

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

**SUBJECT:** Student Conduct Code

**NUMBER:** 3:4

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### 1. Definitions

The following terms have the stated meanings in this code:

- A. The term “institution” means Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines and Technology, South Dakota State University, and University of South Dakota.
- B. The term “system” means the system of post-secondary institutions under the control of the South Dakota Board of Regents.
- C. The term “student” includes all persons taking courses from the institution, both full-time and part-time, enrolled in undergraduate, graduate, professional or special topic courses.
- D. The phrase “faculty member” means any person hired by the institution to conduct classroom or other academic activities.
- E. The phrase “institutional official” includes any person employed by the institution, performing assigned administrative or professional responsibilities.
- F. The phrase “senior student affairs officer” means that institutional official exercising primary authority over institutional student affairs programs and operations.
- G. The phrase “member of the institutional community” includes any person who is a student, faculty member, institutional official, any person employed by the institution, volunteer or guest. A person’s status in a particular situation shall be determined by the senior student affairs officer.
- H. The phrase “institutional premises” includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the institution, including adjacent streets and sidewalks.
- I. The term “organization” means any number of persons who have been granted institutional registration or recognition.

- J. The phrase “student conduct body” means any person or persons authorized by the senior student affairs officer to determine whether a student has violated the Student Code and to recommend imposition of sanctions.
- K. The phrase “student conduct officer” means any institutional officer authorized on a case-by-case basis by the senior student affairs officer to impose sanctions upon students found to have violated the Student Code. The senior student affairs officer may authorize a student conduct officer to serve as one of the members of a student conduct body, to determine the facts and to impose a sanction without the assistance of a student conduct body or to receive and consider the findings and recommendations of a student conduct body. Nothing shall prevent the senior student affairs officer from authorizing the same student conduct officer to impose sanctions in all cases.
- L. The term “respondent” means a student, group of students or student organization against whom conduct charges have been brought.
- M. The term “complainant” means a member of the university community who has brought charges under this code against any student, group of students or student organization.
- N. The phrase “appellate board” means any person or persons authorized by the institutional chief executive officer to consider an appeal from a student conduct body’s determination that a student has or has not violated the Student Code or from the sanctions imposed by the student conduct officer.
- O. The term “shall” is used in the imperative sense.
- P. The term “may” is used in the permissive sense.
- Q. The term “policy” includes the provisions of this policy as supplemented by consistent written regulations of the institution found in the Student Code, Residence Life Handbook, and Graduate or Undergraduate Catalogs or other official publications.
- R. The term “dishonesty” includes any action taken in order to deceive or to assist another to deceive the institution or any of its representatives. The motive for the action, *e.g.*, personal advantage, interference with another’s prospective advantage or interference with institutional operations, shall not be considered. Dishonesty is established where it is shown that
  - 1) An action, either directly or indirectly, shall affect the information or apparent facts upon which the institution relies in discharging its academic or administrative functions;

- 2) The natural and reasonably expected consequences of relying upon such information includes the drawing of an inaccurate assessment of the true facts; and
  - 3) The actor knew or should have known that the action would probably mislead the institution.
- S. The term “obscenity” means that
- 1) To the average person the dominant theme of the material taken as a whole appeals to prurient interest;
  - 2) The material is patently offensive under contemporary community standards; and
  - 3) The material is utterly without redeeming social value. (SDCL § 22-24-27)
- T. The term “crime of violence” means an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. It includes, but is not limited to, the following offenses: criminal homicide, forcible sex offense, robbery, aggravated assault, and arson, as these terms are defined in 1999 Appendix E to 34 CFR part 668, which is attached hereto as an appendix, as well as burglary of an occupied structure or dwelling and kidnapping.<sup>1</sup>

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<sup>1</sup> **Appendix E to Part 668--Crime Definitions in Accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program**

The following definitions are to be used for reporting the crimes listed in Sec. 668.47, in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program. The definitions for murder, robbery, aggravated assault, burglary, motor vehicle theft, weapon law violations, drug abuse violations and liquor law violations are excerpted from the Uniform Crime Reporting Handbook. The definitions of forcible and nonforcible sex offenses are excerpted from the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Handbook.

**Crime Definitions From the Uniform Crime Reporting Handbook**

**Murder:** The willful (nonnegligent) killing of one human being by another.

**Robbery:** The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

**Aggravated Assault:** An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)

**Burglary:** The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.

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**Motor Vehicle Theft:** The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned--including joyriding.)

**Weapon Law Violations:** The violation of laws or ordinances dealing with weapon offenses, regulatory in nature, such as: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; furnishing deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the aforementioned.

**Drug Abuse Violations:** Violations of State and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include: opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics (demerol, methadones); and dangerous nonnarcotic drugs (barbiturates, benzedrine).

