



March 4, 2022

Dr. William R. Cario
Office of the President
Concordia University Wisconsin
12800 North Lake Shore Drive
Mequon, Wisconsin 53097

URGENT

Sent via Electronic Mail (William.Cario@cuw.edu)

Dear President Cario:

The Foundation for Individual Rights in Education (FIRE), a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses, is concerned that Concordia University Wisconsin (CUW) has suspended Professor Gregory Schulz without prior notice or adequate opportunity to respond to the alleged misconduct, for an article in which he criticized CUW for actions inconsistent with its religious purpose.

CUW's apparent suspension of Schulz without any semblance of due process violates university policy and the terms of Schulz's contract. FIRE accordingly calls on CUW to immediately reinstate Schulz and ensure any misconduct investigation adheres to CUW's binding commitments to due process and academic freedom.

I. CUW Suspends Schulz for Article Critical of University Administration

The following is our understanding of the pertinent facts. We appreciate you may have additional information to offer and invite you to share it with us.

Gregory Schulz is a full professor of philosophy at CUW. In its February 14, 2022 issue, *Christian News* published an article by Schulz entitled "Woke Dysphoria at Concordia," which was posted on its website the following day.¹ In the article, Schulz criticized CUW for "coming under the influence of Woke-ism (that is, a potent cocktail of Progressivism, Neo-Pragmatism, and Marxism)," which Schulz argued is antithetical to the university's Lutheran foundation. In particular, Schulz criticized the university's presidential search, expressing

¹ Rev. Gregory P. Schulz, DMin, PhD, *WOKE DYSPHORIA AT CONCORDIA*, CHRISTIAN NEWS, <https://christiannewsmissouri.com/2022/02/15/woke-dysphoria-at-concordia>.

concern the board of regents seeks to install a “disruptive” and “transformational” president who would be “radically different from spiritual and educational leadership as authoritatively described in the Scriptures.”²

In the early afternoon of Friday, February 18, you emailed Schulz requesting that he attend a meeting that afternoon to discuss the article. Schulz responded at 3:15 PM, noting he had not seen the email until then because he had been teaching classes and visiting with students scheduled to meet during his posted office hours.³ Schulz further noted he was on his way to teach his third class of the day, but said he would be available for a meeting the following Monday. In response, you told Schulz his “request” was denied, and that you would see him at 4:00 PM.⁴ That meeting did not happen because Schulz was not able to access that email until after his final class of the day and after speaking with a student who asked to speak with him immediately after that class. That student visit lasted until 4:30.

That same day, you and Executive Vice President and Chief Operating Officer Allen Prochnow sent Schulz a memorandum notifying him he was suspended pending an investigation into multiple allegations of misconduct, including insubordination, conduct unbecoming a Christian, disclosure of confidential information, and not following various limitations on academic freedom.⁵ The memo directed Schulz to stay off campus, to refrain from contacting any other employees, students, or individuals associated with CUW without your permission, and to immediately and publicly recant the article or face further sanctions including the possibility of termination.

Since Schulz was locked out of the university’s online system thereafter, it was not until his lawyer formally requested any documentation of suspension on Monday, February 20, 2022, that Schulz received access to the memorandum.

II. CUW’s Suspension of Schulz Violates His Right to Due Process

CUW imposed severe sanctions on Schulz—removing him from the classroom and campus—before providing sufficient notice or adequate opportunity to respond to your allegations. CUW’s actions represent an unacceptable departure from its commitment to due process.

A. CUW promises faculty due process.

Schulz’s contract with CUW incorporates language from the faculty handbook stating the “fundamental purpose of due process regarding academic freedom responsibilities is to protect the academic freedom of the faculty member and to uphold the policies and positions

² *Id.*

³ Email from Rev. Gregory Schulz, Professor of Philosophy, Concordia Univ. Wisc., to Dr. William Cario, Interim President, Concordia Univ. Wisc. (Feb. 18, 2022, 3:15 PM) (on file with author).

⁴ Email from Cario to Schulz (Feb. 18, 2022, 3:31 PM) (on file with author).

