

November 3, 2017

To: 2016 Convention Delegates  
Ordained and Commissioned Ministers of The Lutheran Church—Missouri Synod

Re: Bylaw changes under 2016 Res. 12-14 and ecclesiastical supervision in the Synod

Dear brothers and sisters in Christ Jesus,

As you may know, at its May 2017 meeting the Board of Directors of The Lutheran Church—Missouri Synod adopted changes to the Synod's ecclesiastical supervision bylaws (Bylaw sections 2.14–2.17), concluding a project expressly directed by Res. 12-14 of the 2016 convention. Very briefly, these changes grant accusers a bylaw procedure, *under certain specific circumstances*, to appeal for action to the president of the Synod if a district president decides not to suspend the accused. The 2016 *Handbook* you have already received was delayed to accommodate this project and already incorporates these bylaw changes in the noted sections.

You may be aware that these changes and the process by which they were made have been a topic of significant conversation and some confusion in the Synod. To relieve this confusion, the Office of the Secretary, in consultation with others, has prepared the attached “Frequently Asked Questions” document.

If this is a topic of concern, please give your attention to its contents. Please feel free to share it with others so concerned, especially with your congregations. Even if this is not a matter of concern, this is a fine opportunity to consider the important topic of ecclesiastical supervision, the provision of which is one of the foremost objectives and — for both called ministers and congregations — one of the most valuable benefits of membership in our Synod's union. May God grant it to be carried out with evangelical zeal throughout our Synod, and to be a rich blessing to all our congregations and those in the pastoral and auxiliary offices. “Lord, keep us steadfast in your Word.” Amen.

Sincerely in Christ's service,



Rev. Dr. John W. Sias  
LCMS Secretary



# FAQs “Frequently Asked Questions” on Ecclesiastical Supervision and 2016 Res. 12-14 Bylaws

## Origins and Process Followed

### › 1. What necessitated changes to the bylaws regarding the ability of an accuser to appeal a district president’s inaction or decision not to suspend?

After significant research, the Commission on Constitutional Matters (CCM) agreed with certain earlier opinions and conventions that appeal for action to the Synod President was inherent to Const. Art. XI B 1–3<sup>1</sup> and needed to be reflected in the bylaws of the Synod (CCM Op. 16-2791).

The question necessitating the opinion (whether inclusion of such an appeal for action in the bylaws would be constitutional) was brought to the CCM by a member of Floor Committee 12, in light of a task force proposal advocating restoration of an appeal for action to the Praesidium (the President and vice-presidents of the Synod). (Floor Committee 12 was also deliberating some nineteen other overtures on this and related topics: Overtures 12-01, 11–13, 15–21, 23–28, 39–40.) Based on the ruling of the CCM, Res. 12-01 was adjusted, and the resultant Res. 12-01A was brought by the floor committee to restore the mechanism for an appeal for action to the Synod President. This resolution was a topic of significant convention debate, especially involving certain district presidents. The convention ultimately adopted Res. 12-14 instead, directing a period of consultation with the Council of Presidents (COP) and then the correction of the bylaws to include the constitutionally required means of appeal for action (2016 *Proceedings*, p. 233).

### › 2. Have the responsibilities of ecclesiastical supervision of church workers and congregations previously resided exclusively with district presidents?

Historically, these responsibilities have resided *principally* but not *exclusively* with district presidents, even as regards the power of

<sup>1</sup> Const. Art. XI B 1–3 (Rights and Duties of Officers: Duties of the President) reads as follows:

1. The President has the supervision regarding the doctrine and the administration of
  - a. All officers of the Synod;
  - b. All such as are employed by the Synod;
  - c. The individual districts of the Synod;
  - d. All district presidents.
2. It is the President’s duty to see to it that all the aforementioned act in accordance with the Synod’s Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod.
3. The President has and always shall have the power to advise, admonish, and reprove. He shall conscientiously use all means at his command to promote and maintain unity of doctrine and practice in all the districts of the Synod.

suspension. In his constitutional task of promoting and maintaining the “unity of doctrine and practice in all the districts of the Synod,” the President of the Synod “has and always shall have the power to advise, admonish, and reprove” (Const. Art. XI B 3). He “has the supervision regarding the doctrine and administration of ... the individual districts of the Synod” (Const. Art. XI B 1). The office of the district president has, moreover, “the same rights and duties as those [of the President] of the Synod, but only insofar as these apply to the district” (Const. Art. XII 6).

