1, as regard faculty contract termination and dispute resolution (for campus disputes involving faculty and administration).

While boards of regents are not required to adopt this model policy verbatim, Bylaws 3.10.6.4 (a)(7), 3.10.6.7.5.2 and 3.10.6.7.1 require boards of regents to have policies in place that are “consistent with” this *Model Operating Procedure Manual*. These are also subject to coordinative guidelines established by Concordia University System (Bylaws 3.6.6.1 and 3.10.6.1) and to review by the Commission on Constitutional Matters (Bylaw 3.9.2.2.3). Institutions adopting the MOPM operate in a coordinated fashion with the other adopting institutions of the CUS system and enjoy a reduction in the amount of unique policy under institutional maintenance. Should members of the Synod contest the outcome of their disputes or termination cases, asserting their rights under Bylaw 3.10.6.7.5.2, the institutions’ consistent use of the model process may help demonstrate that appropriate procedures, consonant with the Constitution and bylaws of the Synod, were followed in the matter.

B. Purpose

This *Model Operating Procedures Manual (MOPM)* is intended to serve as a uniform process for the resolution, at adopting colleges and universities, of:

- all complaints against members of the faculty or administration, including those potentially leading to termination under Bylaw 3.10.6.7.5 [a–f];
- challenges of faculty termination resulting from a negative performance review (Bylaw 3.10.6.7.4) resulting in a recommendation of termination for cause (Bylaw 3.10.6.7.5 [a–d]); and
- campus disputes involving faculty and administration.

It provides the “appeal process” Bylaw 3.10.6.7.5.2 requires to be “established by the board of regents of the institution shall be in place for use by faculty members who wish to challenge a termination decision.” It applies to faculty and administration, whether full-time or part-time faculty, whether serving under initial-level/non-tenured or continuing-level/tenured appointments

(if implemented by the institution), also including faculty members and administrators who are not members of The Lutheran Church—Missouri Synod. *It does not apply to non-renewal of initial-level or non-tenured contracts, which does not constitute a termination.* This process shall be used in response to *complaints* concerning any matter, including those specified under Bylaw 3.10.6.7.5, which provides:

Other than honorable retirement, termination of faculty employment may only be the result of the following:

- (a) professional incompetency;
- (b) incapacity for the performance of duty;
- (c) insubordination;
- (d) neglect of or refusal to perform duties of office;
- (e) conduct unbecoming a Christian;
- (f) advocacy of false doctrine (Constitution Art. II) or failure to honor and uphold the doctrinal position of the Synod as defined further in Bylaw 1.6.2 [b];
- (g) discontinuance of an entire program;
- (h) discontinuance of an entire division or department (e.g., modern foreign language) of a college or university;
- (i) reduction of the size of staff in order to maintain financial viability in compliance with policies concerning fiscal viability;
- (j) discontinuance, merger, or consolidation of an entire college or university operation;
- (k) expiration of the term of a contract of employment; and
- (l) for those whose position requires membership in a Synod congregation, if the person ceases to be a member of a Synod congregation. (Bylaw 3.10.6.7.5)

Provisions [a]–[f] of Bylaw 3.10.6.7.5 deal with complaints lodged against faculty or administration; termination resulting from such complaints may be appealed under this process. Provisions [g]–[j] and [l] deal with circumstances leading to a termination which are not complaints and are not handled under this process or otherwise subject to appeal.¹ Provision [k], the expiry of a (non-tenured) contract term, is not a *termination* and is not appealable under this process.²

This MOPM provides the appeal process required by Bylaw 3.10.6.7.5.2, as well as prior procedures intended to assure that faculty and administration complaints are handled in good order and will

¹ Request for review and revision of a termination thought to have been carried out in violation of Bylaw procedures and/or institutional policies may be sought from the Office of the President of the Synod (Bylaw 3.3.1.2 [c]).

² “Bylaw 3.10.5.6.4 excludes only ‘honorable retirement’ from its application. The provisions of the bylaw certainly apply when ‘firing a faculty member during the term of a contract.’ However, preceding bylaw paragraphs clearly anticipate that contracts or other such documents will have a stated duration. After a faculty contract has expired, employment is ended and Bylaw 3.10.5.6.4 no longer applies unless/until the contract is renewed.” CCM Op. 14-2737 (Sept. 26–26, 2014)

If an institution has implemented “continuing-level” appointments, the non-renewal of such an appointment constitutes a termination. If such a termination is not originally carried out by this process, it may be appealed to this process, with the non-renewed faculty member filing a complaint regarding termination, with the president of the institution as the respondent. *Non-renewal* of an initial-level appointment, or at an institution without continuing-level appointments, is not subject to appeal.

proceed to termination only in those cases warranted under the bylaws of the Synod. It also provides procedures for other types of faculty complaints and dispute resolution referenced in Bylaw 3.10.6.7.1.

Bylaw 3.10.6.7.1 (cf. 3.6.6.7) also requires colleges and universities to provide in their policies for dispute resolution. This MOPM provides for dispute resolution in cases involving faculty and administration. Disputes among students and student discipline are not included in this policy manual.

Questions regarding procedure may be directed to the president of the institution or the chairman of the board of regents in the early part of the process. When a review committee is in place, questions may be directed to the chairman of the committee.

C. Contract Statement

Bylaw 3.10.6.7.2 requires that employee contracts include, in addition to the required statement on academic freedom, a reference to the appropriate campus handbook or manual that spells out the institution's expectations of behavior and the conditions of employment.³ This *Model Operating Procedures Manual* should be included in the faculty and staff handbook/manual, either in its entirety or with specific reference to a copy in a designated office or embedded in the campus electronic information system. Employees should be encouraged to read this manual and its referenced 2019 LCMS *Handbook* provisions governing institutional procedures and processes for resolving complaints.

