

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

**SUBJECT:** Faculty Remediation

**NUMBER:** 4.4.8

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### **A. PURPOSE**

To outline the process and due process requirements related to faculty remediation actions.

### **B. DEFINITIONS**

None

### **C. POLICY**

#### **1. Preamble**

The Board, through its institutional administrators, has the duty to maintain a competent, productive, effective and ethical workforce and to ensure observance of obligations and rights established by law, rule or policy and implicated in university operations. This duty extends to supervision of faculty member conduct. To discharge this duty, the Board and its administrators possess the inherent power to discipline employees, including faculty members, who fail to adhere to expectations for competent, productive, effective and ethical teaching, research or service, who violate laws, rules or policies implicated in university operations, or who engage in misconduct, neglect of duty, insubordination or otherwise unacceptable conduct. This article ensures that the exercise of the power to remediate conduct comports with the requirements of due process.

#### **2. Alternative Measures**

Subject to the reserved authority required by *Worzella v. Board of Regents of Education*, 77 S.D. 447, 93 N.W.2d 411 (S.D. 1958), the Board has delegated to institutional administrators provisional authority to discipline any faculty members for failure to adhere to expectations for: competent, productive, effective and ethical teaching, research or service; violation laws, rules or policies implicated in university operations; or misconduct, neglect of duty, insubordination or otherwise unacceptable conduct, including such conduct identified in section 2 of this policy. The authority delegated to institutional administrators must be exercised consistently with Board policy. The delegated authority includes the power to determine the discipline to be imposed and its effective date Taking into consideration the circumstances that warrant discipline or corrective actions, past service, scholarly achievements and other mitigating or aggravating circumstances, remediation may consist of one of the following actions:

##### **2.1. Corrective Action:**

- 2.1.1. Verbal warnings or directives which do not constitute Discipline; or
- 2.1.2. Written warnings or directives to be filed with the personnel file of the faculty member which do not constitute Discipline.
- 2.2. Discipline:
  - 2.2.1. Required training or current substance abuse treatment at the cost of the faculty member;
  - 2.2.2. Suspension from duties with, or without, loss of pay commensurate therewith;
  - 2.2.3. Demotion, which does not include any change(s) in employment status occurring at the expiration of a term contract or any alteration(s) in employment status authorized in the faculty member's existing contract of employment; or
  - 2.2.4. Discharge.

### **3. Interim Suspension**

Unlike a disciplinary suspension under paragraph C.2.2.2 above, an interim suspension from duties during the pendency of an active review of allegations of conduct warranting discipline is not deemed to be a discipline under this article.

The decision to place a faculty member on interim suspension pursuant to this section does not require compliance with the Stage One notice procedures set forth in Section C.4.2., below, but an informal pre-suspension process will ordinarily be provided. Absent the need for quick action or manifest impracticality, a faculty member will be informed, either orally or in writing, of the basis for the suspension, given an explanation of the evidence supporting the action and afforded an opportunity to respond before being placed on interim suspension.

In circumstances that require quick action or where the pre-suspension process is impractical, and where independent third-party findings confirm reasonable grounds for the allegations against the faculty member, the administration may place a faculty member on interim suspension before providing the requisite information, explanation and opportunity to respond.

The administration may withhold pay where the circumstances that trigger the interim suspension implicate public trust in ways that would preclude continued discharge of assigned responsibilities.

### **4. Procedures**

#### **4.1. Corrective Action Procedures**

Corrective action may be imposed immediately, upon communication of the corrective action to the faculty member, pursuant to the discretion of the faculty member's supervisor. Faculty members who have had corrective action imposed may request review of the action through the grievance procedures established in BOR Policy 4.4.9, subject to the limitation(s) in BOR Policy 4.4.9, Section C.1.4.3.3.1. Any grievance appeal under this section will begin at Step 3 of BOR Policy 4.4.9, Section C.1.4.

## 4.2. Disciplinary Procedures

### 4.2.1. Legal Review Panel

Prior to providing written notice pursuant to Section C.4.2.2 below for discipline that would result in demotion or discharge, the administration shall submit the intended discipline, the allegations supporting the intended discipline, and any evidence or documentation upon which the intended discipline is based to an internal legal review panel appointed by the Board of Regent's Executive Director, or as delegated, the institutional President. The legal review panel will be comprised of legal counsel, a human resources representative of the Board of Regents or institution, and an additional representative designated by the panel's appointing authority. The panel will conduct a review of the intended discipline and supporting materials, and provide a recommendation to the administrator for consideration. Faculty members may be placed on paid administrative leave during the legal panel review process in accordance with applicable policies. Any review and recommendation of the legal review panel shall be conducted under attorney-client privilege and shall not be included in the supporting materials provided to faculty member, made part of the faculty member's personnel file, or otherwise disclosed or shared without the express written permission of the Board of Regents or its authorized designee. The legal review panel may be requested to review other employment actions; however, the legal review panel will not be used for discipline resulting from sexual harassment proceedings conducted in accordance with BOR Policy 1.4.1.