**Liquor Law Violations:** The violation of laws or ordinances prohibiting: the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public conveyance; and all attempts to commit any of the aforementioned. (Drunkenness and driving under the influence are not included in this definition.)

### **Sex Offenses Definitions From the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Program**

**Sex Offenses—Forcible:** Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.

- A. Forcible Rape--The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).
- B. Forcible Sodomy--Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
- C. Sexual Assault With An Object-- The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
- D. Forcible Fondling--The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

**Sex Offenses—Nonforcible:** Unlawful, nonforcible sexual intercourse.

- A. Incest--Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- B. Statutory Rape--Nonforcible sexual intercourse with a person who is under the statutory age of consent.

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## 2. Proscribed Conduct

### A. Jurisdiction of the Institution

- 1) The institution shall have authority over its students and recognized student organizations.
  - a. For purposes of the policy, the institution in which the majority of a student's credits are offered during an enrollment period shall have jurisdiction over the student for conduct purposes.
  - b. Where students are also employees, they may be subject to concurrent authority. Conduct proceedings under this code may be initiated irrespective of any action taken by the institutional employer, except that, if an individual has been subject to conduct hearings as an employee, and if those hearings afforded notice and an opportunity to be heard that are substantially equivalent to those provided herein, the facts found through that process, insofar as they are relevant to infractions of this code, shall be given effect hereunder.
- 2) Conduct proceedings may be initiated in response to conduct that occurs on institutional premises or at events officially sponsored by the institution, conduct that arises out of membership in the institutional community or conduct elsewhere, otherwise proscribable under this code, that adversely affects the institution, its affiliated organizations, or members of the institutional community or their pursuit of its objectives.

### B. Conduct – Rules and Regulations

Members of the institutional community reasonably expect that they shall be able to live, study, work and relax in a safe and orderly environment that is conducive to achievement of the educational, scholarly and public service missions of the institution. The following regulations, while not all-inclusive, identify forms of conduct that infringe upon those expectations, disrupt the orderly progress of institutional activities and, so, expose the actors to conduct sanctions.

Any student, group of students or student organization found to have committed the following misconduct is subject to the conduct sanctions outlined in Section 3, Student Conduct Policies.

- 1) Acts of dishonesty, including, but not limited to, the following:
  - a. Cheating, which is defined as, but not limited to, the following:

- i. use or giving of any unauthorized assistance in taking quizzes, tests, or examinations;
    - ii. use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments; or
    - iii. acquisition, without permission, of tests or other academic material belonging to a member of the institutional faculty or staff.
  - b. Plagiarism, which is defined as, but is not limited to, the following:
    - i. the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgement consistent with accepted practices of the discipline;
    - ii. the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.
  - c. Other forms of dishonesty relating to academic achievement, research results or academically related public service;
  - d. Furnishing information known or believed to be false to any institutional official, faculty member or office;
  - e. Forgery, fabrication, alteration, misrepresentation or misuse of any document, record, or instrument of identification, including misrepresentations of degrees awarded or honors received;
  - f. Tampering with the election of any institutionally-recognized student organization;
  - g. Claiming to represent or act in behalf of the institution when not authorized to so represent or so act.
- 2) Disruption or obstruction of teaching, research, administration, conduct proceedings, other institutional activities, including its public service functions on or off campus, appearances by speakers or presenters, whether invited by the institution, by recognized organizations or by authorized facility users, or other authorized non-institutional activities.
- 3) Disruption of or interference with the activities of persons who are studying, sleeping, or otherwise engaging in activities that are consistent with the

normal and expected uses of institutional facilities, or of student residential facilities, whether institutionally controlled or not.

- 4) Acts of aggression including threats, intimidation, coercion or other conduct that threatens or endangers the health or safety of any person.
  - a. Tampering with fire and life safety equipment including, without limitation, fire alarms, sprinkler systems, first aid equipment, and laboratory safety apparatus;
  - b. Conduct that threatens or endangers a student's own health or safety may also violate this section;
  - c. "Aggression" means not only intentional infliction of harm, but also conduct that intentionally subjects another to unwelcome, offensive, physical contact or that puts another person in reasonable fear that the actor intends immediately to subject person to intentional injury or unwelcome, offensive touching.
  
- 5) Subjection of another person to any sexual act against that person's will or without consent, including any conduct that would constitute a sex offense, whether forcible or non-forcible, under SDCL §§ 22-22-1 through 22-22-7.2, 22-22-19.1 or 22-24.1.
  - a. Persons who are under the influence of alcohol, marijuana or other illegal controlled substances at the time that they are subjected to the sexual act shall be presumed incapable of effective consent.
  
