

**SOUTH DAKOTA BOARD OF REGENTS**

**Planning and Resource Development**

**AGENDA ITEM: 5 - H**

**DATE: December 6-8, 2016**

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**SUBJECT: Student Alcohol Policy Discussion**

This item is for the Regents to discuss the letter from Regent Jewett found as Attachment I. In the letter, Regent Jewett proposes a six-point Alcohol Motion that, if passed, would have the effect of modifying Board policy regarding alcohol.

Functionally, if the Alcohol Motion were to pass, Board staff would either:

- (1) Create a standalone alcohol policy applicable to students and student organizations and make conforming changes to other applicable Board Policies to avoid inconsistency and confusion; or
- (2) Enact the substance of the Alcohol Motion by making the required changes to applicable Board Policies.

However, the Board should be aware that points 1, 2, and 6 of the Alcohol Motion would be inconsistent with federal and state law.

Points 1 (prohibition of suspension or expulsion for alcohol violation) and 2 (mandatory sanctions capped at a fine) of the Alcohol Motion would appear to violate the Drug-Free Schools and Communities Act Amendments of 1989 (“Act”). This Act requires:

A clear statement that [Institutions] will impose disciplinary sanctions on students and employees ... and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct [Standard of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities]

(Continued)

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**INFORMATIONAL ITEM**

For Discussion Only.

(emphasis added) (*See* 34 CFR 86.100). Failure to comply with the Act would result in the Institution being “not eligible to receive funds or any other form of financial assistance under any Federal program” (34 CFR 86.5). The absence of expulsion as a potential sanction for alcohol violations appears to be inconsistent with the requirement of the Act. See Attachments II and III for the full text of the two federal regulations that implement the Act, respectively, and Attachment IV for the full text of the pertinent part of Section 22 of the Act that is implemented by the two federal regulations.

Additionally, point 6 (one year record retention period for all conduct records other than academic dishonesty and violations that constitute a felony or child or domestic abuse under state law) of the Alcohol Motion would appear to violate the State of South Dakota Records Retention & Destruction Schedule for Student Conduct Records and for Academic Records.

REG-308 Student Conduct Records provides as follows:

**RETENTION:** JUDICIAL AFFAIRS/RESIDENTIAL LIFE:  
**Retain 7 years** after last date of incident, then destroy provided no litigation is pending.

(Note: ***Exceptions are made for*** cases that result in ***suspended and expulsion students*** from the University. ***Transfer expelled student records*** to the Records and Registration Office ***to be merged with respective the student’s “Academic Records”***.)

(emphasis added).

REG-245 Academic Records provides as follows:

**RETENTION:** Retain permanently.

The one-year retention period for most conduct records would be inconsistent with the State Retention Schedule of seven years for most conduct records and the permanent retention of expulsion records. See Attachments V and VI for the Records Retention Schedule for Student Conduct Records and Academic Records, respectively.

Points 3 (in most instances, there could be no sanctions on organizations related to alcohol), 4 (no sanction on organizations that do not discipline its members who violate alcohol policy), and 5 (limit jurisdiction for possession and consumption of alcohol violations to campus, University owned property, and activities sponsored and controlled by the University) of the Alcohol Motion appear to be legally permissible, but contain valid policy arguments both for and against.



## BOARD OF REGENTS

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OFFICE OF THE EXECUTIVE DIRECTOR

November 15, 2016

Dr. Michael Rush  
 306 East Capitol Avenue  
 Suite 200  
 Pierre, SD 57501

RE: Alcohol Policy

Dear Dr. Michael Rush,

I am again enclosing a revised Motion to adopt a separate alcohol policy. I would ask that it again be placed on the agenda. I believe I have a second to this motion. My motion addresses five integrated issues and only one was discussed when it was last brought up. Those issues are:

1. The mandatory universally applicable penalty for underage possession or consumption of alcohol. This is the mandatory "three times and you're out" policy regardless of age and circumstances. This was addressed in part at the meeting and some changes were made. My motion would eliminate mere consumption and/or possession or a student furnishing alcohol to another as grounds for suspension and mandate fines alone as is normal in our society. One offense now would authorize the expulsion of a student.
2. The penalties were not addressed at our last meeting for student organizations. This is still the rigid "one or two times and you're out" "one size fits all" mind set. Organizations are nothing but a group of students. Alcohol use alone should cause no penalty but a fine.
3. The rule "no alcohol under 21" still applies universally. It applies at home. It applies in other countries which as far as I know, if they even have a drinking law, it is age 18. Are we really going to send someone to Scotland for a semester of college and then throw them out for drinking at age 20 while studying abroad. Is it any business of ours what these kids drink in a home of they own, apartment they rent, house the live in all off campus. Are we going to police the bars or is that the police department's job? The Federal Government does mandate an alcohol policy for Universities for consumption on campus or at University Sponsored and Controlled events. We need a policy for on campus and University sponsored and controlled events and the remainder of that alcohol policy is a private agenda of the drafters of this policy.