The following or a similar statement is provided as an example for inclusion in an employee's contract:

Complaint Resolution

Both parties agree that any complaint/dispute brought against the employee as a result of his/her employment shall be reconciled, adjudicated, and/or appealed, as appropriate, in accordance with the rules and regulations governing such as provided by the Constitution and Bylaws of The Lutheran Church—Missouri Synod and, as applicable, by the *Model Operating Procedures Manual* accompanying Bylaws 3.10.6.7.1 and 3.10.6.7.5–3.10.6.7.5.2. Both parties further agree to follow the procedures and processes for resolution of complaints and/or disputes as delineated in the aforementioned documents and accept and uphold any final decisions resulting from such processes as final with no resort to or review by civil courts or any other public forum. No other remedies shall be pursued unless and until the procedures referenced by this paragraph have been exhausted.

D. Exceptions

As with other dispute resolution processes of the Synod (e.g., Bylaw section 1.10) the process described in this *Model Operating Procedures Manual* is intended to provide an evangelical procedure to respond to complaints. It is not intended to provide an exclusive remedy for the following

³ Bylaw 3.10.6.7.2 requires that “[t]he terms and conditions of every appointment shall be stated in writing and be in the possession of both the institution and the prospective faculty member before the appointment is consummated. Limitations of academic freedom because of the religious and confessional nature and aims of the institution shall be stated in writing at the time of the appointment and conveyed to the person being appointed. Faculty members, full- and part-time, shall pledge to perform their duties in harmony with the Holy Scriptures as the inspired Word of God, the Lutheran Confessions, and the Synod’s doctrinal statements.”

matters, unless such matters involve theological, doctrinal, or ecclesiastical issues, including those arising under the divine call of a member of the Synod:

- (a) Disputes concerning property rights (e.g., real estate agreements, mortgages, fraud, or embezzlement); and
- (b) Disputes arising under contractual arrangements of all kinds (e.g., contracts for goods, services, or employment benefits).

E. Relation to Other Processes for Dispute Resolution

Those processes required by Bylaws 3.10.6.7.5.2 and 3.10.6.7.1 and provided by this *Model Operating Procedures Manual* exist to address *complaints* brought against, or *disputes* involving members of the faculty or administration of Concordia University System colleges and universities, as regard their responsibilities and duties at their respective institutions. In addition, provisions and procedures for doctrinal dissent are set forth in Bylaw section 1.8; provisions for doctrinal discussions are set forth in Bylaw 3.9.5.2.1 and Bylaw sections 4.8, 4.9, and 5.3; provisions and procedures for doctrinal review are set forth in Bylaw section 1.9; provisions and procedures for dispute resolution (when involving members of Synod but not involving expulsion from Synod membership) are set forth in Bylaw section 1.10; and procedures for expulsion from Synod membership are provided in Bylaw sections 2.14–2.17.

A *president or board of regents of a college or university of the Synod receiving a “complaint or accusation”* will consider the following in determining which bylaw procedure is applicable:⁴

1. An *accusation* consists of information that “could lead to the expulsion of a *member* from the Synod under Article XIII of the Constitution” (consult Constitution Articles XIII 1, VI 1–5, and II; and relevant Bylaws, especially Bylaw sections 1.6, 1.7, 1.8, and 2.1; and Bylaws 2.14.1 and 2.17.1).

“Any person connected with an institution who is a member of Synod shall also remain under the ecclesiastical supervision of the Synod” (Bylaw 3.10.6.7.5.2). The president of the geographical district in which the school is located is the ecclesiastical supervisor of members of the Synod who serve a college or university of the Synod (Bylaw 2.12.1.5). He is to be informed immediately of the accusation. He may act immediately upon the accusation or may wait for the results of an on-campus investigation and / or hearing (cf. Bylaw 3.10.5.7.9 [g]).

Should a faculty member be removed from the roster of Synod, Bylaw 3.10.6.7.5.1 indicates that such a member is also considered removed from the position held, and is to be terminated forthwith by the board of regents.

An *accusation* may also entail a *complaint* or a *dispute*—that is, a reason for the board of regents also (and perhaps simultaneously) initiating procedures under (2) and (3), below. That is, a faculty member may be terminated for a cause that might result in expulsion from the Synod before that expulsion can be carried out.

2. A *faculty or administration complaint* deals with a dispute, disagreement, or offense *having to do with an individual’s faculty or administration campus responsibilities, whether the complainant is part of, or not part of, the educational institution.* If such a complaint entails or uncovers circumstances (e.g., conduct unbecoming a Christian or advocacy of false doctrine) that could

⁴ This paragraph and its accompanying outline are due to CCM Op. 16-2798A, Feb. 3–4, 2017. Corresponding guidance for district presidents is included in the *Standard Operating Procedures Manuals* for Bylaw sections 1.10, 2.14, 2.15, 2.16, and 2.17.

result in an *accusation* (which presumes that the accused is a member of the Synod), these *must be conveyed to the appropriate ecclesiastical supervisor*.

In the case of a college or university, the complaint shall be handled under policies specified according to Bylaw 3.10.6.7.5–3.10.6.7.5.2. “Notwithstanding the provisions of any such policy, any person connected with an institution who is a member of Synod shall also remain under the ecclesiastical supervision of the Synod, and nothing in any such CUS institution policy shall be construed to limit or constrain any action that may be taken, or the rights or responsibilities of any party, pursuant to the Synod’s *Handbook* with respect to a member of Synod.” (Bylaw 3.10.6.7.5.2)

“Any person connected with an institution who is a member of Synod shall also remain under the ecclesiastical supervision of the Synod” (Bylaws 3.10.6.7.5.2). Ecclesiastical supervisors of members of Synod shall be kept informed of any information relevant to their supervision.