- 6) Discriminatory conduct proscribed under Board Policies 1:17 and 1:18 includes sexual harassment, racial harassment, harassment on other grounds identified in Board Policy 1:17, or harassment on any other grounds, directed against individuals.
  - a. Harassment may be established by showing
    - i. Conduct toward another person that has the purpose or the effect of creating an objectively and subjectively intimidating, hostile or demeaning environment that substantially interferes with his or ability to participate in or to realize the intended benefits of an institutional activity, employment or resource.
      - a) Harassment consists, in most cases, of more than casual or isolated incidents.

- (1) Consideration should be given to the context, nature, scope, frequency, duration and location of the incidents, whether they are physically threatening or humiliating as opposed to merely offensive utterances, as well as to the identity, number and relationships of the persons involved.
- b) Harassment shall be found where, in aggregate, the incidents are sufficiently pervasive or persistent or severe that a reasonable person with the same characteristics of the victim of the harassing conduct would be adversely affected to a degree that interferes with his or her ability to participate in or to realize the intended benefits of an institutional activity, employment or resource.
  - (1) The reasonable person standard includes consideration of the perspective of persons of the alleged victim's race, gender or other circumstances that relate to the purpose for which he or she has become the object of allegedly harassing conduct.
    - a) If the victim does not subjectively perceive the environment to be hostile, the conduct has not actually altered the conditions of participation and there shall be no violation of this policy.
  - (2) It is not necessary to show psychological harm to the victim to establish that the conduct would interfere with the person's ability to participate in or to realize the intended benefits of an institutional activity, employment or resource.
- ii. Other conduct that is extreme and outrageous exceeding all bounds usually tolerated by polite society and that has the purpose or the substantial likelihood of interfering with another person's ability to participate in or to realize the intended benefits of an institutional activity, employment or resource;

- b. Sexual harassment through the creation of an intimidating, hostile or demeaning environment may be established under section (a) above. Sexual harassment may also be established by showing that an individual has been subjected to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature where:
  - i. Submission to such conduct is made either explicitly or implicitly a term or a condition of an individual's participation or use of an institutionally sponsored or approved activity, employment or resource; or
  - ii. Submission to or rejection of such conduct by an individual is used as the basis for educational, employment or similar decisions affecting an individual's ability to participate in or use an institutionally sponsored or approved activity, employment or resource.
- 7) Attempted or actual theft of services or property, including intellectual properties, of the institution or property of a member of the institutional community or other personal or public property;
- 8) Attempted or actual damage to property, including intellectual properties, of the institution or property of a member of the institutional community or other personal or public property;
- 9) Possession of stolen property on institutional property or at an institutionally sponsored activity, where the property is known to be stolen;
- 10) Participation in hazing. Hazing includes any activity intended to test another person's willingness or readiness to join a group (or to maintain full status in a group) by subjecting that person to humiliation, degradation or other risks of emotional or physical harm; willing participation in a hazing exercise by the person being hazed does not excuse hazing;
- 11) Failure to comply with directions of institutional officials or law enforcement officers acting in performance of their duties or failure to identify oneself to these persons when requested to do so;
- 12) Unauthorized possession, duplication or use of keys to any institutional premises, unauthorized entry to or use of institutional premises or unauthorized possession, entry into or use of institutional equipment, data processing systems or information management or storage materials, facilities or systems;
- 13) Violation of published Board or institutional policies, rules or regulations;

- 14) Violation of federal, state, or local law on institutional premises or at institutionally-sponsored or -supervised activities;
- 15) Making bomb threats;
- 16) The manufacture, sale, possession, use or consumption of alcohol, marijuana or controlled substances by students on any property controlled by the Board of Regents or used in connection with any institutionally sponsored activity; except that alcohol may be served at social activities held in other locations subject to the restrictions set out in this article;
- 17) Illegal or unauthorized possession of firearms, other items defined as dangerous weapons in SDCL § 22-1-2(10), fireworks, explosives, tasers, BB guns, or dangerous chemicals on institutional premises;
- 18) Participation in a campus demonstration which disrupts the normal operations of the institution and infringes on the rights of other members of the institutional community; leading or inciting others to disrupt schedules or normal activities within any campus building or area; intentional obstruction which unreasonably interferes with freedom of movement, either pedestrian or vehicular, on campus;
- 19) Obstruction of the free flow of pedestrian or vehicular traffic on institutional premises or at institutionally-sponsored or supervised functions;
- 20) Conduct classified under state law or local ordinance as disorderly, lewd, indecent or a breach of peace;
- 21) Aiding, abetting, inviting or procuring another person to breach the peace or to violate the Student Conduct Code;
- 22) Theft of computer time or other abuse of computer access, including, but not limited to:
  - a. Unauthorized entry into a file to use, copy, read, delete, or change the contents, or for any other purpose;
  - b. Unauthorized transfer of a file;
  - c. Unauthorized use of another individual's identification or account;
  - d. Use of computing facilities to interfere with the work of another student, faculty member or institutional official;