The bylaws resulting from 2016 Res. 12-14 restore (in a carefully refined way) a mechanism that existed in the bylaws from 1956–2004. The bylaws of those 48 years made explicit the authority of the President of the Synod (or the Praesidium, after 1989) to suspend a member under district supervision when a district president had failed to act as required — and those bylaws explained that this authority is inherent to the Synod President’s powers and duties under Const. Art. XI B 1–3.

One may consider the “modern era” of Synod’s expulsion processes to begin in 1965, after which explicit bylaws were required to guide all expulsion proceedings, and conventions were no longer the final “court of appeal.” The period from 2004–2016, lacking an explicit bylaw mechanism for “appeal for action,” is the unconstitutional exception in the modern era, not the constitutional rule. (See CCM Op. 16-2791, June 20, 2016; 17-2828, May 12, 2017.)

### › 3. What was the process followed to change the bylaws on ecclesiastical supervision?

In the case of Res. 12-14 the convention chose to apply Bylaw 7.1.2, in which “[i]n exceptional circumstances and upon the *express direction* of a convention of the Synod, amendments may be made by a two-thirds majority of the Board of Directors ... Such amendments shall be drafted by the Secretary of the Synod and shall be reviewed by the Commission on Constitutional Matters and the Commission on Handbook [(COH)].” The convention expressly directed that bylaws be drafted to provide the constitutionally-required missing feature (appeal for action to the President) identified in CCM Op. 16-2791.

### › 4. Were these bylaw changes developed without representation from and consultation with the Council of Presidents?

No. Res. 12-14 mandated at least a six-month consultation between the Secretary and Council of Presidents to obtain their input “as to proposed mechanisms to implement expulsion processes consistent with and not contradicting the Constitution of the Synod.” The convention’s express direction as to what, generally speaking, had to be adopted, was clear and immutable. This consultation, though, did take place at length and significantly impacted the particulars of the

bylaws presented to and adopted by the Board of Directors in May 2017.

It may also be noted that while members of the CCM and COH are appointed by the President of the Synod, that appointment is from a slate of candidates nominated by district boards of directors and selected by the Council of Presidents. Both commissions approved the bylaws drafted as consistent in substance and language with the Constitution and other bylaws of the Synod, as required by Bylaw 7.1.2.

At its September 2017 meeting the Council of Presidents completed its review of, and granted its required approval to, the *Standard Operating Procedure Manuals* that provide the binding procedural detail accompanying the newly written bylaws of sections 2.14 and 2.17.

## ► 5. Was the process outlined by the 2016 Convention for consultation with the Council of Presidents properly followed?

Yes. The required minimum six months of consultation was expanded by President Harrison and COP Chairman Hennings to involve a significant portion of the four meetings of the COP (September, November, February and April) following the 2016 convention.

# The Changes Themselves

## ► 1. What are the main changes that were made to the Bylaws regarding ecclesiastical supervision?

The main change (specifically, in Bylaws 2.14.4–2.14.5.3) occurs when (1) an accuser, a member of the Synod, has filed a formal, written accusation in a matter of doctrine and practice, and (2) the district president, having had an opportunity to investigate, admonish and suspend the accused, has not, in the impression of the accuser, adequately carried out these responsibilities. In such an instance, the accuser may appeal to the Synod President to carry out these ecclesiastical supervisory responsibilities. This restores the constitutionally necessary “appeal for action” present in the Bylaws from 1956–2004, restoring to the Synod President a bylaw means to carry out his constitutional responsibility to “maintain unity of doctrine and practice in all the districts of the Synod” (Const. Art. XI B 3). Other changes include:

- An adjustment to the timeline of the investigation and admonition process: Formerly an accuser could force a district president to convene a Referral Panel (which would take over the decision whether to suspend) after only 60 days of “failure to act” — a standard open to varying interpretation. The new bylaws eliminate the “failure to act”<sup>2</sup> standard. The district president now has 120 days from receipt of a formal, written accusation to investigate and admonish, plus any extension(s) he may obtain with the approval of the President of the Synod.

<sup>2</sup> “Fails to act”: While the title of Res 12-14 includes this language due to historical usage, the bylaws developed at its direction avoid the pejorative language and unclear standard “fails to act.”