3. A *campus dispute* deals with other disputes, disagreements, and offenses that arise *between individuals within the context of an educational institution (involving only students, faculty, staff, administration, and campus governance)*. Faculty termination is handled under (2) above. Student disciplinary procedures (e.g., as in Bylaw 3.10.6.7.5 [I]) are not, as such, *campus disputes*, and are handled under distinct policies, and without appeal to Synod’s dispute resolution process.

In the case of a college or university, the matter shall be handled under dispute resolution policies specified according to Bylaw 3.10.6.7.1 (3.6.6.7), insofar as they apply. Parties *may also* have access to the Synod’s dispute resolution process (Bylaw section 1.10), if applicable to both parties and to the type of dispute (Bylaws 3.6.6.7; 3.10.6.7.5.2). A terminated faculty member may appeal his or her termination to Synod’s Dispute Resolution Process under Bylaw section 1.10 only on the grounds that the MOPM was not followed or that the provisions of the Constitution and Bylaws of the Synod were otherwise violated in his or her termination.

“Any person connected with an institution who is a member of Synod shall also remain under the ecclesiastical supervision of the Synod” (Bylaw 3.10.6.7.5.2). Ecclesiastical supervisors of members of Synod shall be kept informed of any information relevant to their supervision.

4. Synod’s dispute resolution process applies to certain other *disputes* that might be brought initially to a board of regents when they have as parties: members of the Synod (congregational or individual); corporate Synod or an agency of the Synod (such as a college, university, or seminary); or members of congregations of the Synod elected or appointed to positions with the LCMS Board of Directors or an agency of the Synod (such as members of a board of regents). A board of regents does not have jurisdiction over matters “crossing the campus boundary.” Complainants who are members of Synod shall be advised to consult their ecclesiastical supervisors.

II. DEFINITION OF TERMS

In order to communicate effectively and avoid misunderstanding, it is critical that terms be carefully defined:

A. Administration

Those persons responsible for managing the affairs and operations of the college or university (who may or may not also be faculty), with direct supervision of staff(s) to carry out the operational affairs of the school. In most cases these persons have a direct reporting relationship with and responsibility to the president of the school.

B. Blind Draw

Used by the Secretary of the Synod to select a name from the list of 25 hearing facilitators (Bylaw 1.10.12) to serve as a member of a review committee in the MOPM process. The name is drawn in the presence of two witnesses, who prepare and sign a written statement attesting to the proper conduct of the draw. More names than immediately necessary may be drawn and used in sequence, should potential hearing facilitators prove unavailable or to have conflicts of interest.

C. Board of Regents

For the purpose of this process, only the voting members of the governing board of the college or university. The president of the school participates without vote in the discussions unless personally involved in the complaint. Non-voting members of the board are excluded from participation.

D. Complainant

The individual or entity that brings a complaint against a member of the faculty or administration of a college or university under Bylaw 3.10.6.7.5. The president of the institution serves as complainant if a faculty or administration member contests his/her termination as a result of a negative performance review (Bylaws 3.10.6.7.4, 3.10.6.7.5.2).

E. Complaint

Any complaint against a member of the faculty or administration directed to the board of regents, including matters arising out of Bylaw 3.10.6.7.5 [a]–[f]. The complaint should be concise, and should be delivered to the president of the college or university except when the president is the subject of the complaint, in which case the chairman of the board of regents receives the complaint. In all cases, it is to be presented to the board of regents.

F. District President

For the purposes of this complaint process, the president of the geographical district of the Synod in which the college or university is located.

G. Face-to-Face

The nature of the meeting in person between the complainant and the respondent in the manner described in Matthew 18:15. E-mail, surface mail, fax, or telephone call (or any combination thereof) will not satisfy the requirement of a face-to-face meeting. This meeting is an essential step in the process following the submission of a complaint. It is not, however, required for allegations involving sexual misconduct or criminal behavior (Cf. Bylaw section 2.17).

H. Faculty

As defined by Bylaw 3.10.6.7, “the president, the full-time faculty and the part-time faculty” of the college or university.

I. Hearing Facilitator

The fifth member of a review committee, chosen by the Secretary of the Synod from the Synod's roster of 25 trained hearing facilitators (Bylaw 1.10.12). The hearing facilitator serves as chairman of the committee. Unlike in the Bylaw section 1.10 and 2.14–2.17 processes, but as in the Bylaw 3.9.2.2 [c] panel proceeding and the process of Bylaw 3.10.5.7.9, the hearing facilitator participates in formulating the substance of the opinion and is a voting participant in the committee proceeding.

The Synod is not required by its bylaws to offer hearing facilitators to the colleges and universities of the Synod, nor are the hearing facilitators required to serve in such a capacity. The Secretary of the Synod will provide a hearing facilitator to schools adopting the MOPM who is willing to serve voluntarily. The school will be responsible for expenses incurred by the hearing facilitator.

J. Informal Reconciliation Effort

Includes all efforts of the complainant and respondent to reconcile a complaint and must include a face-to-face meeting. The president of the college or university is required to assist in this attempt. In such case as the president is the respondent, the chairman of the board of regents assumes the role of assisting in this attempt.

K. Limited Activities

The relieving by the president or board of regents of a respondent's teaching and/or administrative duties pending final resolution of a conflict when in the best interest of the college or university or parties involved. Contractual obligations of the school shall, however, continue to be honored until the matter is resolved.

L. Parties to the Matter

In the narrow sense, the complainant and the respondent. If the complainant is a congregation, board, commission, or district, it shall be represented by its chairman or a designated member. The members of the review committee and the board of regents are not parties to the matter but "persons involved."

M. Private Hearing

Due to the nature of all hearings conducted by a review committee, such hearings are to include only the committee, the complainant and respondent, and any witnesses called upon to substantiate facts relevant to the complaint. Unless otherwise decided by the committee, witnesses are allowed to be present only while giving their testimony.