- e. Use of computing facilities to send obscene or abusive messages or to engage in unlawful activities, including those involving uses that infringe intellectual properties;
  - f. Use of computing facilities to interfere with normal operation of the institutional computing system;
  - g. Making, acquiring or using unauthorized copies of computer software, or violating terms of applicable software license agreements;
  - h. Attempting to circumvent data protection schemes or tampering with security;
  - i. Violating institutional or Board internet policies.
- 23) Abuse of the Judicial System, including but not limited to:
- a. Failure to obey the summons of a student conduct body or institutional official;
  - b. Falsification, distortion, or misrepresentation of information before a student conduct body;
  - c. Disruption or interference with the orderly conduct of a judicial proceeding;
  - d. Initiation of a judicial proceeding knowingly without cause;
  - e. Attempting to discourage an individual's proper participation in, or use of, the judicial system, including retaliation against persons who brought charges or gave testimony;
  - f. Attempting to influence the impartiality of a member of a student conduct body prior to, or during the course of, the judicial proceeding;
  - g. Harassment (verbal or physical) or intimidation of a member of a student conduct body prior to, during, or after a judicial proceeding;
  - h. Failure to comply with the sanction(s) imposed under the Student Code;
  - i. Influencing or attempting to influence another person to commit an abuse of the judicial system.

- 24) Invasion of Privacy: No person may use a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, any other person without clothing, or any other person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person, and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy. Nor may a person use an audio recording device for use of unauthorized eavesdropping when another person or persons has a reasonable expectation of privacy.

C. Other Conduct

Conduct not expressly proscribed may also subject students, groups of students or student organizations to conduct sanction where it has the purpose and effect of infringing interests protected by the rules set out in section 2(B) of this article, other provisions of Board or institutional policy or comparable regulations duly established by other educational institutions or public or private authorities; or where it demonstrates that an individual disregards the need to conform to reasonable rules and regulations intended to protect the health and safety of others and to assure their orderly access to and beneficial use of institutional resources and facilities.

D. Student Organizations

Student organizations that, formally or informally through repeated practice, initiate, encourage, support or tolerate conduct by members, associates or invitees that violates the provisions of this code shall be subject to conduct sanction.

- 1) The privileges of official recognition by South Dakota public institutions may be extended to student organizations, including those that maintain residences for their members, only if such organizations agree to adopt and to enforce policies that, at minimum:
  - a. Prohibit the possession, use or dispensing of alcoholic beverages at organizational functions or in the organizational residence by persons under the age of 21 and the provision of alcoholic beverages to persons under the age of 21;
  - b. Prohibit the manufacture, possession, use or dispensing of marijuana or illegal controlled substances at organizational functions or in the organizational residence;

- c. Prohibit the expenditure of organizational funds on alcoholic beverages, marijuana, or illegal controlled substances;
  - d. Prohibit the informal collection from the members or residence of monies to be spent on alcoholic beverages, marijuana or illegal controlled substances;
  - e. Require that whenever this section permits consumption of alcoholic beverages at organizational functions or in the organizational residence, the function must adhere to the Board guidelines for alcohol usage set out in Board Policy 4:27(E) at page 5 of 6;
  - f. Establish conduct policies and sanctions regarding violations by individual members or residents no less stringent than those set forth under Board policies, except that limited use of alcoholic beverages is permissible as set out above, and except that, in lieu of suspension or expulsion, the organization shall suspend or revoke the privileges of membership, including residence privileges;
  - g. Require that a report be filed with the senior student affairs officer each semester identifying all actions taken pursuant to the conduct policies required in this code;
  - h. Institutions may impose additional or more restrictive conditions on official recognition.
- 2) Student organizations are subject to the Board's antidiscrimination policies set forth in Board Policy 1:18.
- E. No provision of this Code shall be interpreted to deprive students of rights guaranteed them under state or federal law.
- F. Violation of Law and Institutional Conduct Sanctions
- 1) Students charged with a violation of federal, state, or local laws may be subject to conduct sanction where the conduct would fall within the proscriptions set out in this code or institutional regulations. Where the student has been found guilty in a court of law or has declined to contest such charges, although not actually admitting guilt (*e.g.*, "no contest" or "nolo contendere"), the alleged facts that formed the basis of the criminal charges shall be deemed established for purposes of conduct proceedings.
  - 2) Conduct proceedings may be instituted against a student charged with violation of a law which is also a violation of this Student Code, for example, if both violations result from the same factual situation, without regard to the status of civil litigation in court or criminal arrest and

prosecution. Proceedings under this Student Code may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus.

