

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs

AGENDA ITEM: 5 – D (1)
DATE: December 4-6, 2018

SUBJECT

BOR Policy 1:23 – Employee-Employee and Faculty-Student Consensual Relationships Revisions (First Reading)

CONTROLLING STATUTE, RULE, OR POLICY

BOR Policy 1:23 – Employee-Employee and Faculty-Student Consensual Relationships

BACKGROUND / DISCUSSION

A [May 2018 article from Inside Higher Ed](#) discussed faculty-student dating bans, especially in regard to the “Me Too” era. The article discusses the wide variation in policies that campuses use to regulate faculty-student relationships. The “Me Too” era has spurred many institutions to create policies in this regard. Some institutions are banning faculty-student relationships outright, which is somewhat rare, whereas others take a more nuanced approach that depend on the program of study or whether or not the faculty member would potentially have direct academic authority over the student or is likely to in the foreseeable future.

IMPACT AND RECOMMENDATIONS

Currently, under BOR Policy 1:23, faculty members only need to report a relationship if the student enrolls in a class or if they have academic supervision over the student. Failure to make a disclosure of the relationship as required, or failure to abide by assurances given in regard to reassignment of duties and/or termination of the relationship would result in a termination of employment.

During their [August 2018](#) meeting, AAC members discussed the current policy, how it is used in practice, and were supportive of the proposed changes provided in Attachment I. In addition, the policy was updated to the new Board Policy format, and several small clerical changes have been made as well.

Board staff recommend approval.

ATTACHMENTS

Attachment I – Proposed Revisions to BOR Policy 1:23

DRAFT MOTION 20181204_5-D(1):

I move to approve the first reading of the proposed revisions to BOR Policy 1:23 as presented

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Employee-Employee and Faculty-Student Consensual Relationships

NUMBER: 1:23

A. Background and Purpose-PURPOSE

To limit appearances of favoritism or other self-serving motives deriving from relationships between employees or an employee and student.

~~When individuals exercising power delegated by the Board make work related or academic decisions about people with whom they have sexual relationships, their conduct may give rise to the appearance, if not the reality, of favoritism or other self-serving motive. Even the appearance of such improper motives can diminish the confidence that students and employees have in the integrity of institutional decision making and thereby disrupt the institutional workplace or academic processes. While the state and federal constitutions generally limit the power of government to regulate intimate relationships, government may impose reasonable restrictions to assure that actions taken on behalf of the people are free from actual or apparent favoritism or other self-serving motives.~~

~~The Board already has adopted regulations that address similar concerns that arise when individuals supervise close family members, Board Policy No. 4-22, or when individuals indulge in conduct that amounts to harassment, Board Policies No. 1-17 and 1-18.~~

B. DEFINITIONS

1. **Institution:** ~~“Institution” and its cognate terms~~ All institutions governed by the Board, including the Board Office, and all institutions governed by the Board.
2. **Employee:** All persons employed by the Board of the institutions under its control as administrators, faculty, or Civil Service staff, full-time or part-time, in temporary or permanent positions, including students employed as teaching or research assistants, in work-study positions or otherwise.
3. **Supervisor:** Any person, irrespective of job title or employment status, who, on behalf of an institution, oversees, directs or evaluates the work of others, including, but not limited to, officers, managers, administrators, coaches, directors, physicians, deans, principals, chairs, outreach consultants, extension personnel, advisors, clinical staff members, house parents, university residential personnel and teaching assistants, as well as faculty members in their roles as instructors, as supervisors of their staff, and as participants in decisions affecting the Careers of other faculty members. For purposes of this policy, administrators holding appointments with line responsibilities for policy development and staff supervision at or above the level of a deanship are deemed to be supervisors of all persons employed in the institutional units under their control.