N. Request for Opinion

A request for an opinion from the Commission on Theology and Church Relations (in matters of doctrine and doctrinal application) or the Commission on Constitutional Matters (in matters requiring constitution and bylaw interpretation) made through the review committee (which shall determine the wording of the question[s]), to be made within four weeks of the selection of the committee or later only by or with the approval of the committee. Opinions received must be followed by the committee.

An individual panel member seeking understanding of doctrinal matters associated with a suspension may, "through the hearing facilitator, also request resource materials and personal assistance from the executive director of the CTCR or from a theologian recommended by the executive director" (cf. Bylaw 2.14.7.8[k]).

O. Reply of Respondent

A written response to a complaint by the accused party, submitted to the board of regents and the complainant and containing factual assertions in response to the complainant's written statement of the matter in dispute.

P. Respondent

The named member of the faculty or administration of a college or university of the Synod in a complaint submitted to the board of regents of the school.

Q. Review Committee

The committee of five persons (Matthew 18:16) assembled by the board of regents to decide regarding the validity of a complaint received against a member of a college or university faculty or administration. Members are selected as follows:

- (1) Each party shall select one faculty member and one regent.
- (2) The Secretary of the Synod shall select the fifth member by blind draw from the Synod's roster of hearing facilitators, who shall serve as chairman.
- (3) The selection shall be completed within one month of the date on which the board decides to form the review committee.

The review committee conducts its business according to this MOPM.

R. Witnesses

Persons called upon by the complainant or respondent to substantiate facts relevant to a complaint during a hearing before a review committee.

III. GENERAL PRINCIPLES AND REGULATIONS

These general principles and regulations ensure consistency and uniformity when complaints brought against members of faculties and administrations of the seminaries of the Synod are resolved.

A. Governing Authority

The complainant and respondent, the president and board of regents of the involved college or university, and the review committee involved in this complaint resolution process shall be governed in all their actions by the Holy Scriptures, the Lutheran Confessions, the Constitution and Bylaws of The Lutheran Church—Missouri Synod, and this *Model Operating Procedures Manual*.

B. Governing Principles

Matthew 18 and the Eighth Commandment undergird this process for bringing and resolving complaints against members of faculties and administrations of the Synod's seminaries. While Matthew 18 provides the structure for carrying out church discipline in a local congregation, it also provides guidance and a pattern that is to be observed in this procedure whenever applicable. And in accord with the Eighth Commandment, everything possible should be done to protect the reputations of complainants and respondents.

C. Primary Purpose

The primary purpose of this procedure is to achieve reconciliation and, when necessary, repentance, and to bring healing to the college or university community. The goal will be to resolve matters of complaint in an amicable manner, if possible without resorting to the use of a review committee. The process is intended to provide opportunity for the ministry of law and gospel, for teaching, and for the practice of Christian love.

D. Removal of Members of Faculties or Administrations

Whereas this MOPM allows for complaints "concerning any matter," only those complaints associated with Bylaw 3.10.6.7.5 [a]–[f] may result in the dismissal of a faculty or administration member.

IV. FLOW CHART OF MODEL PROCESS

(Including initial steps for “negative performance review” process)

COMPLAINT RECEIVED (Section V)	NEGATIVE PERFORMANCE REVIEW (See Section VI)
<ol style="list-style-type: none"> 1. Reception of Complaint <ol style="list-style-type: none"> 1.1 Board of regents receives complaint 1.2 Complainant directed to have face-to-face meeting 1.3 Complainant receives assistance from president or chairman of board 2. Request for Formal Process <ol style="list-style-type: none"> 2.1 Complainant prepares written statements 2.2 Respondent submits written reply 2.3 Board of regents forms review committee 	<ol style="list-style-type: none"> 1. Completion of Negative Performance Review <ol style="list-style-type: none"> 1.1 President writes review recommending termination 1.2 President meets with faculty member, who may prepare a written response 2. Termination Initiated and Appealed <ol style="list-style-type: none"> 2.1 Board acts on termination proposal 2.2 Terminated faculty member may appeal 2.3 Board of regents forms review committee
BOTH PROCESSES CONTINUE UNDER THE FOLLOWING STEPS (Section V)	
<ol style="list-style-type: none"> 3. Formation of Review Committee <ol style="list-style-type: none"> 3.1 Selection of two committee members by each party 3.2 Selection of fifth committee member by Secretary of the Synod 3.3 Possible limitation on activities of respondent 4. Review Committee Formal Hearing <ol style="list-style-type: none"> 4.1 Arrangements for hearing 4.2 Opinions from CTCR and CCM 4.3 Conduct of hearing 5. Review Committee Decision <ol style="list-style-type: none"> 5.1 Committee issues decision 5.2 Board of regents takes appropriate action 5.3 Board of regents actions are final and binding 	

V. DETAILED MODEL PROCESS

The first three steps are *different* for proceedings initiated under Bylaw 3.10.5.7.4 (appeal of a termination decision based on a negative performance review). Steps 1–3 for such cases are included in Section VI. *These provisions do not apply to non-renewal of initial-level appointments (see preamble above).*

1. Reception of Complaint

1.1 Board of regents receives complaint

The board of regents shall have authority to investigate, hear, and act on any complaint against a member of that college or university's faculty or administration concerning any matter related to such a person's conduct of office, including those arising out of Bylaw 3.10.6.7.5 [a]–[f].