- 3) When a student is charged by federal, state, or local authorities with a violation of law, the institution shall not request or agree to special consideration for that individual because of his or her status as a student. If the alleged offense is also the subject of a proceeding before a student conduct body under the Student Code, however, the institution may advise off-campus authorities of the existence of the Student Code and of how such matters shall be handled internally within the institutional community. The institution shall cooperate fully with law enforcement or other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators. Individual students and faculty members, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.
- 4) When the senior student affairs officer receives a report of student misconduct that may constitute a felony offense under state or federal law, that official shall report the known facts and circumstances to law enforcement officials who have jurisdiction over the matter.

### **3. Judicial Policies**

#### **A. Allegations and Hearings**

- 1) Written allegations of misconduct may be filed against any student by any member of the institutional community. Allegations shall be directed to the student conduct officer responsible for the administration of the institutional judicial system. The complaint shall state the specific facts that form the basis for the allegation, as well as the identities of any other witnesses and the location of any physical evidence of the misconduct. Allegations must be signed by the complainant. Any allegation should be submitted as soon as possible after the event takes place or after the complainant discovers the identity of the alleged perpetrator.
- 2) In cases in which a faculty member raises allegations of academic misconduct, the written allegation shall contain specific details of the alleged violation and include a recommendation in regard to conduct sanctions.
- 3) Allegations arising under the human relations policy shall be handled as provided in Board Policy 1:18.
- 4) The student conduct officer shall make an initial determination whether the allegations were timely brought, taking into account the seriousness of the incident and the degree to which delay may have impaired access to

evidence. The student conduct officer shall determine if the allegations have merit, including, as to off-campus conduct, whether the incident sufficiently affects institutional interest to warrant further proceedings.

- 5) If the student conduct officer determines that the allegations have merit, the officer shall next determine whether they can be disposed of by mutual consent of the parties involved on a basis acceptable to the student conduct officer or by waiver of formal hearing where the student charged admits to the misconduct and accepts the proposed punishment.
  - a. Informal disposition shall be final and there shall be no subsequent proceedings. If the allegations cannot be disposed of informally, the student conduct officer may later serve in the same matter as the student conduct body or a member thereof.
- 6) Within fifteen working days of the filed complaint, the student conduct officer shall present all allegations to the student charged in written form and shall identify with specificity each section of the conduct code under which allegations are brought, the faculty allegations that support the allegations and those persons whose testimony shall be used to establish the allegations. A time shall be set for a hearing, not less than five nor more than fifteen calendar days after the student has been notified. The minimum time limits may be waived by the party charged. Maximum time limits for scheduling of hearings may be extended at the discretion of the student conduct officer.
- 7) Hearings shall be conducted by a student conduct body or student conduct officer according to the following guidelines:
  - a. Hearings shall be conducted in private.
  - b. The chair of the student conduct body or the student conduct officer shall have the power to exclude from the hearing any person whose conduct interferes with the hearing.
  - c. In hearings involving more than one accused student, the student conduct body or student conduct officer may permit the hearings concerning each student to be conducted separately or jointly.
  - d. The complainant and the respondent have the right to be assisted by an advisor of their choice, at their own expense. Ordinarily, no more than one advisor judicial for each student shall be permitted. The advisor may be a faculty member, staff member, student, attorney, or family member. The complainant and the respondent are responsible for presenting their own cases, and, therefore, advisors are not permitted to speak or to participate directly in any hearing before a body or student conduct officer, except that the senior student affairs

officer shall assume that responsibility under Board Policy 1:18 for the presentation of evidence in matters involving discrimination complaints against students.

- e. The complainant, the respondent, and the student conduct body shall have the privilege of presenting witnesses, subject to the right of cross examination. Witnesses may only be present during the hearing while testifying.
- f. Pertinent records, exhibits, and written statements may be accepted as evidence for consideration by a student conduct body or conduct officer at the discretion of the chairperson or the student conduct officer.
- g. All procedural questions are subject to the final decision of the chairperson of the student conduct body or the student conduct officer.
- h. At the hearing, the student conduct body or student conduct officer shall determine (by majority vote if the student conduct body consists of more than one person) whether the student has violated each section of the Student Code which the student is charged with violating.
- i. The student conduct body's or student conduct officer's determination shall be made on the basis of whether it is more likely than not that the accused student violated the Student Code.
- j. The fact that a student acted while under the influence of alcohol, marijuana or an illegal controlled substance shall not be considered a mitigating factor.
- k. Intoxication may be considered an aggravating factor, and it shall be so considered where the student has a history of prior violations of alcohol, marijuana, or controlled substance regulations.
- l. The student conduct body shall prepare written findings to support its determination. These shall include:
  - i. Concise statements of each factual finding.
  - ii. Brief explanations of whether the factual findings justify a conclusion that the conduct violated the code;