- Allowance for a district president to seek the Synod President’s concurrence in a decision not to suspend, which would preclude a subsequent “appeal for action.”
- Corresponding changes to Bylaw sections 2.15–2.17.

More significant is what has not changed:

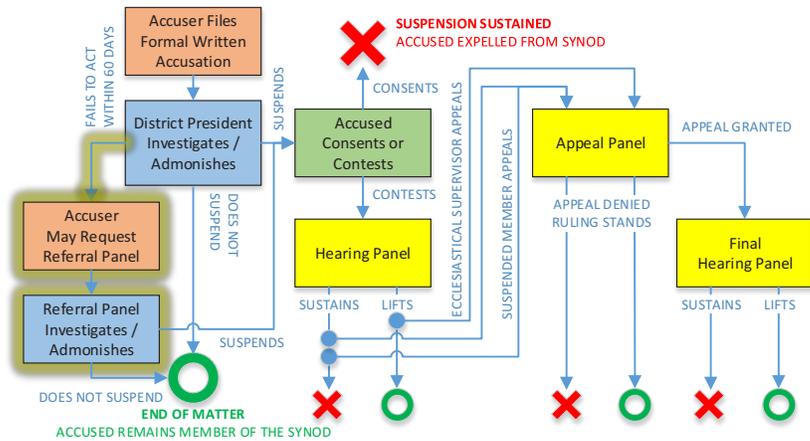
- The conditions of membership (Const. Art. II and VI) and standard for expulsion from the Synod (Const. Art. XIII) have not changed, and are equally applicable as district and Synod presidents deal with accusations.
- Except in cases of sexual misconduct or criminal behavior, formal accusations can be laid only by members of the Synod; in any case, they must be laid in consultation with the appropriate district president.
- Likewise, from the point of suspension (whether by district or Synod president) there is no change or distinction. Should the Synod President decide, upon an appeal for action, that admonition or suspension is warranted, the process proceeds exactly as though the district president made the same decision.
- The requirements that the pattern of Matthew 18 be followed and that an erring member receive significant evangelical admonition (where possible) prior to suspension apply equally to the Synod President as to the district presidents. The Synod President’s adherence to those guidelines, as well as his judgment that the conditions of Const. XIII for expulsion from the Synod have been met, are subject to the same review by subsequent panels as if a district president had acted in the matter.
- The composition of these Hearing and Final Hearing Panels has been expanded (by 2016 Res. 12-04A) to include two district presidents, two lay reconcilers, one ordained reconciler, aided by a hearing facilitator (the district presidents are selected by the parties and the rest by blind draw, with opportunity for disqualification due to actual or perceived partiality).<sup>3</sup> The composition of the panels and process of their selection is identical, however, whether a district president or the Synod President is presenting charges.
- The Hearing and Final Hearing Panels, of course, are charged with either sustaining or lifting the suspension. To do so, they weigh the facts presented against the Constitutional and bylaw standards of membership and the Scriptural and confessional position of the Synod. They also determine whether the suspending ecclesiastical supervisor properly followed procedure in the suspension. As part of that, where possible, the supervisor must have exhausted the requirement of “previous futile admonition” before a member can be expelled from the Synod. For a suspension to be sustained and a member expelled from the Synod, the panel must conclude that the expulsion is justified according to the Constitutional standards *and* that proper procedure was followed by the suspending ecclesiastical supervisor. All this remains the same, whether the suspending ecclesiastical supervisor is a district president or the Synod President.

<sup>3</sup> Reconcilers and Hearing Facilitators are drawn from Synod’s pools; they are appointed and renewed by district boards of directors. No two members of a panel are from the same district, and none is from the district where the matter arose. Appeal panels consist of three district presidents, one chosen by each party and the third chosen by the two so selected.