- A complaint may be brought against a member of a college or university's faculty or administration concerning matters that are not cause for removal from office.
- Complaints may also pertain to matters that may result in removal from office, *i.e.*, “(a) professional incompetency; (b) incapacity for the performance of duty; (c) insubordination; (d) neglect of or refusal to perform duties of office; (e) conduct unbecoming a Christian; and (f) advocacy of false doctrine (Constitution, Art. II) or failure to honor and uphold the doctrinal position of the Synod as defined further in Bylaw 1.6.2 (b)” (Bylaw 3.10.6.7.5 [a]–[f]).
- Complaints ordinarily are received by the president of the school except when the president is the respondent, in which case they are received by the chairman of the school's board of regents.
- Because of its biblical nature, Christian conflict resolution encourages parties to admit their offenses openly and candidly. Thus it requires an environment where parties may speak freely without fear that their words may be used against them later, especially should there be subsequent legal proceedings. Therefore, all communications that take place shall be regarded as strictly confidential.

1.2 Complainant directed to have face-to-face meeting

The board of regents shall, except in a matter of sexual misconduct or criminal behavior, direct the complainant first to meet face to face with the respondent in an attempt to resolve the issue (in the manner described in Matthew 18:15).

Should allegations involve information that could lead to the expulsion of the member from the Synod under Article XIII of the Constitution, the member's ecclesiastical supervisor is to be informed immediately of the accusation (Bylaws 2.14.3 and 2.17.3).

- The board of regents must develop a procedure to exercise its responsibilities without delay as soon as a complaint is submitted.
- For assistance in determining the appropriate response to a particular *complaint* (which may also be an *accusation*), the president and board of regents are to consult General Note E, “Relation to Other Processes for Dispute Resolution,” on pp. 5f. If the complaint regards conduct that could require ecclesiastical supervision of the member, the district president having supervision of the member in question is to be informed immediately of the accusation.
- In a matter of sexual misconduct or criminal behavior, the face-to-face meeting is not to be required of the complainant. A copy of this *Model Operating Procedures Manual* is to be supplied to complainant and (upon receipt of the complainant's formal written complaint) to respondent. The process continues with Step 2.1.

- An informal attempt to resolve the complaint that includes a face-to-face meeting of the complainant and the respondent precedes further formal measures.
- Although the complainant and respondent will likely have communicated before this time, perhaps even face-to-face, they are to be directed to meet to attempt to resolve the issue between them.
- This private face-to-face meeting should reflect a spirit of repentance and forgiveness on the part of both parties.
- The complainant may at any time during this stage of the process withdraw his complaint, provided such withdrawal is in writing with copies provided to the president, the board of regents, and the respondent.

1.3 Complainant receives assistance from president or chairman of the board

The president of the college or university shall assist in this attempt. If the president himself is the respondent, the chairman of the board shall act in his stead.

- A face-to-face meeting of the complainant with the respondent is a primary interest of this process in order to serve its ultimate interest, *i.e.*, reconciliation, repentance, and forgiveness.
- The president of the school is required to assist in the attempt of the complainant to have a meaningful and fruitful meeting with the respondent.
- In the event that the president is the respondent, the chairman of the board has the responsibility for assisting in this attempt to have a meaningful and fruitful meeting.
- This is a fitting time for the president or chairman of the board to supply a copy of this *Model Operating Procedures Manual* to the complainant and respondent.
- Unwillingness on the part of the complainant to participate in a face-to-face meeting halts the process. Unwillingness on the part of the respondent becomes a matter of record as the process proceeds.

2. Request for Formal Process

2.1 Complainant prepares written statements

If the complainant is of the opinion that such informal reconciliation efforts have failed and there is a wish to pursue the matter, the complainant shall prepare a written statement of the matter in dispute and a written statement setting forth, in detail, the efforts that have been made to achieve informal reconciliation and forward such statements to the board of regents and to the respondent.

- At this point the process can still be halted by the complainant if informal reconciliation efforts succeed or there is no wish to pursue the matter. If there is a wish to pursue the matter and statements are prepared and forwarded, the process must be carried out to completion and a decision by the review committee.
- The statement of the complainant requires careful preparation, since it will serve as the basis for the proceedings that may follow, in which case it will be the subject of the complainant's case and of the response of the accused.
- The statement should be concise, contain factual assertions regarding the issues of the complaint, and, if the content of Bylaw 3.10.6.7.5 [a]–[f] is involved, demonstrate their relevance to the stated causes for removal from office or position. The statement shall also demonstrate how the requirements of Step 1.2 (a face-to-face meeting) were carried out.

- The secretary of the board of regents receives the statement on behalf of the board and maintains the official record of the case.

2.2 Respondent submits written reply

Within 21 days after receipt of the written statement of the matter in dispute, the respondent shall submit a written reply to the board of regents and the complainant. If the respondent fails to reply, the allegations of the statement of the matter in dispute shall be deemed accepted.

- When possible, notification and response shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that the notification was received by the respondent and to establish the date of its receipt.
- Notification must make clear to the respondent the end-date of the 21-day period and the consequences of not submitting a written reply to the board of regents and the complainant by that date.
- It is essential that the reply in response to the statement of the matter in dispute be carefully prepared, containing factual assertions to address all matters included in the complainant's statement. The statement and the respondent's reply become the basis of all that follows throughout the remainder of the process.
- In the event that a party seeks to avoid this process by refusing to sign a delivery receipt, ordinary first class mail to the last known address and allowance for sufficient time for delivery shall, after two failed delivery attempts by certified or other signature-requiring mail, suffice to provide notice.
- If the respondent fails to reply, the statements of the complainant, now deemed "accepted," are retained by the board of regents for delivery to the review committee upon its selection.

2.3 Board of regents forms review committee

Upon receipt of a reply from the respondent or if no reply is received, and the board of regents determines that all informal reconciliation efforts have failed...

- The review committee is not to be formed until such time as the president and board of regents are satisfied that all efforts to reconcile the matter have been exhausted.
- So long as the matter at issue is undecided, there shall be no publicity regarding the matter by any party. Any violation of this rule shall be brought to the attention of the chairman of the committee.