- a) These must address each factual element that must be satisfied to establish that conduct has violated the code.
- iii. Recommendations concerning appropriate sanctions;
  - a) These must explain why the sanctions recommended are appropriate in view of the seriousness of the conduct and in consideration of the need to assure that the violation shall not recur.
- m. If a student conduct body prepares recommended sanctions, these shall be forwarded, together with the other findings and conclusions, to the student conduct officer who may adopt or reject the recommended sanctions.
  - i. If the findings, conclusions, or recommended sanctions are rejected, the student conduct officer shall impose appropriate sanctions, or take such other action as deemed necessary, and provide the student conduct body with a written explanation for this action.
  - ii. The student conduct officer shall determine the effective date of any sanctions imposed.
- n. The approved written findings and conclusions and sanctions, if any, shall be provided to a complainant entitled to receive such information under section B, below, and to the respondent.
- o. There shall be a single verbatim record of all formal evidentiary hearings before a student conduct body. The record shall be the property of the institution.
  - i. The record and its contents shall be held in confidence and may be used solely for purposes of appeal. Any person who unnecessarily discloses the contents of the record to parties not involved in the appeal shall be subject to conduct sanction.
  - ii. In the event of an appeal, the respondent shall be given access to the record for purposes of preparing the appeal. Access shall be provided at such places and times as the senior student affairs officer may direct.

- iii. Except as required by the Americans with Disabilities Act, the institution shall not be required to change the form in which the record is maintained.
  
- p. No student may be found to have violated the Student Code solely because the student failed to appear before a student conduct body, unless the student has allegedly failed to obey the direction of a duly empowered student conduct body, student conduct officer or other institutional officer to appear. In all cases, the evidence in support of the allegations shall be presented and considered.

## B. Sanctions

In each case in which a student conduct body determines that a student has violated the institutional Student Code, the sanction(s) shall be determined and imposed by the student conduct officer. Where a violation of Board Policy is established, and where a sanction is mandated under Board Policy, that sanction shall be imposed. In cases in which persons other than or in addition to the student conduct officer have been authorized to serve as the student conduct body, the recommendation of all members of the student conduct body shall be considered by the student conduct officer. The judicial student conduct officer is not limited to sanctions recommended by members of the student conduct body. Following the hearing, the student conduct body and the student conduct officer shall provide the accused in writing of the findings of fact, conclusions and recommendations, if any, reached by the student conduct body or student conduct officer and of the sanction(s) imposed, if any.

- 1) Complainants shall be informed of any sanctions imposed in the following circumstances:
  - a. When the sanction involves remedial action that directly relates to the complainant (for example, an order requiring the student harasser not to have contact with the complainant);
  - b. Where the allegations against the accused would constitute a crime of violence as defined in section 1(T), above, and committed a violation of the institution's rules or policies with respect to that crime.
  
- 2) Institutions may disclose the final results of a conduct proceeding when, at their discretion, they conclude that disclosure will serve a legitimate educational interest and determine through a conduct proceeding conducted under its student conduct code that the alleged student perpetrator committed a crime of violence or a nonforcible sexual offense that is a violation of the university's rules or policies with respect to such crime or offense. For purposes of this subsection, "final results" means

the name of the student perpetrator, the violation committed, and any sanction imposed by the university on that student. Names of other students involved in the violation, such as a victim or witness, will be released only with the written consent of that other student or students.

- 3) Institutions may inform the parents or legal guardians of students under twenty-one years of age that the students have violated institutional policies concerning the use or possession of alcohol or controlled substances as follows:
  - a. When the infraction occurs under circumstances that suggest that the student suffers from a serious substance abuse problem or shows little regard for his or her own health or safety or that of others; or
  - b. When the student is found to have committed a second violation.
- 4) The following sanctions may be imposed upon any student found to have violated the institutional Student Code:
  - a. Warning – A conduct notice in writing to the student that the student is violating or has violated institutional regulations.
  - b. Censure – A written censure for violation of specified regulations.
  - c. Probation – Probation is for a designated period of time and includes the probability of more severe conduct sanctions if the student is found to be violating any institutional regulation(s) during the probationary period.
  - d. Loss of Privileges – Denial of specified privileges for a designated period of time.
  - e. Fines – Previously established and published fines may be imposed.
  - f. Restitution – Compensation for loss, damage, or injury. This may take the form of appropriate service or monetary or material replacement.
  - g. Discretionary Sanction – work assignments, service to the institution or other related discretionary assignments.
  - h. Residence Suspension – Separation of the student from residence facilities for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.