4. **Supervise:** All situations in which an employee or a faculty member, as defined under this policy, oversees, directs or evaluates the work or academic performance of employees or students. It also encompasses all settings in which employees, as part of their assigned duties, provide confidential advice, counseling or treatment to students, or in which residential staff, as part of their assigned duties, direct or counsel residential students.
5. **Institutional Chief Executive Officer:** The Executive Director, the Presidents and the Superintendents. Where the institutional chief executive officer is involved in a reportable consensual relationship, that person will report the matter to the Executive Director, who will then take such actions as may be required or permitted under the policy. If an Executive Director is involved in a reportable consensual relationship, that person will make the required disclosure to the President of the Board, who will then take such actions as may be required or permitted under the policy. An institutional chief executive officer may delegate to a subordinate the responsibility to conduct such preliminary investigations and inquiries and to assemble such documentation as may be required to carry out the requirements of this policy, but the institutional chief executive officer may not delegate the authority to make decisions assigned to such officers under the policy.
6. **Faculty:** All persons charged with academic instruction, research or service, including all ranks recognized as faculty, teaching assistants, academic advisors, coaches, outreach consultants and others who have a role in educating, supervising, coaching or advising students as part of the academic courses or programs of the Board and its various institutions, whether or not these involve credit-bearing coursework. Where the different rules apply in the university or special schools setting, the policy employs the phrases, “university faculty members” or “special school faculty members,” as appropriate. Employees who, as part of their assigned duties, provide confidential advice, counseling or treatment to students, and residential staff, who as part of their assigned duties, direct or counsel residential students, will be subject to the same duties and restrictions that govern faculty members.
7. **Student:** All persons enrolled full-time or part-time in any academic course or program of Board and its various institutions, whether or not these involve credit-bearing coursework, as well as children served by the outreach programs of the special schools.
8. **Consensual Relationship:** A current sexual relationship willingly undertaken and sustained by the persons involved, but not to the relationship between persons who are married to one another. Note: Board Policies No. 1:17, 1:18 and 4:22, addressing sexual harassment, discrimination and nepotism, may govern conduct or circumstances not addressed by this policy, including, specifically, supervision of spouses.
9. **Academic Supervision:** All relationships in which university faculty members exercise supervisory power over students.—“Academic supervision” includes, but is not limited to: teaching, formal mentoring, supervision of research, and employment of a student as a research or teaching assistant; and exercising substantial responsibility for grades, honors, or degrees; and considering disciplinary action involving the student.

C. POLICY

1. ~~Policy Regarding~~ Employee-Employee Consensual Relationships

- 1.1. ~~Except as provided in Section 1.3 of this policy, n~~No supervisor may engage in a consensual relationship with any supervised employee, except as provided in Section 1.4 of this policy.
- 1.2. In the event that an individual is offered a position that will require supervision of a person with whom the supervisor has a consensual relationship, the prospective supervisor must disclose the relationship to the institutional chief executive officer. Employees who apply for supervisory positions must disclose at the time that they submit their applications any current consensual relationships with persons who would be under their supervision if the employees were to be selected for the post.
- 1.3. Where a prospective supervisor reports a consensual relationship, the institutional chief executive officer will withdraw the offer of the supervisory position, unless the consensual relationship substantially predates the supervisory relationship, or unless the prospective supervisor terminates the relationship prior to assuming supervisory duties.
- 1.4. If a prospective supervisor reports a consensual relationship that substantially predates the supervisory relationship, the institutional chief executive officer may authorize an exception to this policy. In such cases, supervisory duties will be reassigned in accordance with the nepotism policy stated in Board Policy No. 4:22.
 - 1.4.1. The institutional chief executive officer will notify the Executive Director each time that authorization to continue a consensual relationship is granted under this section.
- 1.5. Engaging in a consensual relationship prohibited under this policy, failure to make disclosures when required by this policy, or failure to abide by assurances given to the institutional chief executive, will result in termination of employment.
- 1.6. Employees should be aware that entering into such a relationship with a supervisor creates the potential for risk to both persons. In particular, such a relationship will limit that supervisor's ability to direct work or promote that employee's ~~Career~~career.