3. Formation of Review Committee

3.1 Selection of two committee members by each party

...the board of regents shall form a review committee of five persons (Matthew 18:16), which shall be chosen as follows:

(1) Each party shall select one faculty member and one regent.

- It is the responsibility of the secretary of the board of regents to notify the parties of their need to select two members for the review committee, one to be a member of the faculty of the school and the other a member of its board of regents. Faculty members selected shall be members of member congregations of The Lutheran Church—Missouri Synod.
- Notifications must make clear the need to respond promptly so that the selection of the review committee can be completed within the allotted time, *i.e.*, within one month of the date of the decision to form the committee. Should either party fail to respond, the secretary

of the board of regents shall make necessary selections by blind draw, audited by two witnesses, from among all eligible faculty and/or board members.

- When possible, notification and response shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that the notification was received by the respondent and to establish the date of its receipt.

3.2 Selection of fifth committee member by Secretary of the Synod

(2) The Secretary of the Synod shall be requested to select the fifth member by blind draw from the Synod's roster of hearing facilitators, who shall serve as chairman.

(3) The selection shall be completed within one month of the date on which the board decides to form the review committee.

- It is the responsibility of the secretary of the board of regents to notify the Secretary of the Synod of the need for him to select by blind draw from the Synod's roster of hearing facilitators a fifth member of the review committee to serve as chairman.
- The school shall be responsible for the expenses of the hearing facilitator.
- The secretary of the board of regents shall inform the board of regents, the complainant, and the respondent of the membership of the review committee when the selection of the committee has been completed.
- Copies of all documents pertaining to the case shall be provided to the members of the committee by the secretary of the board of regents.
- Parties shall not communicate with members of the review committee after the committee is in place, except with the chairman of the committee to determine the time and place of a hearing.
- The standard for disqualification of any review committee member shall be actual partiality or the appearance thereof. Any committee member may disqualify him/herself from service. Circumstances that are thought to or are likely to affect performance of duties and the outcome of the process shall be disclosed to the chairman of the committee. If the chairman disqualifies him/herself, the Secretary of the Synod shall select another facilitator to serve as chairman. The complainant or respondent may challenge the eligibility of a member of the review committee, in which case the committee shall review the challenge and make a determination. In the event of the disqualification of a committee member, another member shall be selected in his/her place.
- If a review committee member withdraws or is unable to serve after the committee has been established, the remaining members of the committee shall continue without filling the vacancy.

3.3 Possible limitation on activities of respondent

If the board decides that the matter is of such a nature that the interests of the college or university will best be served, it may limit the activities of the respondent. It may do so by relieving the respondent of teaching and/or administrative duties pending final resolution of the conflict. However, contractual obligations of the school shall continue until the matter is resolved.

- Notification of limitations on teaching and/or administrative duties must be specific and in writing. While the respondent's service may be placed on hold, the school shall honor its obligations to the respondent.
- While a limitation on duties is in place, the president (or chairman of the board of regents when appropriate) continues to work with the respondent directly or through others,

concerns himself with the spiritual well-being of the respondent, and continues to attempt to resolve the matters that have resulted in limitations on duties.

4. Review Committee Formal Hearing

4.1 Arrangements for hearing

The review committee shall proceed as follows:

(1) The committee shall hold its first hearing no later than 60 days after the last committee member has been appointed.

(2) The chairman of the committee shall notify the complainant and the respondent, at least 28 days in advance, of the date, time, and place of the said hearing.

- The review committee shall meet initially via conference call arranged by the hearing facilitator, who serves as chairman of the committee. The purpose of the meeting will be to select a secretary, to make certain that all members have received necessary documentation, and to make the chairman aware of special needs and considerations.
- The preference and convenience of the parties shall be taken into consideration in determining the time and place of hearings. The chairman of the review committee shall contact the parties to discuss possible dates and shall set the time and place of the hearing.
- The committee chairman shall notify the parties and the members of the committee at least 28 days in advance of the hearing. Parties are responsible for notifying their own witnesses.
- No party nor anyone on a party's behalf shall either directly or indirectly communicate with the review committee or any member thereof without the full knowledge of the other party. All other communications shall take place only in the presence of the review committee. Copies of all printed documents and other materials submitted to the committee shall also be provided to the other party.
- Members of the review committee are to discuss the matter only in the presence of the full committee.

4.2 Opinions from the CTCR and CCM

(3) If any part of the dispute involves a specific question of doctrine or doctrinal application, each party shall have the right to an opinion from the Commission on Theology and Church Relations. If it involves questions of Constitution or Bylaw interpretation, each party shall have a right to an interpretation from the Commission on Constitutional Matters. The request for an opinion must be made through the review committee, which shall determine the wording of the question(s). The request for an opinion must be made within four weeks of the final formation of the committee. If a party does not request such an opinion within the designated time, such a request may still be made to the committee, which shall, at its discretion, determine whether the request shall be forwarded. The committee shall also have the right, at any time, to request an opinion from the Commission on Theology and Church Relations or the Commission on Constitutional Matters. When an opinion has been requested, the time limitations will not apply until the opinion has been received by the parties. Any opinion received must be followed by the committee.

- If the complainant or respondent has a question regarding doctrinal or constitutional matters, this question should be submitted to the chairman of the review committee who will consult with the committee to determine the wording.

- If a request for an opinion is submitted later than four weeks after the formation of the committee, the chairman shall consult with the committee to determine whether the request should be honored.
- The four-week time constraint does not apply to the review committee itself, which has the right to request opinions at any time.
- Opinions will be provided as promptly as possible, but may result in delay depending upon commission meeting schedules, during which time the process is placed on hold. Once received, commission opinions are binding upon the committee.