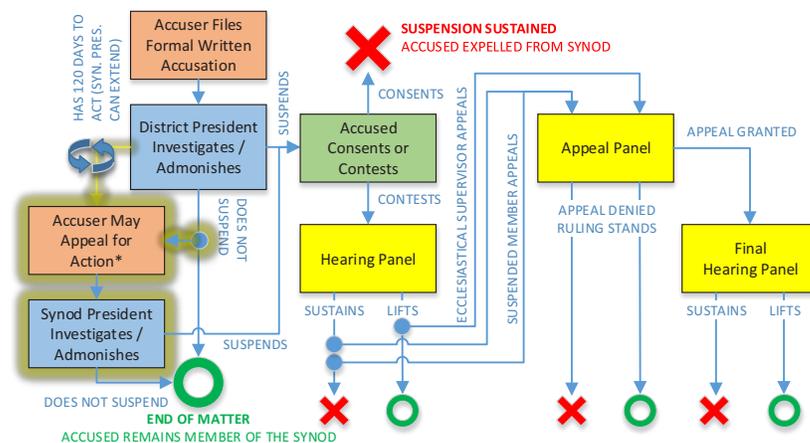
The simplified flowcharts below indicate graphically what has changed (highlighted portions) and what remains the same. An examination of Bylaw section 2.14 in the “red-lined May 2017 edition” of the 2016 Handbook (available at [lcms.org/handbook](http://lcms.org/handbook) under the “Handbook” tab) will indicate the exact changes.

To summarize from the flowcharts: note that the *only changes* involve (1) when the accuser can request review of a non-suspension (no longer when 60 days have expired, but when the district president has finally determined not to suspend — and then only in a case where there is a formal, written accusation, and involving doctrine and practice), and (2) who carries out that review (the President of the Synod, who has the Constitutional authority and responsibility to do so, and not a Referral Panel of circuit visitors). The President of the Synod reviews the district president’s documented investigation and actions and determines either to agree not to suspend or to pursue the matter if, in his assessment, the member in question has violated the Constitutional standards of membership and all reasonable admonition proves futile. In such a case, the President of the Synod could suspend the member (just as the district president might have) and the case would proceed as it usually would.

**Before 2016 Ecclesiastical Supervision Changes (Res. 12-14) (As since 2004)**



**After 2016 Ecclesiastical Supervision Changes (Res. 12-14)**



\* Only where a formal, written accusation has been filed (involving consultation with the district president, a face-to-face meeting, etc.) and only in a matter involving doctrine and practice. In addition, only where the district president has not already obtained the Synod President’s concurrence in his decision not to suspend.

**2. What was the system before 2004 for an accuser to appeal a district president decision not to discipline a member?**

Prior to 2004 any accuser, whether member of the Synod or not, could appeal any issue regarding a district president’s decision to the Praesidium (or, before 1989, the President) of the Synod. After the 2016 Res. 12-14-related changes:

- Only an accuser who is a member of the Synod may appeal for action to the President.
- An accuser may appeal for action *only* on an issue of doctrine or practice (not blamelessness of life or “offensive conduct” unrelated to doctrine or practice).
- An accuser may appeal for action *only* by using the same facts presented to the district president and with the district president’s having an opportunity fully to explain to the President of the Synod his documented decision not to suspend.
- An accuser may appeal for action *only* if the district president has not already obtained the concurrence of the President of the Synod in his decision not to suspend.

The present ability to appeal a decision of a district president not to suspend is much more limited, compared to the mechanism before 2004, and the new procedure is more carefully structured.

**3. Do these bylaw changes take away the supervisory authority (including suspension) of the district presidents?**

No. The 2016 *Handbook*, pages 64–76, demonstrates that the district president is clearly the primary individual responsible for carrying out the investigation and action of expulsion. The Synod President only becomes involved if the accuser appeals the district president’s decision not to initiate formal proceedings, etc.

**4. How do the new bylaws give an incentive for the district president and Synod President to consult with each other earlier in the process?**

The new bylaws stipulate that if the Synod President concurs with the planned action of a district president, on the basis of his review of the charge brought and the district president’s documented investigation, it precludes the possibility of an accuser appealing for action later.

**5. Has the President of Synod now been given the ultimate authority to determine whether a member of Synod should be expelled or not?**

No. Only a Hearing Panel or, if an appeal is granted, a Final Hearing Panel, has the authority to finally expel a member of the Synod. The Synod President can only suspend, not expel. Moreover, he can only suspend in a matter of doctrine or practice in which a district president has had an opportunity to suspend and has not. Whether suspended by a district president or the Synod President, the suspended member may always request that his suspension be reviewed by a panel. Hearing Panels and Final Hearing Panels are made up of district presidents, two lay reconcilers, and an ordained

reconciler. Appeal Panels, which evaluate the grounds for a Final Hearing, are made up of three district presidents.