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4. The policy adopted requires Student Organizations to suspend or expel any student who violates alcohol provisions of the Code: Organizations may not “encourage, support or tolerate .... The possession, use ... alcoholic beverages at organizational functions” (Student Code of Conduct Policy 3:4, 3. (Prohibited Conduct) J. (Conduct By Organizations) paragraphs 1,2,and 2a))  
The organization may avoid its own suspension or expulsion by searching out and suspending members who “use” “alcohol” (2f on page 19) and filing a report with the Conduct Officers every semester detailing its enforcement efforts (2g on page 19). I can hardly wait to see that report from that will certainly be produced. This again is a gross overreach. 90% of our students drink and student organizations of any substance will end on campus when this report form is introduced and enforced. Who is dumb enough to join an organization that will “rat on them”? Where did this report on your family and friends come from? I have never heard of such a mandatory report requirement in our Country!!!
5. The policy requires any suspensions and expulsions to be kept of record permanently. Are we truly going to report 20 years later a student was expelled simply for possessing a can of beer? As we learned the people who drafted this policy fully intended to expel students at the third time a student was caught with a beer, regardless of the conduct by making the expulsion mandatory. However, the record will not say – “possession of a can of beer” but rather will say something like “habitual drug & alcohol abuse”. These students are not the enemy to be punished forever. They are not rapists or murders (notice there is no Code violation for murder). Our job is not to try to ruin students’ lives for college mistakes. We are passing penalties no reasonable South Dakotan would impose for simply having a beer.

My proposal does not try to do away with the South Dakota alcohol law but it imposes what is a typical penalty for just drinking underage. Kids are not kicked out of high school for drinking beer. No attempt is made to permanently scar them for the offense.

The FBI does not even keep track of the misdemeanor of possession of beer under age. My proposal will still allow all real conduct offenses to be pursued. If he is drinking and wrecks his dorm, beats someone up, drives drunk, steals, etc., etc., etc. he can still be prosecuted. My motion reaches only simple drinking off campus and one student giving another alcohol off campus and limits simple drinking to fines on campus. This is more than adequate and this is where the real world is!

The South Dakota Legislature has provided that if the federal law ever changes, the drinking age will revert to the status quo ante without further action of the Legislature. The Regents are the Legislature for the Universities. Our job is to bring practical sense to the proposals of the bureaucracy. It is not to uphold whatever is proposed. The drafters have never raised teenage kids and propose clearly excessive penalties. We now know that Conduct

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Officers can sue a University President under title IX for refusing to enforce the plain language of the Student Conduct Policies. A University President can't just ignore what you pass. What kind of monster have we created?

If some of the provisions came from past Policies, it just means times do change. When I went to school in the 60's, the poor, delicate women had to be protected by a requirement that they be in by 10:00 p.m. on the weekdays and 1:00 p.m. on the weekend. The penalty was "Date nights" where they could not leave the dorm on weekend nights. Dresses were required of women on campus from 8:00 a.m. to 4:00 p.m. The men had none of these. That a certain provision came from before does not mean much to me. We are passing this code now in 2016 for students in the 21<sup>st</sup> Century, not the 20<sup>th</sup>.

Sincerely,



Regent Harvey Jewett

CC: Regent John W. Bastian  
Regent Kathryn Johnson  
Regent Pam Roberts  
Regent Kevin Schieffer  
Regent Randy Schaefer  
Regent Bob Sutton  
Regent Jim Morgan  
Regent Conrad Adam

### Alcohol Motion

I hereby move that it is the policy of South Dakota Board of Regents with respect to under age use of alcohol, on campus, campus facilities, and housing provided by a recognized Student Organization or other off campus locations by students attending a University under the Jurisdiction of the South Dakota Board of Regents as follows:

1. No student at least 18 years of age shall be suspended or expelled from a University, nor mandated suspension of activities or expulsion of Student Organizations, based solely on the fact that a student consumed alcohol beverages or provided alcohol beverages to other students who are less than 21 years of age, but 18 or more in age, even if such offenses are repeated during the students terms of enrollment.
2. Students who are found to be in violation of the Student Conduct Code provisions with respect to the possession, consumption, or furnishing of alcoholic beverages to other students shall be penalized as follows:
  - a. For the first offense, the student(s) under the age of 21 shall receive a letter from the University advising them that the possession or consumption of alcoholic beverages on campus and/or property owned by the University and/or activities sponsored and controlled by the University, or in any other locations, furnishing the same to others under the age of 21 is a violation of the Student Conduct Code.
  - b. For the second offense, the student or organization shall receive a fine up to an amount not to exceed \$100.00.
  - c. For the third and all subsequent alcohol violations shall receive a fine not to exceed \$150.00.
3. With the respect to Student Organizations, all references to the consumption, use, possession, dispensing, expenditure of funds formally or informally for alcoholic beverages shall be deleted from Policies 1:17, 1:18 and/or 3:4 or any other policy of the Board of Regents or University. The "Organization Conduct Sanctions" sections shall expressly not apply to the Organizations covered by the Student Conduct Code with respect to alcohol or its possession, use, consumption, dispensing alcoholic beverages or furnishing it to members 18 at least years of age but less than 21 years of age nor purchasing directly or indirectly of the same.
4. Student Organizations shall not be disciplined in any manner because it does not suspend or expel members who drink alcohol beverages under the age of 21 or furnish alcohol to people at least 18 years of age.
5. Notwithstanding any other provision relating to drinking or furnishing to drink alcohol under the age of 21 in policies 3:4, 1:17 or 1:18 or other University or Board of Regents policies, the Student Conduct Codes as to possession and consumption of alcohol shall be limited to the University premises, University owned property and/ or at an activity sponsored and controlled by the University.

6. Notwithstanding the provision to the contrary in 3:4 Paragraph 4 (Student Conduct Process) E (Sactions) 1, h, no Conduct Records will be kept no longer than one year after the termination of attendance unless this disciplinary action arose out of academic misconduct or violence constituting a felony under S.D. Law or child or domestic abuse as defined by S.D. Statute at the time of the offense.

Institution's president may also prescribe, provided that a notice of such designation and conditions have been filed previously with the executive director of the Board of Regents; or

- d. The possession, use, or distribution of the controlled substance is prescribed by a licensed health care professional authorized to prescribe such substances.
- e. Alcohol is possessed, used, or distributed in a manner that is expressly approved by a Board Policy.

2. The unauthorized possession of any drug paraphernalia.

#### H. Violation of Policy or Laws

1. Violation of published Board of Regents or Institutional ~~policies~~Policies, rules, or regulations.
2. Violation of federal, state, or local law.

#### I. Other Conduct

Conduct not expressly prohibited may also subject Students or Organizations to conduct sanctions where such conduct has the purpose and effect of infringing interests protected by this Student Code or other provisions of Board Policy or Institutional Policy.

#### J. Conduct by Organizations

1. 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 Student Code shall be subject to conduct sanctions.
2. The privileges of official recognition by an Institution may be extended to 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 manufacture, possession, use, dispensing, or provisions of alcoholic beverages at organizational functions or in the organizational residence by persons under the age of 21;
  - b. Prohibit the manufacture, possession, use, or dispensing of marijuana or unauthorized controlled substances at organizational functions or in the organizational residence;
  - c. Prohibit the expenditure of organizational funds on alcoholic beverages, marijuana, or controlled substances;
  - d. Prohibit the informal collection of monies from members, associates, or invitees to be spent on alcoholic beverages, marijuana, or controlled substances;