### 4.2.2. Stage One: Pre-Discipline Conference

If the administration determines that there are reasonable grounds for discipline, the faculty member will be furnished written notice of the allegations supporting the determination, an explanation of the evidence relied upon by the administration, and the intended disciplinary action. The matter will be discussed with the faculty member at a personal conference which will be held at a time not sooner than fourteen (14) calendar days, nor later than twenty-one (21) calendar days from the date of the transmission of the written notice, unless otherwise agreed by the faculty member and the administration. The faculty member may bring to this conference a representative chosen by the faculty member. At the close of the personal conference, or within seven (7) calendar days thereafter, the administration will notify the faculty member whether it will discipline the faculty member, how and the effective date of the discipline.

### 4.2.3. Stage Two: Post Discipline Hearing Rights

Faculty members who have been disciplined after completion of Stage One personal conferences may challenge the action through the grievance procedures established in BOR Policy 4.4.9. Any grievance appeal under this section will begin at Step 3 of Board Policy 4.4.9, Section C.1.4.

In all cases, the burden to prove the charges will rest with the administration to the extent provided by law; provided that the faculty members will bear the burden to prove affirmative defenses or counterclaims relating to a challenged discipline.

## **5. Unprofessional Conduct**

The Board recognizes that academic tradition has established common and accepted standards of acceptable conduct and that academic disciplines may assemble and publish statements applying such standards to the unique circumstances of their respective professions. While the Board expects faculty members to adhere to accepted professional standards, whether published or not, it also recognizes that university lecture halls, laboratories and work environments have become subject to manifold levels of governmental regulations and contractual restrictions that also establish or imply standards of conduct needed to protect the special interests that justify the regulations and restrictions.

Even standards published by professional organizations or conduct expectations grounded in statute, rule, policy or contract may be subject to change over time or may be extended to technological or social contexts that emerge following their original adoption. These circumstances preclude the establishment of comprehensive policy that catalogs each form of conduct that violates the essential principles recognized by professionals or established in statute, rule, or policy contract. Thus, the Board provides the following instances to illustrate, without limitation, forms of unacceptable conduct that expose faculty members to discipline, but this enumeration is neither intended, nor could be intended, to preclude disciplinary action for other conduct that violates accepted standards or emergent requirements of statute, rule, policy or contract:

- 5.1. Neglect of duty, misconduct, incompetence, abuse of power or other actions that manifest an unfitness to discharge the trust reposed in public university faculty members or to perform assigned duties;
- 5.2. A failure to correct deficiencies in performance which have been documented, whether in email or print, and communicated to the faculty member;
- 5.3. A breach of recognized published standards of professional ethics;
- 5.4. Conviction of any felony or the conviction of a misdemeanor involving moral turpitude;
- 5.5. Unauthorized absence from duties without prior notification or justifiable cause or excuse for the absence;
- 5.6. The manufacture, distribution, dispensing, possession or use of alcohol or controlled substances shall be cause for discipline where:
  - 5.6.1. The conduct is unlawful or unauthorized and occurs while acting within the scope of employment; while on premises owned and controlled by the Board of Regents or used by the Board of Regents for educational, research, service or other official functions; or while participating in any capacity in activities sponsored by the Board; or
  - 5.6.2. The conduct has been authorized and is lawful, but the use significantly impairs the faculty member in the performance of his duties; or

- 5.6.3. Other conduct that involves a failure to conform to laws regulating alcohol and controlled substances and that results in injury to the person or the rights of others.
- 5.7. The failure or refusal to follow or comply with Board or institutional policies, regulations or published work rules or with lawful orders or instruction of a superior;
- 5.8. Theft, misuse, abuse or wrongful destruction of state owned or controlled property controlled real, personal or intellectual property, including information systems, databases and similar resources;
- 5.9. Participation in strike activities proscribed by SDCL Chapter 3-18;
- 5.10. Violations of rights assured to students, employees or others under federal or state laws or regulations or Board or institutional policies and regulations;
- 5.11. Use of the powers and prerogatives of a faculty member to coerce or to induce others to engage in unlawful conduct or conduct prohibited under Board or institutional policy;
- 5.12. Failure to comply with health or safety regulations, to require compliance by students or others under a faculty member's supervision or to comply with duly issued emergency orders;
- 5.13. Misrepresentation of authority or other conduct intended to deceive or to assist another to deceive others, irrespective of the motives;
- 5.14. Interference with or disruption of the efficiency or morale of educational, research or service programs, workplaces or organizational units, including actions that violate expectations for civil conduct among professors and when working with students, as provided in BOR Policy 4.4.3, Section C.5, or failure at all times to be accurate, to exercise appropriate restraint and to show respect for the opinions of others, as required under BOR Policy 1.6.1, Section C.1.3.; or
- 5.15. Any substantial or irremediable impairment of the ability of a faculty member to perform assigned duties.

## **FORMS / APPENDICES:**

None

## **SOURCE:**

1991 Policy Manual 5:4:2 and 5:4:3; BOR April 2009; BOR December 2010; BOR May 2021; BOR December 2021; January 2022 (Clerical); BOR December 2022; October 2023 (Clerical).