- i. Residence Expulsion – Permanent separation of the student from residence facilities.
  - j. Suspension – Separation of the student from the institution for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified. A student who has been suspended from one Board institution may not be enrolled at another.
  - k. Expulsion – Mandatory separation of the student from the institution for a period of no less than six years. A student who has been expelled from one Board institution may not be enrolled at another until the period of expulsion has expired.
  - l. The privileges of continued participation in institutional activities, access to institutional facilities or residences may be conditioned upon participation in or completion of counseling, substance abuse, or comparable programs, at the student’s expense.
  - m. More than one of the sanctions listed above may be imposed for any single violation.
  - n. Imposition of a sanction may be delayed, suspended, or held in abeyance on such conditions as the student conduct officer may prescribe.
- 5) The following sanctions are mandated for violation of Board policies:
- a. Conduct sanction for acts of aggression, sex offenses, or harassment shall be subject to the following conditions:
    - i. Conduct sanction on the first occasion may include expulsion, where appropriate, given the nature of the act of aggression, sex offense, or harassment;
    - ii. If there is a second occurrence of an infraction of the same nature at any time during the student’s career in South Dakota public higher education, expulsion shall be mandatory.
  - b. Persons who make bomb threats or who aid or abet their making shall be expelled. Additionally, they shall be required to pay restitution to the institution for all direct and indirect expenses incurred as a result of the threat or threats.

- c. Conduct sanctions for infractions of alcohol, marijuana, and controlled substances regulations:
  - i. Conduct sanction for the initial infraction shall be determined under local regulations which may provide for mandatory substance abuse assessment.
  - ii. If, at any time during their enrollment within the system, students commit a second offense under the alcohol, marijuana, and controlled substances policy, they shall be fined \$100.00 and placed on conduct probation.
  - iii. If, at any time during their enrollment within the system, students commit a third alcohol, marijuana or controlled substances offense, they shall either be suspended for one semester or, in compelling circumstances, be permitted to continue attendance subject to conduct probation while participating in an approved substance abuse treatment program at their own expense.
  - iv. The foregoing sanctions, together with such actions as may be imposed pursuant to local regulations for initial infractions, are minimum sanctions. The reference to them does not preclude the institution from imposing more severe sanctions at any level, including expulsion, where the facts and circumstances of the infraction warrant such action.
  - v. Where an infraction of Board alcohol, marijuana, or controlled substances policies appears also to constitute a criminal offense under South Dakota or federal law, the institution may refer the matter to law enforcement authorities. Where the facts suggest a felony offense, such referral shall be mandatory. Referral of a matter to law enforcement authorities shall not require suspension of conduct proceedings nor delay imposition of discipline.
- d. The following sanctions may be imposed upon groups or organizations:
  - i. Those sanctions listed above in Section 3(B)(3)(a)-(g) and (l)-(n).
  - ii. Loss of all privileges, including institutional recognition, for a specified period of time.

- iii. When an officially recognized student organization has violated any of the conditions of the recognition established under the alcohol, marijuana, and controlled substances policy, it shall be sanctioned as follows:
  - a) On the first offense the organization shall be required to forego the use of alcohol at any of its functions, to remove all alcohol from the residence or both for one calendar year from the date on which this conduct sanction is imposed. Additionally, the organization may lose the right to conduct social functions for a like period of time or, at the discretion of local officials, may incur additional sanctions including the loss of recognition.
  - b) A second offense within four years against any of the conditions of recognition or a violation of a sanction imposed following a first infraction shall result in the suspension of the privilege to solicit and to accept new members for one calendar year from the time the sanction is imposed and may result in the loss of recognition.
  - c) A third offense shall result in the loss of recognition.

#### C. Interim Suspension

In certain circumstances, the senior student affairs officer, or a designee, may impose an institutional or residence suspension prior to the hearing before a student conduct body.

- 1) Interim suspension may be imposed only for one or more of the following purposes:
  - a. To ensure the safety and well-being of members of the institutional community or preservation of institutional property or other property located on premises controlled by the institution;
  - b. To ensure a student's own physical or emotional safety and well-being; or
  - c. To ensure the normal operations of the institution where a student poses a definite threat of disruption of or interference with the normal operations of the institution.