2. ~~Policy Regarding~~ Faculty-Student Consensual Relationships

- 2.1. No faculty member or employee at the special schools may enter into a consensual, romantic or dating relationship with a student enrolled at the special school or receiving services from the special school.
- 2.2. University faculty members may not have consensual relationships with any students under their academic or athletic supervision.
- 2.3. Students and university faculty members alike should be aware that entering into a consensual relationship will limit the university faculty members' ability to teach and mentor, direct work, employ, and promote the Career of students involved with them in a consensual relationship.
- 2.4. If a student with whom a university faculty member has a consensual relationship attempts to enroll in a class that the university faculty member is scheduled to deliver,

or otherwise to come under any form of academic supervision by the university faculty member, the university faculty member will disclose the consensual relationship to the institutional chief executive officer. The institutional chief executive officer may reassign the university faculty member's supervisory responsibilities if that can be done without compromising the integrity of the academic program. Otherwise, the university faculty member must terminate the consensual relationship or the employment of the university faculty member must be terminated.

- 2.5. Engaging in a consensual relationship prohibited under this policy or, for faculty or other employees of the special schools, engaging in a romantic or dating relationship with a student, failure to make disclosures when required by this policy, or failure to abide by assurances given to the institutional chief executive, will result in termination of employment.

3. Enforcement

- 3.1. Alleged violations of this policy will be subject to ~~the~~ investigation and discipline.
- 3.1.1. Investigations conducted by the institutional chief executive officer for purposes of determining what action may be taken in response to a report required under this policy are not disciplinary investigations.
- 3.1.2. Persons who are asked to cooperate with institutional chief executive officers are subject to the obligations and entitled to the protections extended those who cooperate with investigations into alleged violations of this policy.
- 3.2. Allegations that the policy has been violated may be filed with the institutional chief executive officer or with the institutional Title IX/EEO coordinator.
- 3.3. The Title IX/EEO coordinator, or such other individual designated by the institution, will investigate the circumstances to determine whether it appears it is more likely true than not true that an employee or faculty member engaged in conduct prohibited by this policy or failed to provide notice of a relationship when required to do so under this policy.
- 3.4. The person conducting the investigation will submit the report to the institutional chief executive officer.
- 3.5. The institutional chief executive officer, or that person's designee, may attempt to arrange an informal resolution to secure compliance with the policy, or, at that person's sole discretion, will initiate disciplinary proceedings against the persons involved in the consensual relationship.
- 3.6. Any disciplinary proceedings will be initiated using such procedures as are established elsewhere in Board policy or where relevant to employees under any collective bargaining agreement in force at the time of the discipline, depending upon the employment or student status of the affected individual.
- 3.7. Persons who report violations of this policy or who provide evidence to investigators or at hearings involving such alleged violations will not be subject to harassment, interference, intimidation or retaliation.

- 3.8. All students and employees whose assistance is needed in the investigation of a complaint or in the course of disciplinary action will be required to cooperate with the Title IX/EEO coordinator and other parties who are duly authorized to investigate or to discipline. Persons who are accused of having violated this policy will be entitled to such cooperation when necessary to obtain witnesses in any formal disciplinary proceedings that may be initiated. Where necessary, adjustments will be made to work schedules, classroom schedules and other academic or employment obligations.
- 3.9. Reasonable effort will be made to maintain the confidentiality of the persons who assist the investigation of alleged violations of this policy. Nevertheless, such individuals must understand that it may become necessary to disclose their identities, either directly or indirectly, in the course of investigation. Where formal disciplinary proceedings are instituted, the party alleged to have violated the policy will be given the names of any witnesses whose testimony will be used to support the alleged violation, together with the substance of the statements made by the witnesses.
- 3.10. Initiation of an investigation or discipline under this policy will not preclude, delay or preempt an investigatory or disciplinary proceeding under any other Board policy, collective bargaining agreement or Civil Service Act regulation.
- 3.11. Investigation or disciplines initiated under this policy may be combined with related investigations or disciplinary actions initiated under other policies, agreements or rules, but, where such matters have been combined, questions of proof must be resolved separately.

FORMS / APPENDICES:

None

SOURCE:

BOR May 2002; BOR December 2009.