- xvii. Conduct sanction for ~~conduct prohibited by Sections 3.D and 3.E (see pages 7-9)~~ Human Rights Violations shall be subject to the following conditions:
1. ~~Conduct sanction on~~For the first occasion ~~may include violation, expulsion, where may be appropriate, given the nature of the violation;~~
  2. ~~If there is~~For a second occurrence ~~of a violation of Sections 3.D or 3.E~~ at any time during the Respondent's academic career at any Institution, expulsion shall be mandatory.
- xviii. Respondents who make bomb threats or who assist others who make bomb threats shall be expelled and shall be required to pay restitution to the Institution for all direct and indirect expenses incurred as a result of the threat or threats.
- xix. Conduct sanctions for violations of the Student Code related to alcohol, marijuana, or controlled substances during the Respondent's academic career at any Institution must, at a minimum, include:
1. For the first violation, the completion of educational programming.
  2. For the second violation, a fine of \$100.00 and being placed on conduct probation.
  3. For the third violation, a one semester suspension.
- xx. Conduct sanctions for Academic Misconduct must, at a minimum, include:
1. For a first violation, a warning and being placed on conduct probation.
  2. For a second violation, an educational sanction.
  3. For a third violation, suspension for one semester.
- h. Conduct sanctions shall not be made part of the Respondent's permanent academic record, but shall become part of the Respondent's conduct record. The Respondent's conduct record containing conduct sanctions other than suspension, expulsion, revoking admission and/or a degree, or withholding a degree, will be expunged seven (7) years after the date of the original finding of a violation of the Student Code. The Respondent's conduct record containing any of the four conduct sanctions above shall be maintained permanently. Where restitution is required of a Respondent, the Institution reserves the right to disclose all portions of the conduct file as may be necessary to obtain a judgment in a court of competent jurisdiction. Such files shall be preserved at least until all necessary compensation has been obtained.

Code of Federal Regulations

Title 34. Education

Subtitle A. Office of the Secretary, Department of Education

Part 86. Drug and Alcohol Abuse Prevention (Refs & Annos)

Subpart B. Institutions of Higher Education

34 C.F.R. § 86.100

§ 86.100 What must the IHE's drug prevention program include?

Currentness

The IHE's drug prevention program must, at a minimum, include the following:

(a) The annual distribution in writing to each employee, and to each student who is taking one or more classes for any type of academic credit except for continuing education units, regardless of the length of the student's program of study, of--

(1) Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities;

(2) A description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;

(3) A description of the health risks associated with the use of illicit drugs and the abuse of alcohol;

(4) A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and

(5) A clear statement that the IHE will impose disciplinary sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct required by paragraph (a)(1) of this section. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(b) A biennial review by the IHE of its program to--

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (a)(5) of this section are consistently enforced.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: [20 U.S.C. 1145g](#))

SOURCE: [55 FR 33581](#), Aug. 16, 1990; [56 FR 29436](#), June 27, 1991; [61 FR 66225](#), Dec. 17, 1996; [61 FR 68821](#), Dec. 30, 1996, unless otherwise noted.

AUTHORITY: [20 U.S.C. 1145g](#), unless otherwise noted.

Current through November 17, 2016; 81 FR 81636.

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Code of Federal Regulations  
Title 34. Education  
Subtitle A. Office of the Secretary, Department of Education  
Part 86. Drug and Alcohol Abuse Prevention (Refs & Annos)  
Subpart A. General

34 C.F.R. § 86.5

§ 86.5 What are the consequences if an IHE fails to submit a drug prevention program certification?

Currentness

(a) An IHE that fails to submit a drug prevention program certification is not eligible to receive funds or any other form of financial assistance under any Federal program.

(b) The effect of loss of eligibility to receive funds or any other form of Federal financial assistance is determined by the statute and regulations governing the Federal programs under which an IHE receives or desires to receive assistance.

(Authority: 20 U.S.C. 1145g)

Credits

[61 FR 66225, 66226, Dec. 17, 1996]

SOURCE: 55 FR 33581, Aug. 16, 1990; 56 FR 29436, June 27, 1991; 61 FR 66225, Dec. 17, 1996; 61 FR 68821, Dec. 30, 1996, unless otherwise noted.

AUTHORITY: 20 U.S.C. 1145g, unless otherwise noted.

Current through November 17, 2016; 81 FR 81636.

"(4) the establishment or improvement of coordination between the agency administering the grant, and—

"(A) child advocates;

"(B) public educational institutions;

"(C) community-based organizations that serve substance abusing parents, including pregnant and post-partum females and their infants; and

"(D) parents and representatives of parent groups and related agencies.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, \$40,000,000 for fiscal year 1990, and such sums as may be necessary for each of the subsequent fiscal years 1991, 1992, and 1993."

SEC. 22. DRUG-FREE SCHOOLS AND CAMPUSES.