4.3 Conduct of hearing

All hearings shall be private, attended only by the parties and the witnesses who can substantiate the facts relevant to the matter in dispute. The review committee, under the guidance of the hearing facilitator, shall follow the procedures set forth in this *Model Operating Procedures Manual* and shall establish the relevancy of evidence so that each party shall be given an opportunity to present fully its respective position. In performing its duty, the review committee shall continue efforts to reconcile the parties on the basis of Christian love and forgiveness. If a party is a board or commission of the Synod or its districts, it shall be represented by its chairman or a designated member.

- The proceedings of the hearing shall be conducted according to the guidelines provided in this *Model Operating Procedures Manual*, a copy of which shall have been provided to the parties at the time the complainant is provided assistance by the president or chairman of the board of the college or university (see 1.3 above). If any provision of this manual has not been complied with, it must be brought to the attention of the chairman of the review committee within three days, or the right to object shall be considered waived.
- The complainant shall be responsible for his/her own travel, lodging, food, and witness costs. The expenses of the review committee, including the hearing facilitator, and essential expenses of the respondent shall be covered by the institution.
- Hearings shall be private, attended only by the committee members, the complainant, and the respondent.
- All committee members must be involved at all stages of the decision-making process.
- The committee shall establish the procedure to be followed to hear and determine the relevancy of evidence so that each side of the matter is given opportunity fully to present its position.
- Witnesses who can substantiate facts relevant to the matter(s) at issue may be called before and address the review committee at the request of the complainant, respondent, or committee. Unless otherwise determined by the committee, witnesses shall attend hearings only during the time that they are giving their own testimony. The committee may question witnesses directly and may permit the parties to do likewise.
- Copies of all documents presented as evidence shall be provided to all parties.
- At its discretion, review committees may make audio recordings of hearings for their own sole use. Such recordings are not to be regarded as part of the official record. No recording of the proceedings of a hearing aside from personal notes may be made by the parties involved.

5. Review Committee Decision

5.1 Committee issues decision

Within 60 days after completion of the final hearing, the review committee shall issue a written decision which shall state the facts determined by the committee and the reasons for its decision and forward them to the parties and the board of regents.

- It is the responsibility of the review committee to make a final recommendation regarding the validity of the complaint to the board of regents within 60 days of the hearing. The decision shall be by majority vote and shall be communicated in writing following the outline provided in *Appendix A* of this manual and shall be signed by the chairman and secretary of the committee.
- In the event that a majority decision cannot be reached, a new review committee shall be formed immediately and the matter reheard.
- If the parties have settled their dispute during the course of the committee hearing or prior to the rendering of a decision, the committee may set forth the terms of the agreed-upon settlement in its decision.
- If the review committee determines that there is a valid complaint regarding matters under Bylaw 3.10.6.7.5 [a]–[f], it may make recommendations to the board of regents for actions it deems appropriate, distinguishing between Bylaw 3.10.6.7.5’s items [a]–[d] and [e]–[f].
- The decision of the committee shall be provided to the complainant and respondent. It shall also be provided to the board of regents, which alone has the authority to take any appropriate action.

5.2 Board of regents takes appropriate action

If the committee decides there is a valid complaint

(1) regarding matters under Bylaw 3.10.6.7.5 [a]–[d], it may take whatever action it deems appropriate, including recommendation for termination of the employment contract;

(2) regarding matters under Bylaw 3.10.5.7.5 [e]–[f], if the member of the college or university’s faculty or administration is a member of the Synod, it must also refer the complaint to the district president, who shall follow the procedure set forth in Bylaw sections 2.14 or 2.17.

- If the review committee determines that there is a valid complaint regarding matters other than those under Bylaw 3.10.6.7.5 [a]–[f], the board of regents is responsible for determining appropriate actions to be taken to resolve the matter.
- If the committee determines that there is a valid complaint regarding matters under Bylaw 3.10.6.7.5 [a]–[f], the board of regents must distinguish between complaints under items [a]–[d] and [e]–[f]. In the latter case, if the respondent is a member of the Synod, the matter must be referred to the member’s supervising district president for ecclesiastical supervision.

5.3 Board of regents actions are final and binding

The board of regents shall then take appropriate action.

- If the matter results in the termination of a faculty or administration member who is not a member of the Synod, the board’s action shall be regarded as final and binding without opportunity for further appeal.

- A complainant or respondent who is a member of the Synod *may* have additional rights under Bylaw 3.10.6.7.5.2: “Notwithstanding the provisions of any such policy, any person connected with an institution who is a member of Synod shall also remain under the ecclesiastical supervision of the Synod, and nothing in any such CUS institution policy shall be construed to limit or constrain any action that may be taken, or the rights or responsibilities of any party, pursuant to the Synod’s *Handbook* with respect to a member of Synod.” It must be noted however, that Bylaw 1.10.3, *Exceptions (to the Dispute Resolution Process of the Synod)*, provides that Bylaw section 1.10 does not “set forth procedures for board of regents’ supervision of faculty and administration as specified in Bylaws 3.10.5.7.5–3.10.5.7.9, 3.10.6.7.1, and 3.10.6.7.5–3.10.6.7.5.2.”
- If and when a faculty, administrative, or professional staff member is dismissed for conduct described in Bylaw 3.10.6.7.5 [a]–[f], the president of the institution shall take steps to bring healing to the school community.
- All records of the proceedings shall be obtained by the chairman of the committee from the committee’s secretary and provided to the president of the school for confidential storage. Such records shall be made available to any subsequent process under Synod’s Bylaw sections 1.10 or 2.14–2.17 and to the appropriate district president in the consultation phase of these processes. Such records may be unsealed by order of the board of regents to defend any suit brought by a faculty or administration member terminated under this MOPM.
- The president of the school shall assume responsibility for fostering the reestablishment of a positive relationship between the complainant and respondent.