- 2) During the interim suspension, students shall be denied access to residence facilities or to the campus (including classes) or all other institutional activities or privileges, in any combination or all together, for which the student might otherwise be eligible, as the senior student affairs officer or the student conduct officer may determine to be appropriate.
  - 3) Except in circumstances presenting an immediate threat to the safety and well-being of members of the institutional community, including the affected student, or in circumstances presenting an immediate threat of serious damage to institutional property or other property located on premises controlled by the institution, interim suspension may not be imposed until the student is afforded a reasonable opportunity to meet informally with the senior student affairs officer, or a designee, to learn the basis for the action and to raise any objections or to request leniency. The student should be notified beforehand of the purpose of the meeting. A student who fails to respond to the notice shall be deemed to have waived the right to such a meeting.
- D. Conduct sanctions shall not be made part of the student's permanent academic record, but shall become part of the student's confidential record. Sanctions that would be considered in the course of administering progressive conduct sanctions under section 3(B)(2) above shall be disclosed to another institution within the system if a student transfers to that institution or is required to appear there to respond to conduct allegations. Upon graduation, the student's confidential record may be expunged of conduct actions other than residence expulsion, institutional suspension or institutional expulsion. Cases involving the imposition of sanctions other than residence expulsion, institutional suspension or institutional expulsion shall be expunged from the student's confidential record six years after final disposition of the case or such other time as the student conduct officer may prescribe at the time of the expulsion. Where restitution is required of a student, the institution reserves the right to disclose all material portions of the confidential file as may be necessary to obtain a judgment in a court of competent jurisdiction. Such files as relate to matters involving restitutionary sanctions shall be preserved at least until all necessary sums have been paid.
- E. Students enrolled in a Board institution shall be held accountable for their conduct while visiting other Board institutions. Students may be required, as a condition of continued enrollment, to report at their own expense to another campus to appear before a conduct hearing and to answer allegations based on their conduct while at that campus.
- 1) Any conduct sanction imposed in response to campus or Board regulations shall be given systemwide effect. A student suspended at one institution shall not be able to enroll in the meantime at another. A student who has been expelled from one Board institution may not be enrolled at another.

- 2) When a student is brought forward on conduct allegations by an institution, sanction shall be determined under local standards. This punishment/sanction may, at the discretion of local authorities and pursuant to local procedural regulations, include sanctions more severe than the minimum sanctions set forth in systemwide policy; except that no discretionary recommendation for suspension or expulsion may be imposed without the concurrence of the senior student affairs officer from the student's home campus.

#### F. Appeals

- 1) A decision reached by the student conduct body or a sanction imposed by the student conduct officer pursuant to § 3:4(3)(A)(7) may be appealed by accused students or complainants entitled to receive information concerning conduct sanctions under section (B) above, to an appellate board of the institution within five (5) week days, exclusive of holidays, after notice of the decision is sent. Such appeals shall be in writing and shall be delivered to the student conduct officer or his or her designee.
- 2) Except as required to explain the basis of new evidence, an appeal shall be limited to review of the verbatim record of the initial hearing and supporting documents for one or more of the following purposes:
  - a. To determine whether the original hearing was conducted fairly in light of the allegations and evidence presented, and in conformity with prescribed procedures;
  - b. To determine whether the facts in the case were sufficient to establish that violation(s) of the Student Code occurred;
  - c. To determine whether the sanction(s) imposed were appropriate for the violation of the Student Code which the student was found to have committed.
- 3) An appeal may request consideration of new evidence, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, where such evidence or facts were not known to the person appealing at the time of the original hearing.
- 4) If an appeal is upheld by the appellate board, the matter shall be remanded to the original student conduct body and student conduct officer for re-opening of the hearing to allow reconsideration of the original determination and/or sanction(s).
- 5) In cases involving appeals by students accused of violating the Student Code, review of the sanction by the appellate board may not result in more

severe sanction(s) for the accused student. Instead, following an appeal, the senior student affairs officer may, upon review of the case, reduce, but not increase, the sanction(s) imposed by the student conduct officer.

- 6) Where complainants entitled to receive information concerning conduct sanctions under section (B) above appeal from the decision, the senior student affairs officer may, upon review of the case, reduce or increase the sanction(s) imposed by the student conduct officer or remand the case to the original student conduct body and student conduct officer.

#### **4. Administrative Review**

As provided in Board Policy No. 1:6(4), the Board or a President may review a finding or a sanction of an official or body exercising the powers delegated through this policy.

- A. Except on the affirmative vote of two-thirds of the members of the Board, a notice of review must be given to the complainant and respondent within ninety calendar days of a final decision by the official or body exercising delegated authority.

#### **5. Interpretation and Revision**

- A. Any question of interpretation regarding the Student Code shall be referred to the senior student affairs officer or his or her designee for final determination.
- B. The Student Code shall be reviewed every four years under the direction of the student conduct officer.
  - 1) If the review leads to a recommendation that Board policy be modified, that recommendation and its supporting rationale shall be provided to the institutional president and, if approved, forwarded to the Executive Director.

#### **6. Institutions may adopt consistent local regulations to implement this code.**

**SOURCE: BOR, February 1969; RR, 12:06, 1977; BOR, 1980; BOR, April 1987; BOR, June 1990; BOR, December 1994; BOR, October 1996; BOR, December 1999; BOR, March 2006; BOR, December 2006: BOR August 2009.**