⁵ Memorandum from Cario and Allen Prochnow, Exec. Vice President and Chief Operating Officer, Concordia Univ., to Schulz, Feb. 18, 2022 (on file with author).

of the institution.”⁶ The contract further provides CUW is “responsible for maintaining clearly stated procedures for due process that include the process described in the most current [Lutheran Church Missouri Synod] handbook.”⁷

The Concordia University System Model Operating Procedures Manual is intended to serve as a uniform process for resolution of all complaints against faculty members and all campus disputes involving faculty and administration.⁸ All Concordia University System institutions must “have policies in place that are ‘consistent with’ this Model Operating Procedure Manual.”⁹

The manual specifies extensive procedures for resolving complaints against faculty members, including but not limited to allegations of insubordination and conduct unbecoming a Christian.¹⁰ Those procedures include an initial face-to-face meeting to attempt to resolve the matter informally; if informal reconciliation efforts fail, a “written statement” of “efforts that have been made to achieve informal reconciliation,” must be forwarded to the board of regents and the respondent; an opportunity for the respondent to submit a written reply within 21 days; formation of a five-person review committee; and a formal hearing.¹¹ Only the board of regents—not the president—may relieve a respondent of teaching and/or administrative duties pending final resolution of the conflict only if the board “decides the matter is of such a nature that the interests of the college or university will best be served” by limiting the activities of the respondent.¹²

Beyond this, the term “due process” generally refers to the legal suite of significant procedural protections to which individuals are entitled when government authorities, including public universities, subject them to adjudicatory proceedings.¹³ Thus, while CUW is a private institution, its invocation of the term “due process” in Schulz’s contract and the faculty handbook¹⁴ reflects its promise to provide more than the minimal—or no—process generally owed by private institutions, and places its faculty on par with their counterparts at public institutions. The United States Supreme Court has held that a “tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the

⁶ Concordia Univ. Wisc. & Ann Arbor, Agreement Between Concordia University and Gregory Schulz (2020) (on file with author).

⁷ *Id.*

⁸ CONCORDIA UNIV. SYS., MODEL OPERATING PROCEDURES MANUAL § I.B (2019) [“MOPM”] (on file with author).

⁹ MOPM § I.A. Neither the faculty handbook nor documents available on CUW’s website set forth CUW’s specific procedures, but whatever procedures CUW uses must at least be consistent with those in the model policy, as well as the ordinary understanding of “due process.”

¹⁰ MOPM § V.

¹¹ MOPM §§ V.1.2, V.2.1, V.2.2, V.3, V.4.

¹² MOPM § V.3.3.

¹³ *Due Process*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/due%20process> (last visited Mar. 2, 2022) [<https://perma.cc/GKP5-3DT5>] (“A course of formal proceedings (such as legal proceedings) carried out regularly and in accordance with established rules and principles — called also *procedural due process*.”); see also *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976).

¹⁴ CONCORDIA UNIV., FACULTY HANDBOOK § 4.5.E (2021–2022).

employer’s evidence, and an opportunity to present his side of the story.”¹⁵ Notice and a meaningful opportunity to be heard are the most basic requirements of due process.¹⁶

Before suspending or imposing any other sanction on Schulz, CUW must at least afford him these elementary procedures; otherwise, CUW’s contractual promise of due process is meaningless and contrary to basic legal principles of contract interpretation.¹⁷

B. CUW failed to provide Schulz sufficient notice or an adequate opportunity to respond to the charges.

CUW’s suspension of Schulz is inconsistent with the procedures in the Model Operating Procedure Manual and with commonly understood principles of due process reflected in decades of judicial decisions.

Suspension is a punishment, and not a light one, entitling Schulz to due process *before* it is imposed.¹⁸ Schulz is unable to teach his classes or even communicate with his students or other faculty members. Each day of the suspension that goes by is a further disruption to Schulz’s career as an educator and to his relationships with his students and colleagues.

Before suspending Schulz, CUW failed to give him proper notice of the charges—including an explanation of how his speech or conduct violated university policies—and an adequate opportunity to respond to them, let alone anything resembling the process outlined in the Model Operating Procedures Manual.

Your February 18 email to Schulz requesting that he meet with you that same day to discuss the *Christian News* article did not constitute sufficient notice or provide Schulz a meaningful opportunity to respond to the charges, nor was it a reasonable attempt to resolve the matter through an informal face-to-face meeting. By notifying Schulz of allegations of misconduct and giving him mere hours to meet in person to address them—amid a busy schedule of teaching classes and fulfilling other professional obligations—then abruptly suspending

¹⁵ *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). While, again, CUW is a private institution, the Constitution’s guarantee of due process to individuals facing governmental deprivation of a liberty or property interest sets a baseline for what faculty would reasonably expect from a university, such as CUW, that promises due process.