VI. DETAILED NEGATIVE PERFORMANCE REVIEW PROCESS

This section provides Steps 1–3 of the Model Process (section V) for the special case of **performance reviews recommending termination**, correlating Bylaw 3.10.6.7.4 (and a model inferred from the seminary-related Bylaw 3.10.5.7.4) with Bylaw 3.10.6.7.5.2. *These provisions do not apply to non-renewal of initial-level appointments (see preamble above).*

1. Completion of Negative Performance Review

1.1 President writes review recommending termination

A formal procedure shall be in place to carry out performance reviews for all faculty on a regular basis (Bylaw 3.10.6.7.4). Such a process serves to help faculty identify their strengths as well as areas in which improvement is needed (formative) and to provide the information needed to make a decision about future employment status (summative).

- A performance review recommending termination is a special case of complaint, dealt with under the Model Process. Such a review, when recommending termination, eventually comprises a complaint under one or more of the items listed in Bylaw 3.10.6.7.5 [a–d], as appropriate.
- The president of the institution composes the complaint, setting forth the grounds for termination substantiated in the performance review and the efforts made to reconcile them.
- The statement of the complainant requires careful preparation, since it will serve as the basis for the proceedings that may follow, in which case it will be the subject of the complainant's case and of the response of the accused.
- The statement should be concise, contain factual assertions regarding the issues of the complaint, and, if the content of Bylaw 3.10.6.7.5 is involved, demonstrate their relevance to the stated causes for removal from office or position.
- The complaint is not shared with the board at this time.

1.2 President meets with faculty member, who may prepare a written response

The performance review summary and recommendation shall be shared with the faculty member involved and he/she shall be given an opportunity to respond.

- The president of the institution, in a face-to-face meeting, shares the summary review and his recommendation with the faculty member involved and he/she shall be given an opportunity to respond.
- If the president intends, having considered this meeting and initial response, to present a termination decision to the board of regents, the faculty member shall be notified and given 21 days to compose a formal written response. A copy of this MOPM shall be provided at this time.
- It is essential that the reply in response to the negative performance review (which will serve as the “statement of the matter in dispute”) be carefully prepared, containing factual assertions to address all matters included in the review. The review and reply become the basis of all that follows throughout the remainder of the process.
- Failure by the faculty member to respond shall be deemed acceptance of the review and recommendation and waiver of any appeal allowed under Bylaw 3.10.6.7.5.2.

2. Termination Initiated and Appealed

2.1 Board acts on termination proposal

A final decision about any action to be taken as a result of the review shall be made by the board of regents upon recommendation of the president of the institution.

- The president of the institution now formally conveys the review and his recommendation (now the “written statement of the matter in dispute”), together with the faculty member’s response, in writing to the board of regents.
- The board of regents may refer the matter back to the president for further informal counseling and reconciliation, or it may decide whether it will, upon the recommendation of the president of the institution, pursue termination.
- The effective date of any termination shall be specified, and the faculty member shall be notified immediately.

2.2 Terminated faculty member may appeal

An appeal process shall be in place for use by faculty members who wish to challenge a termination decision. The appeal may be about the substance of the decision or the procedures followed in reaching the decision.

- Upon notification of the board’s decision, the faculty member under termination shall have seven (7) days to determine either to accept the decision of the board or to appeal (and extend his/her original, formal written response, if desired). (The 21 days ordinarily allotted for formulation of a response have been allowed in step 1.2 above.)
- The resulting document constitutes the “written reply to the board of regents” and the appeal allowed for in Bylaw 3.10.6.7.5.2. The appeal may be about the substance of the decision or the procedures followed in reaching the decision.
- Termination is effective on the specified date, notwithstanding any appeal. (Should an appeal ultimately succeed, reinstatement with appropriate compensation shall be arranged.)

2.3 Board of regents forms review committee

- **If the termination is accepted**, there is no further review committee process.
- **If the termination is appealed**, the matter proceeds from this point forward as would any review committee, with the president of the institution as complainant and terminated faculty member as respondent.
- The issue before the committee shall be limited to whether the termination is to be sustained with regard to the substance of the decision or the procedures followed in reaching the decision, or both.
- So long as the matter at issue is undecided, there shall be no publicity regarding the matter by any party. Any violation of this rule shall be brought to the attention of the chairman of the committee.

At this point, the process continues with Step 3 of the regular Model Process on p. 14.

APPENDIX A: REVIEW COMMITTEE DECISION REPORT

I. Names of Parties

Complainant: _____

Respondent: _____

II. Review Committee Hearing

[Provide location, date, and time of hearing. List names of witnesses if applicable. Briefly describe in general outline the procedures followed for the hearing(s).]

III. Issue(s) to be Decided

[Describe the complaint(s) at issue. Be as specific as possible.]

IV. Determinations to be Made

A. What are the facts of the matter and how were they substantiated by relevant evidence and testimony?

B. What are the facts upon which the review committee has based its recommendation to the board of regents?

V. Decision of the Committee

[State clearly the decision of the committee and the reasons for arriving at the decision. Suggestions may be offered to the board of regents for actions to be taken.]

VI. Signatures

Respectfully submitted, _____ *[Signature of Committee Secretary]* Date: _____

Names of Review Committee Members: _____, Secretary

Name of Hearing Facilitator: _____, Chairman

The hearing resulting in the above decision was conducted in accordance with the process set forth by the *Model Operating Procedures Manual* and with the Constitution and Bylaws of The Lutheran Church—Missouri Synod, including that all committee members were involved in all stages of the decision-making process. Any procedural errors that may have occurred or been alleged, along with any corrective measures taken to ensure due process, have been documented in a report (not attached) included in the record of the case.

Signed: _____ *[Signature of Hearing Facilitator]* Date: _____

(Revised November 2019)