### ➤ 6. Do the new bylaws expand the power of the Synod President to be the ecclesiastical supervisor of all church workers and congregations of Synod?

No. The Synod President has the constitutional responsibility to “maintain unity of doctrine and practice in all the districts of the Synod” and constitutional supervision of “the individual districts of the Synod.” Should — God forbid — a district president fail to apply the doctrinal membership standard of the Synod within his district, the Synod President is now provided with a clearly delineated bylaw means to carry out his constitutional responsibility. The same doctrinal and membership standards apply in all districts of the Synod, and to all members of the Synod equally, regardless of to which district they belong. The Synod President is simply afforded an opportunity to review, *at the point of suspension*, whether these standards are being properly applied. (The Synod President already had, and has, the authority to appeal a Hearing Panel decision involving a matter of doctrine or practice [Bylaw 2.14.8]. If, in the judgment of the President a Hearing Panel has erred in its handling of a member’s suspension, the President can request an appeal.)

### ➤ 7. Why is the appeal of the accuser to the Synod President limited only to matters of “doctrine and practice” and not matters of “blamelessness of life” or “offensive conduct”?

The precise constitutional problem the CCM and convention identified as requiring a solution was that the Synod President was being denied a means (“appeal for action”) to carry out his constitutional responsibility to see to the unity of doctrine and practice in the Synod, should a district president “fail to act” or decline to suspend. While “blamelessness of life” and “offensive conduct” could have been included in the appeal for action, Res. 12-14 required only that the precise constitutional problem be solved. Practically speaking, where the unity in doctrine and practice of the whole Synod is not in jeopardy, the district president (apart from a conflict of interest, which is handled otherwise) is ideally situated to reach a final determination whether or not suspension is warranted.

## Other

### ➤ 1. Are these bylaw changes in conflict with the Constitution of Synod, specifically Article XI B 2?

No. Const. Art. XI B 2 describes a particular duty of the Synod President, not an exhaustive list of his rights or powers. The fact that suspension is not listed in Const. Art. XI B 2 is not to exclude his authority to effect a suspension as described in the 2016 Bylaws. Before 2004, he or the Praesidium, of which he is a part, had a bylaw mechanism to do this. Even between 2004 and 2016, the Synod’s bylaws provided for the President of the Synod to suspend those directly under his supervision: district presidents and officers of the Synod. In that same period, Referral Panels — which are nowhere mentioned in the Constitution — were also granted the power of suspension.

Note also that the Synod President and district presidents sit in the same office, with only the distinction of their jurisdictions (Const. Art. XII 6). Should a district president fail to exercise his ecclesiastical supervisory responsibility to maintain the doctrinal unity of the Synod within the boundaries of his district, it falls to the Synod President, who has the ultimate responsibility therefor (Const. Art. XI B 3), to see to it — if necessary — by investigating, admonishing, and, if ultimately required, suspending a member. (On this and other constitutional questions reviewed in relation to this matter, see CCM Op. 17-2828, May 12, 2017.)

### ➤ 2. Do these bylaw changes make the synod more “hierarchical” and concentrate more authority in the President of Synod?

No. These changes provide in the bylaws a procedural means for carrying out the constitutional responsibility of the Synod President to see to unity in doctrine and practice in the individual districts of the Synod (Const. Art. XI B 1–3). It is important to note that Synod’s members are subject to one standard of doctrine and practice (Const. Art. II), one set of membership requirements (Const. Art. VI), one standard for suspension and expulsion from the Synod (Const. Art. XIII), and one carefully delineated process for handling such matters, with its many due process safeguards.

“Ecclesiastical supervision in The Lutheran Church—Missouri Synod is not determined by ‘contemporary situations,’ ‘gut feelings,’ ‘individual’ judgment, personal opinion, or personal conscience, but by the collective will, judgment, and conscience of the Synod ... as stated in its Constitution, Bylaws, and resolutions” (CCM Op. 11-2598, February 10–12, 2012). All district presidents (and the President of the Synod) are to uniformly apply the same standard. The district president of an accused “shall commence [suspension] when he becomes aware of information or allegations that could lead to expulsion of a member from the Synod under the provisions of Article XIII of the Constitution” (Bylaw 2.14.4). This is not a discretionary possibility. It is a Constitutional obligation of his office — a duty to the Synod, to an erring member, and to any congregation affected by the member’s error — to admonish erring members and, if admonition fails, to suspend them from membership in the Synod.