(a) IN GENERAL.—

(1) CERTIFICATION OF DRUG AND ALCOHOL ABUSE PREVENTION PROGRAM.—Title XII of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended by adding at the end a new section 1213 to read as follows:

"DRUG AND ALCOHOL ABUSE PREVENTION

20 USC 1145g.

"SEC. 1213. (a) Notwithstanding any other provision of law, no institution of higher education shall be eligible to receive funds or any other form of financial assistance under any Federal program, including participation in any federally funded or guaranteed student loan program, unless it certifies to the Secretary that it has adopted and has implemented a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees that, at a minimum, includes—

"(1) the annual distribution to each student and employee of—

"(A) standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities;

"(B) a description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;

"(C) a description of the health risks associated with the use of illicit drugs and the abuse of alcohol;

"(D) a description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and

"(E) a clear statement that the institution will impose sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct required by paragraph (1)(A); and

"(2) a biennial review by the institution of its program to—

"(A) determine its effectiveness and implement changes to the program if they are needed; and

"(B) ensure that the sanctions required by paragraph (1)(E) are consistently enforced.

**STATE OF SOUTH DAKOTA  
RECORDS RETENTION &  
DESTRUCTION SCHEDULE  
AUTHORIZATION FORM  
(Std Form RM-1 Rev 1/03)**

**DEPARTMENT:** Board of Regents  
**DIVISION:** Public Universities & Special Schools  
**OFFICE:** Student Life  
**PROGRAM:** \_\_\_\_\_  
**RECORDS OFFICER:** \_\_\_\_\_  
**RM CUSTOMER #:** \_\_\_\_\_

|                          |  |                         |
|--------------------------|--|-------------------------|
| <b>RECORD</b>            |  | <b>R.D.B.</b>           |
| <b><u>SERIES NO.</u></b> | <b><u>TITLE---DESCRIPTION---RETENTION AND DESTRUCTION SCHEDULE</u></b> | <b><u>AUTHORITY</u></b> |
|                          |  | <b><u>NUMBER</u></b>    |

**REG-308. STUDENT CONDUCT RECORDS:**

**11-012**

This series of records is arranged alphabetically by the student’s name and contains student conduct records used for follow up and review of incidents. Information may include: incident reports; receipt for confiscated items; search authorizations; notice-to-appear letters; reports of judicial hearings; sanction letters; letters of explanation; records of criminal, civil, or other actions brought to the attention of the University; hearing tapes; correspondence; and the disposition of the hearing. This record series is maintained for verification of past incidents in the event of future cases/incidents. **This record series is a closed record.**

**RETENTION:** JUDICIAL AFFAIRS/RESIDENTIAL LIFE: Retain 7 years after last date of incident, then destroy provided no litigation is pending.

(Note: Exceptions are made for cases that result in suspended and expulsion students from the University. Transfer expelled student records to the Records and Registration Office to be merged with respective the student’s “Academic Records”.)

**STATE OF SOUTH DAKOTA  
RECORDS RETENTION &  
DESTRUCTION SCHEDULE  
AUTHORIZATION FORM  
(Std Form RM-1 Rev 1/03)**

**DEPARTMENT:** Board of Regents  
**DIVISION:** Public Universities & Special Schools  
**OFFICE:** Student Academics  
**PROGRAM:** \_\_\_\_\_  
**RECORDS OFFICER:** \_\_\_\_\_  
**RM CUSTOMER #:** \_\_\_\_\_

|                          |  |                         |
|--------------------------|--|-------------------------|
| <b>RECORD</b>            |  | <b>R.D.B.</b>           |
| <b><u>SERIES NO.</u></b> | <b><u>TITLE---DESCRIPTION---RETENTION AND DESTRUCTION SCHEDULE</u></b> | <b><u>AUTHORITY</u></b> |
|                          |  | <b><u>NUMBER</u></b>    |

**REG-245. ACADEMIC RECORDS:**

**11-012**

This database series is arranged numerically by social security number, and the paper series is arranged alphabetically by student's name and contains student records, student terms, grading, academic standing, graduation process, transcripts, student hiatus/withdrawal, student attendance tracking, and student information transfer used to update the cumulative academic history of each student. Information may include: name, social security number, date of birth, place of birth, course name, course number, course title, credit hours attempted, credit hours completed, grades assigned, semester grade point average, accepted transfer credit (if applicable), current academic status, honors, and other degrees and programs completed. This record series provides a history of courses completed and grades earned by the student while attending. **This record series is a closed record.**

**RETENTION:** Retain permanently.

(Note: When a student re-enters the institution, the data from the document image record is encoded in the student information system.)