¹⁶ *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (notice is “[a]n elementary and fundamental requirement of due process”); *Mathews*, 424 U.S. at 333 (“The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”) (cleaned up); *see also Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 171 (1951) (Frankfurter, J., concurring) (“The validity and moral authority of a conclusion largely depend on the mode by which it was reached. . . . No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.”).

¹⁷ *See Stubbe v. Guidant Mut. Ins. Co.*, 651 N.W.2d 318, 323 (Wis. Ct. App. 2022) (“contract should be construed whenever possible so that . . . none of the language is discarded as superfluous or meaningless”) (cleaned up).

¹⁸ *See Goss v. Lopez*, 419 U.S. 565, 579 (1975) (“[T]here can be no doubt that at a minimum [the words of the Due Process Clause] require that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for a hearing appropriate to the nature of the case.”).

Schulz instead of accepting his offer to meet the next business day, CUW has failed to adhere to its due process obligations.

There also is no credible argument that Schulz's presence on campus would pose any type of threat or danger justifying an interim suspension, as the allegations against him arise merely from his authorship of an article critical of the university.¹⁹ There is no reason why Schulz cannot continue to teach and perform his other job duties while CUW investigates his alleged wrongdoing. Moreover, the Model Operating Procedures Manual places authority in the board of regents—not the president—to decide whether to remove a faculty member from teaching or administrative duties pending an investigation.

III. Conclusion

As CUW recognizes, due process is “fundamental” to protecting faculty members’ academic freedom. Schulz’s academic freedom, including the freedom to criticize university governance, is exactly what is at stake here, as CUW purports to “value[] the individuality of each faculty member and respect[] the right of faculty to hold diverse opinions” and to maintain that “pursuit of knowledge through intellectual inquiry and research is highly valued as a mark of institutional excellence”—including recognition of the right of faculty members even to “present and discuss concepts that conflict with Synodical teachings.”²⁰ To the extent CUW alleges that Schulz’s *Christian News* article falls within any of the university’s express “limitations” on academic freedom or violates any other university policy, CUW must provide Schulz with a meaningful opportunity to respond to those allegations before imposing any sanctions.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on March 11, 2022, confirming that CUW will immediately lift all

¹⁹ While notice and an opportunity to respond generally must precede a suspension, courts have recognized an exception to this rule in exigent circumstances, where the presence of the accused “poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process.” *Haidak v. Univ. of Massachusetts-Amherst*, 933 F.3d 56, 72 (1st Cir. 2019) (citing *Goss*, 419 U.S. at 582–83).

²⁰ FACULTY HANDBOOK, *supra* note 14, §§ 4.5.B, 4.5.C; *see also* AM. ASS’N OF UNIV. PROFESSORS, ON THE RELATIONSHIP OF FACULTY GOVERNANCE TO ACADEMIC FREEDOM (1994), *available at* <https://www.aaup.org/report/relationship-faculty-governance-academic-freedom> [<https://perma.cc/UF66-7EDJ>] (recognizing that in matters of institutional governance, it is “essential that faculty members have the academic freedom to express their professional opinions without fear of reprisal” and that “grounds for thinking an institutional policy desirable or undesirable must be heard and assessed if the community is to have confidence that its policies are appropriate”). We further note that Concordia is accredited by the Higher Learning Commission, whose standards require that each accredited institution be “committed to academic freedom and freedom of expression in the pursuit of truth in teaching and learning.” HIGHER LEARNING COMM’N, CRITERIA FOR ACCREDITATION (rev. June 2014), *available at* <https://www.hlcommission.org/Policies/criteria-and-core-components.html> [<https://perma.cc/3JBF-2TJC>]; *see also* Peter Bonilla, *An accreditor tells an institution to do better on academic freedom. Will more follow?*, FIRE (Nov. 12, 2021), <https://www.thefire.org/an-accreditor-tells-an-institution-to-do-better-on-academic-freedom-will-more-follow> (discussing the Higher Learning Commission’s decision to place Southwest Baptist University on probation in part because the meaning of the university’s stated commitment to academic freedom was unclear).

sanctions placed on Schulz, return him to the classroom, and ensure that any investigation of alleged wrongdoing fully complies with CUW policy and its contractually binding commitments to due process and academic freedom.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Terr', with a stylized, cursive-like script.

Aaron Terr
Senior Program Officer, Individual Rights Defense Program

Cc: Allen Prochnow, Executive Vice President and Chief Operating Officer