Should a district president fail to do so, now an accuser has the opportunity to seek the action of the Synod President under the same standards. In either case, whether taken up by a district or the Synod President, Hearing Panels are to operate by the same standards (Bylaw 2.14.7.8 [a]) established by the Synod in convention: Synod’s confessional position (the Scriptures and the Lutheran Confessions), the rest of Synod’s Constitution, bylaws, and resolutions (especially those establishing doctrinal positions of the Synod). Hearing Panels, not ecclesiastical supervisors, make the final determination of whether these standards are, in spite of diligent admonition, being violated — and whether, therefore, expulsion is the necessary next step in the Synod’s evangelical efforts to call a member to repentance.

Rather than imposing a personal hierarchy on the Synod, the 2016 bylaw changes allow the President of the Synod to review the decisions of district presidents not to pursue charges of a doctrine and practice nature within their districts, to ensure a uniform application of the standards established by the convention for the whole Synod in all the districts of the Synod.

### ▶ 3. Do these bylaw changes represent a major change to who we are as Synod and how we relate to one another?

No. These changes simply allow members of the Synod with legitimate accusations about matters of doctrine and practice in the Synod, after they have followed Matthew 18 and had a face-to-face meeting with the accused, and after a district president has refused to pursue their accusations, to present *the same accusations* to the President of the Synod. The President of the Synod is then to apply the Synod's doctrine and practice standards as required (the same standards to be applied by the district presidents). If the President of the Synod examines the district president's documents, investigates himself, and determines that the doctrine and practice of Synod *are in fact* being violated, he would need to admonish the member, just as a district president would, in the hope that the error would be corrected and the wayward brother or sister, reconciled. Should that admonition prove futile (Const. Art. XIII) the President of the Synod is then empowered to suspend the member, just as a district president would. If the member contests the suspension, that would initiate formal expulsion proceedings that would ultimately come before at least one Hearing Panel for final resolution.

A district president who is unsure whether to suspend a member may always confer with the Synod President before refusing to suspend the member. New bylaws provide procedure for this consultation — and even for the Synod President to confirm ahead of time a district president's decision not to suspend, where the two agree that there is no basis for suspension. The bylaws as developed are designed to serve collaborative, not competitive, ecclesiastical supervision at the district and Synod levels.

The 2016 Res. 12-14 bylaw changes restore a check and safeguard ("appeal for action"), which was generally available from 1956–2004 and missing from 2004–2016, in a carefully circumscribed way. They support Synod's objectives: to "conserve and promote the unity of the true faith," to "provide evangelical supervision, counsel and care for pastors, teachers, and other church workers of the Synod in the performance of their official duties," and to "provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights" (Const. Art. III 1, 8, 9). These changes are entirely consistent with who we are as a Synod and with how we ought, as one Synod, walk together with one another.

Not one member of the Synod, congregation or individual, has been subjected to a new doctrinal standard or new requirement of membership in the Synod as a result of these changes. The changes assure a carefully circumscribed means is in place to ensure uniform application, in all the districts, of the standards for doctrine and practice in the Synod, as elaborated over time by Synod's conventions. The Synod, after all, is not a federation of independent districts, having potentially multiple standards for doctrine and practice, but one Synod, established by all its congregations, which sets up districts so that its common constitutional aims — including a blessed Synod-wide unity of doctrine and practice — can be sought evangelically and effectively in every place.

For both congregational and individual members of the Synod, faithful and evangelical ecclesiastical supervision is a great gift. To be admonished to remain true to the Scriptures and Lutheran Confessions, in doctrine and in practice, is never a curse but always a blessing, for the member and for the Synod — for we all serve "as those who will have to give an account," and "faithful are the wounds of a friend." Faithful ecclesiastical supervision is "not a terror to good conduct, but to bad." District and Synod presidents, as those assigned certain ecclesiastical supervisory authorities, are "God's servant for [members'] good." These bylaw changes ensure that the Synod President can, where necessary, function as a reinforcement for those on the front lines of this hard but vital and salutary work, increasing, rather than decreasing, Synod's assurance that this blessing will be provided uniformly "in all the districts of the Synod."

John W. Sias  
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